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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

521RD EESC PLENARY SESSION, 14 AND 15 DECEMBER 2016

Opinion of the European Economic and Social Committee on ‘The functional economy’**(own-initiative opinion)**

(2017/C 075/01)

Rapporteur: **Thierry LIBAERT**

Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Plenary Assembly decision	21 January 2016
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	4 October 2016
Adopted at plenary	15 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	169/0/3

1. Conclusions and recommendations

1.1. The EESC calls in this opinion for society to begin an economic transition from over-exploitation of resources and a throw-away culture to a more sustainable, job-rich era, based on quality rather than quantity. The EESC would very much like to see Europe take the initiative in devising new economic models.

1.2. The EESC considers that the functional economy must be supported, as it will enable all or some of these challenges to be met. The functional economy is not an end in itself, but rather a tool which will help to achieve new consumption model objectives.

1.3. Given the many unresolved questions and unknown factors regarding the supposed economic, environmental and social benefits of the functional economy, a thorough assessment should be carried out of services or product types in order to identify the advantages and if necessary establish the conditions under which the functional economy should be rolled out to people's benefit.

1.4. Labelling will then need to be promoted to indicate the environmental, social, economic or other impacts of the product or service acquired through the functional economy approach of access or use rather than ownership. Such labelling will enable consumers to know whether it would be best to opt to buy the product or service, and to make informed choices. With this in view, it is crucial that the information provided by companies be accurate and trustworthy, and authorities and mechanisms must be designated to guarantee this in the eyes of consumers.

1.5. The EESC recommends that the Member States and stakeholders promote responsible consumption, including over the whole of the education process, with an emphasis on the functional economy. Provided it is rolled out sensibly, the functional economy can help overcome many current consumption challenges.

1.6. More generally, the EESC recommends stepping up the pace of research and achievements in new methods of production and consumption connected to the functional economy:

- Product eco-design, which guarantees the sustainability of resources used from the outset by factoring in the environmental impact of goods throughout their lifecycle. The functional economy can draw on new forms of design to make products more repairable, modular, etc.
- The circular economy (see the EESC's opinion on the circular economy package ⁽¹⁾), aims to establish a 'cradle to cradle' approach with a view to converting one company's waste into another's resources. The functional economy can make it possible to optimise the co-products and externalities of some companies for the production ends of others.
- The collaborative economy, discussed in the EESC's opinion of 21 January 2014 ⁽²⁾, whose theoretical basis is the functional economy. Development of these types of business together can, under certain conditions, cause the functional economy to yield benefits more rapidly, particularly in relation to the environment.
- The economy for the common good (see EESC opinion of 17 September 2015 ⁽³⁾).
- The sharing economy, the special focus of the EESC opinion of 13 May 2016 ⁽⁴⁾.

1.7. An EU legislative package could provide a structure for services delivered through the functional economy, particularly with an eye to new consumption issues such as collaborative consumption, obsolescence, consumer understanding of these models, and a legal and tax framework that is friendlier to innovative businesses.

1.8. By regionalising the functional economy it will be possible to meet the new challenges of sustainable regional development by experimenting with new economic models. The functional economy is useful for harnessing regional assets, getting away from the standardisation inherent in mass production — which is partly responsible for the disillusion with current consumption — and allowing for all production externalities. Cities are also one of the most suitable regional levels for developing functional economy solutions, as their density lends itself to approaches based on pooling.

1.9. In order to cope with the fundamental shift to a new economic model with major systemic consequences in many areas, it is recommended that a new cross-cutting and permanent body be set up in the EESC to analyse these developments.

1.10. An exchange platform making functional economy initiatives more visible across the EU would be useful, given that there are still few good practices and that these do not always receive the attention they deserve. Such a platform could be built into the European circular economy platform endorsed by the EESC in its opinion on the European Commission's circular economy package.

1.11. The functional economy can realign the various types of value of a good. Both use values and labour value must thus find a way to coexist within the functional economy.

1.12. Clarifying and simplifying insurance issues relating to functional economy models will be crucial; models must be made clearer for end consumers so that the new functional economy services can be developed.

⁽¹⁾ OJ C 264, 20.7.2016, p. 98.

⁽²⁾ OJ C 177, 11.6.2014, p. 1.

⁽³⁾ OJ C 13, 15.1.2016, p. 26.

⁽⁴⁾ OJ C 303, 19.8.2016, p. 36.

2. Definition and substance: from ownership to use

2.1. The functional economy is based on using rather than owning products. However, this means more than just incorporating added 'services' into a 'product': the functional economy takes into account all the changes in consumption by more effectively factoring-in the end-user and more resource-efficient economic models, even delivering co-benefits for regions. With this model, companies do not sell the product, but rather a function whose use is charged for. Manufacturers therefore have an interest *a priori* in gearing their business models towards developing good-quality, repairable goods which are easy to maintain, and in introducing appropriate production chains and logistics.

2.1.1. The underlying economic paradigm still holds: that value lies in the benefits derived from use (use value) as well as in the good or service itself or its worth in the eyes of others (its labour value or exchange value).

2.1.2. Under the traditional economic model, producers create value and consumers destroy it through consumption. With the functional economy, the interests of both parties must align, or at least converge, so that each safeguards — or even creates — that value. With the current digital revolution, the production and exploitation of usage data is such a new resource or value created by both parties.

2.1.3. The new dynamic emerging around with the — still hypothetical — figure of the 'prosumer' (a neologism combining the two historically separate roles of producer and consumer) demonstrates how highly linear or vertical economic relationships are turning into more interlinked or horizontal patterns and structures.

2.1.4. The functional economy can promote the dematerialisation of the economy by integrating all costs into the final price, and it must promote the decoupling of economic activity from its environmental impact.

2.2. There are two schools of thought, offering two more or less successful models for applying the concept of the functional economy. The first covers service provision centred on use and ties in with the general idea of a service economy. It rethinks ownership relations but has little to say about products. The second focuses on the externalities of the functional economy which can lead to new solutions, where the sale of goods and services is seen as an integrated whole (looking at issues of work or the production of intangible resources, including regional resources) and the consumer is an integral part of the solution devised.

2.3. The EESC advocates a balanced approach. The idea is not to promote the functional economy across the board but to do so only where it provides answers to the new challenges mentioned.

3. Challenges

3.1. The functional economy is interesting because in theory, or at least under certain conditions, it is able to provide an answer to the many challenges (whether economic, social, environmental or cultural) connected to current consumption.

3.2. As part of an integrated approach, particularly at regional level, it can deliver co-benefits or positive externalities. For example, by using cooperation-based, cross-cutting working methods, local authorities factor into their provision of street-lighting considerations such as economic performance, safer public areas and reduced light pollution and energy consumption. By integrating this range of goals rather than focusing on one single parameter, it is possible to meet several objectives and keep costs under control.

3.2.1. Pooling investment allows the functional economy to be used to promote innovation and thus sustainable development, including clean or green technological innovations. Such forms of innovation are often more capital-intensive than traditional solutions, and the functional economy enables them to be rolled out by consumers, who individually would not have the requisite financial capacity. For instance, an energy performance contract may give the user access to often costly energy-efficient technologies and services in return for a small monthly fee.

3.3. Environmentally speaking, current consumption patterns based on individual ownership lead to under-use of goods and thus significant waste of natural resources: for instance, a car is currently unused 95 % of the time and in urban areas the number of passengers barely exceeds one (the average is 1,2 per vehicle).

3.3.1. Acquiring a mobility service (such as a seat for a given number of kilometres or a car for a specified length of time and distance) allows these resources to be used more intensively. The functional economy can therefore increase the intensity of use of many consumer goods and thus create greater value with a smaller environmental footprint.

3.3.2. Price-setting for functional economy services builds in all product and service costs and not just the marginal cost, meaning that the user has a more accurate understanding of the real costs. This sends a price signal that more closely reflects the real impact of production and thus promotes more responsible behaviour. (For instance, when buying an hour of car-sharing the user contributes to the total costs of wear and tear of the vehicle, insurance, parking, fuel, etc., with all the costs calculated on a pro rata basis. They are therefore likely to take a rational approach to using the vehicle as opposed to an approach based on ownership, where generally only the fuel is seen as a usage cost).

3.4. In social terms, by reducing the cost of accessing a product or service, whether through pooled investment by several parties or by limiting the cost of the intended use to the access price, the functional economy can enable more consumers to access services that were previously unavailable to them. From an economic, legal or insurance point of view, the key issue then is to identify the investor and the holder of the capital made available to the users. The new legislation to be framed will be crucial here.

3.4.1. There are many social issues which, like the environmental challenges, must be explored carefully to establish whether the functional economy will be beneficial in this area, and above all to establish the conditions under which the functional economy can be rolled out with an eye to social progress.

3.5. The paradigm shift involved in moving from ownership to access is far from inconsequential. It underpins a switch from the model of conspicuous consumption and mimetic desire to more moderate consumption which is less rooted in compulsive behaviour or is at least less dependent on ownership of material goods.

3.6. Digitalisation can extend the scope of the functional economy, so that is no longer limited to its original sphere of business-to-business (B-to-B). If the costs of distribution and roll-out are reduced, digital solutions can provide functional economy solutions for everyone in a wide range of areas (such as music, mobility, equipment and the home). With these goals in mind and in order to ensure that the new economic model can operate alongside the existing one, a suitable tax and regulatory framework must be developed and implemented swiftly.

3.7. Recent work and feedback have shown that functional economy practices succeed and are adopted when the solutions improve user experience and consumers' quality of life, rather than on the basis of purely economic or environmental criteria. Good examples of this are car-sharing, which provides an effective solution to the crucial issue of city centre parking, and streaming, which offers almost instant access to a vast online catalogue.

4. Obstacles and limitations

4.1. In some instances the functional economy can speed up the rate of consumption and product renewal. In mobile telephony or long-term hire purchase of vehicles, it is not intuitively obvious that these models (generally long-term lease with option to purchase) do in fact extend product life or improve end-of-life recycling.

4.2. While big industrial groups are best known for implementing specific projects, more traditional sectors such as agriculture — for instance via joint purchasing — and start-ups have a role to play in consolidating and rolling out the functional economy in society. Moreover, SMEs may also find new solutions for their clients in this concept and its application. Certain types of organisational structure, notably cooperatives, can also promote more horizontal forms of governance in which users are fully involved.

4.3. By reducing the costs of accessing products or services, the functional economy can be an advantage for people on the lowest incomes, offering adaptable and flexible access to services and products. However, at the same time it can make these least well-off people more vulnerable if they are no longer able to pay to access, use or subscribe to a service. From this perspective, and in the current context of increasing economic insecurity in many European countries, ownership may seem preferable and safer for people with little material security. In addition, as regards access to certain goods and services, unequal access cannot be attributed solely to economic capital (i.e. financial resources): cultural and educational capital (social background, training) also come into play.

4.4. From a societal perspective, the functional economy can make consumers, i.e. citizens, somewhat more dependent on economic organisations or a given technical or economic system. Once registered for a service, it is difficult — or even impossible — to repair, amend or change the product made available. The functional economy can therefore increase external control if users are not sufficiently involved in the design of the products and solutions developed. Economic and administrative models that promote consumer autonomy (in terms of consumer choices, behaviour and habits) must be sought and promoted.

4.5. Digitalisation can extend the scope of the functional economy to include all consumers. However, it also raises many questions: value capture by some platforms, tax optimisation or avoidance, privacy (particularly through the way in which the data collected are used), market concentration (platform monopolies) and labour issues (as mentioned in point 1.6).

4.6. Simply shifting to a 'service economy' will not shield the functional economy from the risk of all these obstacles or limitations. However, these can be overcome by adopting a more integrated approach to the functional economy, one that addresses issues of corporate governance, work and the regional perspective, and that factors in the consumer from the stage of designing the service through the product lifecycle.

4.7. Nonetheless, legal measures are certainly necessary in relation to several of these points and particularly as regards competition and privacy.

5. Championing a European drive to promote the functional economy

5.1. There are many reasons — environmental, social, cultural, as well as economic — why the EU must concern itself with the functional economy. Digital issues, and more generally the relevance of this area to new economic models such as the sharing or circular economies, are also important here, particularly given the pace of change.

5.2. In Europe, the functional economy provides a way for business to recreate added value and promote job-rich solutions (particularly upstream, in areas such as maintenance and repairs, but also downstream, when designing innovative economic models and related services) and in particular a way to make certain industries more competitive. By developing services that reflect consumer needs as closely as possible, rather than standardised, poorly adapted products, the functional economy could rekindle confidence between business and consumers and make consumption meaningful again.

5.3. While large companies' innovation departments, regional authorities and many experts support the functional economy, it is astonishing to see just how weak Europe's efforts are in this area. Although the functional economy is at the heart of the circular economy, there is not a single reference to it in the Commission's recent *Closing the loop* communication on the circular economy.

5.3.1. Despite these uncertainties and limitations, in light of the uncertain political and economic situation in Europe at present, the functional economy is an opportunity for Europe to build on and develop the expertise and skills of many different players.

Brussels, 15 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on ‘Promoting innovative and high-growth firms’

(own-initiative opinion)

(2017/C 075/02)

Rapporteur: **Antonio GARCÍA DEL RIEGO**

Plenary Assembly decision	21 January 2016
Legal basis	Rule 29(2) of the Rules of Procedure
	Own-initiative opinion
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	29 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote	220/1/8
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC encourages the Commission to pursue its efforts to develop policy proposals aimed at promoting the creation of innovative and high-growth firms and recommends that these initiatives are conducted, led and coordinated by a single unit responsible for assessing, monitoring and achieving synergies between innovative policies delivered by different DGs. These policy proposals should strengthen the single market, reinforce the clusters and ecosystems in which innovative start-ups are created, develop the equity component of the European capital markets, encourage an academic agenda focusing on jobs for the future and minimise the cost and red tape involved in starting a new entrepreneurial venture.

1.1.1. The Commission should continue its work to enforce the existing rules of the single market: long-term harmonisation projects such as accounting and insolvency standards, automatic recognition of professional and academic qualifications, accelerated implementation of the digital single market strategy and the full deployment of the Capital Markets Union initiative⁽¹⁾ would greatly assist the EU in benefiting from the full potential of a genuine single market. Simple and effective cross-border contract rules should boost cross-border e-commerce, reducing legal fragmentation in consumer law as well as compliance costs for business.

1.1.2. Equity financing needs to be further expanded to support start-ups in their development phase. Among other factors, this implies a more neutral tax system that treats debt and equity financing equally by enabling the deductibility of both interest and dividend payments⁽²⁾. Start-ups should be able to use ‘stock option’ packages to attract and retain talent.

⁽¹⁾ The EESC has expressed support for the initiatives of the Capital Markets Union in its opinions on the ‘Action Plan on Capital Markets Union’ (OJ C 133, 14.4.2016, p. 17), ‘Securitisation’ (OJ C 82, 3.3.2016, p. 1) and the ‘Prospectus’ (OJ C 177, 18.5.2016, p. 9).

⁽²⁾ The EESC has repeatedly called for measures to eliminate the debt bias in tax systems, for example in its opinion ‘Finance for business/alternative supply mechanisms’ (OJ C 451, 16.12.2014, p. 20).

1.1.3. An equity culture should be created and promoted, including educational and non-legislative initiatives. The European financial system needs to develop liquid investment products suited to retail investors in order to encourage them to invest in innovative small businesses.

1.1.4. Cutting unnecessary red tape and reducing 'gold plating' are also crucial in order to minimise administrative burdens and avoid unnecessary costs and time inefficiency for entrepreneurs.

1.1.5. The development of new types of collaboration between universities and businesses involving both big industry and smaller firms needs to be strengthened and accelerated across Member States, undertaking novel policy measures aimed at turning the EU into a magnet for talent.

1.1.5.1. The EESC encourages the Commission to remove any legal constraints to student and young entrepreneur exchanges ⁽³⁾, for example with the creation of an Erasmus programme for young entrepreneurs.

1.1.5.2. To raise awareness of promising companies, the EESC advocates setting up a platform-based information database integrated into the European Investment Advisory Hub (EIAH) and the European Investment Project Portal (EIPP) ⁽⁴⁾. It would include the EU's high-growth firms, in different sectors, selected on the basis of objective and transparent criteria and allowing for cross-company comparison and benchmarking.

1.1.6. The EESC believes that sharing and assessing good practices offers valuable insights for experimenting with new policies ⁽⁵⁾.

1.2. The European Investment Fund (EIF) and the European Investment Bank (EIB) are asked to support innovative firms with specific venture and seed capital to facilitate technological transfer from universities and research centres. This could be structured in the form of first loan guaranties that would help to overcome initial resistance to private funding.

1.3. The European Fund for Strategic Investments (EFSI), a EUR 21 billion fund made up of European Union guarantees and European Investment Bank capital, should play a critical role in helping innovative projects attain scale and make it to the market. Moreover, the EFSI could be a model for future EU budgets, moving from a traditional grant-based method of financing projects to a more efficient investment-led model, which would 'crowd in' funds for projects. The EFSI has successfully funded relatively risky areas that could have been easily overlooked ⁽⁶⁾.

1.4. The EESC calls for building a broader investment toolkit to stimulate growth-stage investment, including 'asymmetric funds', which deliver different returns to different classes of asset investors, and alternative finance vehicles, such as crowdfunding ⁽⁷⁾. The creation of sub-markets should also be considered in order to facilitate access to markets for European SMEs.

1.5. The Commission should address regulatory asymmetries between European and the US regarding the treatment of investments in software and remove the regulatory constraints that hamper the European financial sector in investing in digital development.

2. Analysis of the current situation

2.1. Small and medium-sized enterprises (SMEs) are a key element of the European economy, contributing significantly to job creation and economic growth ⁽⁸⁾.

⁽³⁾ See the EESC opinion 'Engaged universities shaping Europe' (OJ C 71, 24.2.2016, p. 11).

⁽⁴⁾ European Investment Advisory Hub: <http://www.eib.org/eiah/index.htm>
Information about the European Investment Project Portal: <https://ec.europa.eu/eipp/desktop/en/index.html>

⁽⁵⁾ See point 4.

⁽⁶⁾ European Digital Forum, *From start-up to scale-up: Growing Europe's digital economy*, Sergey Filippov and Paul Hofheinz, 2016, pp. 3-5.

⁽⁷⁾ *Ibid.*, p. 5.

⁽⁸⁾ EU definition of SMEs (OJ L 124, 20.5.2003, p. 36).

2.1.1. In 2015, more than 22,3 million SMEs in the European Union made up 99,8 % of all non-financial enterprises, employed 90 million people (66,9 % of total employment), generated 57,8 % of total added value⁽⁹⁾ and provided 85 % of new jobs. Europe needs to ensure that a new breed of SME is created to compensate for the 200 000 that go into bankruptcy every year⁽¹⁰⁾, affecting 1,7 million workers. However, what matters more for future economic growth are those businesses that want to innovate, grow and export.

2.2. The creation of start-ups with high rates of growth is of crucial importance because of their focus on innovation in fast-growing sectors with high added value. These are the businesses that will create jobs in the future and drive productivity growth, which is central to improving living standards. While Europe is reporting progress in some areas, it is lagging behind in the move from the start-up to the scale-up phase, which should ultimately lead to the growth and job creation that Europe needs⁽¹¹⁾.

2.3. This own-initiative opinion focuses on scale-ups: high-growth companies with an average annual growth in employees (or turnover) greater than 20 % over a three-year period, and with 10 or more employees at the beginning of the observation period⁽¹²⁾. A key characteristic of scale-ups is that they run business models that are highly scalable. Scalability is the capacity to grow in terms of market access, revenues, and structure triggered by, for example, rapid replication of the business model in different markets or new management practices.

2.3.1. An OECD study of 11 countries⁽¹³⁾ found that scale-ups accounted for less than 10 % of firms in all 11 countries but created up to two-thirds of all new jobs⁽¹⁴⁾.

2.4. Start-ups tend to be less profitable in the short term and are dependent on external finance. If these innovative businesses are unable to finance their expansion plans, they fail to scale up, and the underlying potential for productivity growth and job creation is likely to be stunted.

2.4.1. A World Bank analysis⁽¹⁵⁾ estimates that the average rate of SME non-performing loans in developed markets in 2007 was 6,93 %, more than twice that of large business loans at 2,54 %. Non-performing loans increased dramatically during the crisis in Portugal, Spain, Italy and Ireland to between 10 % and 25 %.

2.4.1.1. Policies that encourage banks to extend loans to riskier firms, particularly early-stage companies with limited collateral, could create a set of risky banks, credit contraction and increasing financial instability⁽¹⁶⁾.

2.5. Europe needs to focus on the smooth functioning of the 'funding transition', which is currently broken.

2.5.1. The funding transition is composed of four chapters: start-up phase (funded by grants, seed capital, family and friends); equity growth phase (crowdfunding, microfinance, business angels); sustained growth (securitisation, private equity, venture capital, institutional investors, private debt placement) and exit (acquisition, public equity markets).

⁽⁹⁾ http://www.eif.org/news_centre/publications/eif_annual_report_2015.pdf

⁽¹⁰⁾ Bankruptcy and second chance for honest failed entrepreneurs — the European Commission's policy. Entrepreneur's Day 12 November 2015.

⁽¹¹⁾ A start-up is commonly defined as an entrepreneurial venture designed to search for a repeatable and scalable business model. These newly created companies are usually highly innovative, typically based on ideas, technologies or business models that did not exist before. By contrast, a 'scale-up' company is one that rapidly expands and grows in terms of market access, revenues or number of employees. See the *Octopus high-growth small business report 2015* (London: Octopus, 2015).

⁽¹²⁾ <https://www.linkedin.com/pulse/20141201163113-4330901-understanding-scale-up-companies>

⁽¹³⁾ UK, Finland, Spain, Italy, US, Canada, Norway, Netherlands, Denmark, New Zealand, Austria.

⁽¹⁴⁾ *Supporting investors and growth firms* — T. Aubrey, R. Thillaye and A. Reed, 2015, p. 11.

⁽¹⁵⁾ <http://siteresources.worldbank.org/INTFR/Resources/BeckDemirgucKuntMartinezPeria.pdf>

⁽¹⁶⁾ *Supporting investors and growth firms* — T. Aubrey, R. Thillaye and A. Reed, 2015, p. 21.

3. Building blocks for the development of a scale-up-friendly innovation ecosystem

3.1. Successful innovation ecosystems that nurture scale-up companies are characterised by strong interconnected networks of research and education institutions, large industries, venture capital investors, and the presence of creative and entrepreneurial talent ⁽¹⁷⁾.

3.1.1. Normally, start-ups are created in technology hubs built around first class universities that act as key players in the development of a dynamic business environment, because they are a source of talent, both in terms of students and of academics. Powerful, well-connected clusters improve the productivity of business, drive the direction and pace of innovation and stimulate the genesis of new businesses. The USA and China, as well as certain centres in Europe, are leading a long-term battle to attract talent and capital and foster innovation.

3.1.2. However, the fragmentation of the European labour markets impedes the transition from start-ups to scale-ups. In this respect, it is paramount to facilitate labour mobility across the EU as well as to attract talent from third countries that serves as a magnet, thus creating a virtuous circle.

3.1.3. An Erasmus programme for young entrepreneurs could be encouraged. It fits in with the guiding principle of growth and jobs, and it is an initiative that would facilitate mobility and would be well received by businesses.

3.1.3.1. Some policies have been recently adopted to attract talent from outside the EU. The Blue Card, introduced in 2009, has expedited the entry of skilled workers with an EU employer ⁽¹⁸⁾. At national level, some European countries have already created specific visa procedures for entrepreneurs and others are beginning to introduce these ⁽¹⁹⁾.

3.1.4. A remarkably successful case of a technology hub would be 'Oxbridge', which refers to the region of influence encompassing Oxford and Cambridge universities in the UK. The high-tech community in the UK continued to grow and innovate during the prolonged period of economic recession and stagnation between 2008 and 2012 ⁽²⁰⁾.

3.1.4.1. However, many of Europe's universities do not have the standing, structure, or inclination to create conditions for the growth of entrepreneurial ventures on campus or to champion this agenda to governments ⁽²¹⁾. University leaders and Government should develop links with industry, investing in technology transfer offices on campus and education in entrepreneurship ⁽²²⁾.

3.1.5. Spin-offs created as a result of technological transfers from universities face difficulties in scaling up due to a lack of money and specialised management. It is crucial therefore that they are able to count upon institutional public support to overcome the initial reluctance of private funding providers to invest in spin-offs with a technical profile, since these are perceived as too technical and risky and are often not well understood.

3.2. Despite having a similar level of education, Europeans set up new businesses remarkably less frequently than Americans. The manifold reasons for this include high levels of risk aversion, administrative burdens, an underdeveloped culture of second chances, underdevelopment of entrepreneurship-related education programmes and lack of private equity culture. Attention should also be paid to early development of an entrepreneurial culture at elementary and secondary-school level.

⁽¹⁷⁾ Tataj, D. 'Innovation and Entrepreneurship. A Growth Model for Europe beyond the Crisis', Tataj Innovation Library, New York, 2015.

⁽¹⁸⁾ <https://www.apply.eu/directives/>

⁽¹⁹⁾ <http://tech.eu/features/6500/European-start-up-visa>

⁽²⁰⁾ www.cambridge.gov.uk/sites/default/files/documents/cnfe-aap-io-employment-sector-profile.pdf

⁽²¹⁾ *Clustering for Growth, How to build dynamic innovation clusters in Europe*, p. 11.

⁽²²⁾ See the EESC opinion 'Engaged universities shaping Europe' (OJ C 71, 24.2.2016, p. 11).

3.2.1. In fact, the risk of bankruptcy is what Europeans fear most about setting up a new business: 43 % in Europe v 19 % in the US. In the US⁽²³⁾, the fairly efficient and non-punitive corporate bankruptcy regime, as well as a generally greater acceptance of corporate failures, contributes to a willingness to take risks. Developing a more entrepreneurial culture should become a priority for policymakers as well as educational institutions.

3.2.1.1. A recent study shows that companies founded by re-starters have higher turnover and employment growth and higher chances of acquiring external funding⁽²⁴⁾. In Spain, only 20 % of entrepreneurs creating their first start-up succeed; for those that try a second time, the success rate goes up to an astonishing 80 %.

3.3. High-growth and innovative businesses are often more likely to be rejected for bank loan financing because they lack capital, which forms a key part of banks' credit assessments⁽²⁵⁾. Equity finance is therefore fundamental for start-ups and for businesses with significant expansion plans but uncertain or negative-forecasted cash flows. Bank lending should thus be complemented by improving the diversity and flexibility of funding sources with special emphasis on the role of equity finance.

3.4. An equity culture should be created and promoted in Europe, and European financial systems need to develop investment products that are suitable for retail investors and provide the necessary liquidity for them to invest in innovative small businesses.

3.4.1. Due to the lack of later-stage funding, European start-ups cannot keep up with the growing pace of their US counterparts and either need to generate revenues earlier in order to stay alive or are sold at a premature stage at a discount price. Indeed, by 2009, only 5 % of European companies created from scratch since 1980 were in the top 1 000 in terms of market capitalisation. In the US, this share was 22 %⁽²⁶⁾.

3.4.1.1. Remarkably, over half of all venture capital worldwide is granted in the US, only 15 % in Europe. In 2013, EUR 26 billion of venture capital was provided in the US and EUR 5 billion in Europe, while business angel investors provided EUR 6 billion to European start-ups and EUR 20 billion in the US.

3.4.1.2. The EU thus suffers from a major deficit in business angel and venture capital funding, which are respectively three and five times higher in the US. This is a crucial difference as it is this kind of capital that is needed to transform firms into larger and more successful enterprises.

3.4.1.3. The main reason for this is the high fragmentation of the EU venture-capital industry along national borders. At around EUR 60 million, the average European venture fund is only half the size of the average fund in the US, and 90 % of the EU venture-capital investment is concentrated in only eight EU Member States (Denmark, Finland, France, Germany, the Netherlands, Spain, Sweden and the UK)⁽²⁷⁾. Due to the diversity of rules in the Member States, venture capital firms face high costs in raising funds across Europe. As a result, they are small and have less capital to support growing businesses. If Europe's venture capital markets were as deep as in the US, as much as EUR 90 billion of additional funds would have been available to finance companies between 2008 and 2013⁽²⁸⁾.

3.4.1.4. Also problematic is the insufficient involvement of private investors. Over the last decade, the European venture capital sector has become increasingly reliant on public sector institutions, which contributed 31 %⁽²⁹⁾ of the total investment in 2015, up from a mere 15 %⁽³⁰⁾ in 2007. The aim should not be less public money but more private sources. The investor base needs to be broadened and diversified if the industry is to become self-sustaining in the long run.

⁽²³⁾ Bankruptcy and second chance for honest failed entrepreneurs — the European Commission's policy.

⁽²⁴⁾ Research by Professor Kathryn Shaw at Stanford Graduate School of Business.

⁽²⁵⁾ *Supporting investors and growth firms* — T. Aubrey, R. Thillaye, and A. Reed, 2015, p. 40.

⁽²⁶⁾ <http://eref.knowledge-economy.net/uploads/documents/Born%20to%20Grow.pdf>.

⁽²⁷⁾ European Commission, Building a Capital Market Union, Green Paper, op. cit.

⁽²⁸⁾ *Ibid.*

⁽²⁹⁾ <http://www.investeurope.eu/media/476271/2015-european-private-equity-activity.pdf>

⁽³⁰⁾ http://www.investeurope.eu/media/340371/141109_EVCA_FOF_scheme.pdf

3.4.1.5. To incentivise public-private partnerships, asymmetric funds could be considered. These are venture capital funds where investors are given different conditions and returns based on their investment goals, recognising the various interests of partners in different collaborations. They already exist in Finland, Greece, the UK and the Netherlands.

3.4.2. The creation of sub-markets should also be considered in order to facilitate access to markets for European SMEs. They should allow for low listing costs and a flexible tailored approach to the needs of smaller, dynamic companies. Good examples are London's Alternative Investment Market (AIM), Paris's Nouveau Marché, or Madrid's Mercado Alternativo Bursatil (MAB). This flexible regulation system can be a double-edged sword. Small companies can have easier access to the stock exchange to float shares but, on the other hand, inexperienced investors could face difficulties in assessing the exact risk profile of a firm.

3.4.3. Specific sector regulation is sometimes hampering the capacity of EU businesses to invest in technology development when compared to their US counterparts. For example, there is a regulatory asymmetry between European, US and Swiss financial entities regarding the needed investments in software and other intangible assets, which are critical for digital development.

3.4.3.1. The banking sector is, by far, the biggest IT sector in the world: USD 700 billion are spent on IT innovation — 1 in 5 EUR is spent by the financial sector and 5 to 10 % of investment ⁽³¹⁾. Consequently, banks are both a major actor in the digital transformation and the main financier of the digital economy.

3.4.3.2. Nevertheless, the regulatory framework is penalising their much-needed investments in IT. Financial regulation should treat software as an ordinary asset and should not force EU banks to deduct this investment for capital requirement purposes.

3.5. Different tax treatments across Member States and between different types of financing pose an obstacle to the development of pan-European capital markets, with an impact on both investors and issuers.

3.5.1. Most corporate tax systems in Europe favour financing by debt rather than equity, by allowing a deduction for interest costs; there is no deduction for dividend payments in the case of equity. Such debt bias could be addressed through tax deductions for the cost of both equity and debt financing ⁽³²⁾.

3.5.1.1. Tax incentives play an important role in the provision of finance to high-growth early-stage companies, and several governments around the world allow tax deductions for individuals and companies invested in high technology start-ups or qualified venture capital funds ⁽³³⁾.

3.5.1.2. A traditionally attractive benefit to employees and start-up entrepreneurs is to put in place stock option programmes, as many of them would forego salary compensation. In the majority of Member States, the tax treatment of stock options is very punitive since they are treated as normal income and taxed at a marginal rate. A preferred tax treatment for stock options should be encouraged in a similar manner to the incentive stock options (ISOs) ⁽³⁴⁾ in the US.

3.5.2. It is costly for businesses to comply with VAT obligations, in particular if the company sells goods or services cross-border. The EESC is pleased to learn that the Commission has announced, as part of its Digital Single Market strategy, that it will put forward legislative proposals by the end of 2016 to reduce the administrative burden on businesses caused by different VAT regimes. Among these measures, the Commission proposes introducing a VAT-free threshold to help start-ups and microbusinesses ⁽³⁵⁾.

⁽³¹⁾ European Banking Federation, 16 September 2016.

⁽³²⁾ Serena Fatica, Thomas Hemmelgarn and Gaëtan Nicodème, *The Debt-Equity Tax Bias: Consequences and Solutions*, European Commission Taxation Papers/Working Paper 33-2012: http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_33_en.pdf

⁽³³⁾ e.g. point 4.3.

⁽³⁴⁾ <https://www.law.cornell.edu/cfr/text/26/1.422-2>

⁽³⁵⁾ http://europa.eu/rapid/press-release_MEMO-16-1024_en.htm

3.6. Unlocking the full potential of the single market is essential so that start-ups can offer their services and products across the whole EU at an early stage and swiftly scale up to compete in global markets.

3.6.1. Simple and effective cross-border contract rules for consumers and businesses are a priority in the digital single market strategy. They would foster cross-border e-commerce in the EU by eliminating legal fragmentation in the area of consumer contract law. The removal of barriers due to contract law differences would boost consumption in the EU by EUR 18 billion and gross domestic product would increase by EUR 4 billion from its current level⁽³⁶⁾.

3.7. Unnecessary administrative burdens are also a cause of extra costs and time inefficiency for entrepreneurs.

3.7.1. During 2013-2015, the average cost for starting a business in the EU was 4,1 % of GDP per capita, while in the US it was 1,17 %⁽³⁷⁾.

3.7.2. In terms of the time taken to establish a company in the EU, on average registration was completed within 11,6 days. In the US, it takes just 6 days to start a business.

3.8. Information asymmetry is another reason why Europe does not produce enough high-growth firms. Investors lack a complete view of all investment opportunities. Moreover, non-European investors face additional limitations trying to understand the specifics of the different national markets. A dedicated portal, integrated with the European Investment Advisory Hub (EIAH) and the European Investment Project Portal (EIPP)⁽³⁸⁾, would help to provide visibility to high-growth projects and reduce information asymmetry.

4. Example of good practices among the many that are currently in existence

4.1. A number of countries have developed good practices to support start-ups and scale-ups. The EESC recommends that the Commission study carefully the possibilities for their implementation at a European level

4.1.1. Germany requires firms to join a German chamber of commerce (IHK) that in turn provides support and advice⁽³⁹⁾.

4.1.2. Government loan guarantee schemes like those in Italy, the UK, Poland and France should be explored, as well as state co-financing such as in Germany and Sweden⁽⁴⁰⁾.

4.1.3. The United Kingdom is providing tax incentive schemes to increase the flow of funds into riskier assets with its EIS, SEIS and VCT schemes⁽⁴¹⁾.

4.1.4. The Piedmont region in Italy has developed networks in 12 industry clusters, bringing together firms, universities and local government⁽⁴²⁾.

4.1.5. In the Basque region in Spain, the Elkar-Lan cooperative encourages the creation of other cooperatives via a complete viability analysis of the project, training, and access to subsidies and financial aid⁽⁴³⁾.

⁽³⁶⁾ http://europa.eu/rapid/press-release_IP-15-6264_en.htm

⁽³⁷⁾ www.theglobaleconomy.com/USA/Cost_of_starting_business

⁽³⁸⁾ See footnote 4.

⁽³⁹⁾ <http://www.dihk.de/en>

⁽⁴⁰⁾ *Supporting investors and growth firms* — T. Aubrey, R. Thillaye and A. Reed, 2015, p. 36.

⁽⁴¹⁾ Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and Venture Capital Trust (VCT).

⁽⁴²⁾ cordis.europa.eu/piedmont/infra-science_technology_en.html

⁽⁴³⁾ www.elkarlan.coop

4.1.6. Digitalisation of government services, as demonstrated by the case of Estonia, could provide a breakthrough in facilitating the growth of high-tech, innovative companies. On a pan-European scale, developing e-government would have a massive impact.

4.1.7. In the era of the data-driven economy, a competitive advantage may rely on intangible assets, which are difficult to assess and value using traditional financing mechanisms. The UK's Intellectual Property Office has developed ways to identify and measure these assets in terms of cash flow⁽⁴⁴⁾.

4.1.8. In the United Kingdom, a dedicated team within Tech City UK called Future Fifty supports the UK's top 50 growth-stage digital companies. The programme provides access to expertise within government and the private sector, builds links to the UK's institutional investor base, and offers tailored support to help companies grow rapidly and establish the foundation for IPO⁽⁴⁵⁾ readiness, M&A and global expansion⁽⁴⁶⁾.

4.1.9. In 2015, the US federal government put in place the STEM scheme, which aims to inspire children to study science, technology, engineering and maths. A key pillar is dedicated to preparing students for the future needs of the labour market⁽⁴⁷⁾. There is an increasing focus on transferable skills and STEAM, with the 'A' referring to 'Arts'.

5. Initiatives taken by the European Commission to promote the creation and growth of start-ups

5.1. The European Commission has made a remarkable effort to support entrepreneurs, rolling out multiple initiatives in the past few years, with a number of different directorates-general leading the process, namely DG CONNECT⁽⁴⁸⁾, DG EAC⁽⁴⁹⁾, DG GROW⁽⁵⁰⁾, DG RTD⁽⁵¹⁾ and DG FISMA⁽⁵²⁾.

5.2. Many of these initiatives are recent and it is still too early to assess their effects. However, the EESC believes that the Commission is on the right path and encourages it to keep working in this direction, always in consultation with the relevant European and national stakeholders.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁴⁴⁾ <https://www.gov.uk/government/publications/banking-on-ip>

⁽⁴⁵⁾ Initial public offering or stock market launch.

⁽⁴⁶⁾ <http://futurefifty.com/>

⁽⁴⁷⁾ <https://www.whitehouse.gov/the-press-office/2015/03/23/fact-sheet-president-obama-announces-over-240-million-new-stem-commitmen>

⁽⁴⁸⁾ Entrepreneurship 2020 Action Plan.

⁽⁴⁹⁾ Erasmus programme.

⁽⁵⁰⁾ Single Market Strategy.

⁽⁵¹⁾ Horizon 2020 Programme for Research and Innovation.

⁽⁵²⁾ Capital Markets Union.

Opinion of the European Economic and Social Committee on 'An appropriate framework for the transparency of companies'

(own-initiative opinion)

(2017/C 075/03)

Rapporteur: **Vladimíra DRBALOVÁ**

Plenary Assembly decision	21 January 2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
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Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	219/3/14

1. Conclusions and recommendations

1.1. The Committee considers it essential that companies are transparent and supports any initiative that helps to make doing business sustainable and predictable over the long term. Transparency is important for all parties, for the companies themselves, and for improving their image and boosting the trust of workers, consumers and investors.

1.2. The Committee recognises that most companies operating in the EU are indeed transparent. Even so, a series of scandals have recently shown that transparency needs to be improved to become generally a part of companies' sustainable strategies. Investors and shareholders are increasingly paying attention not only to the profitability indicators of businesses but also to qualitative CSR ⁽¹⁾ indicators that help reduce social risks and ensure that businesses can develop in a sustainable way. To meet the needs of enterprises and other stakeholders, information should be material and cost-effective to collect.

1.3. The Committee notes that Member State governments should motivate and encourage companies to make transparency an asset because it is also a good opportunity for business and support them in fulfilling these requirements.

1.4. The Committee thinks it important to focus simultaneously on both the effectiveness and scope of the information being filed and on its quality and veracity. Improving transparency should focus both on the results achieved and the process of reporting and disclosing information. Reporting should be forward looking as well as providing information on past performance.

1.5. The Committee recommends that the Commission set further steps to enable companies to meet their transparency obligations and to remain globally competitive.

1.6. Generally the EESC understands that small and medium-sized companies are operating under different conditions. For this reason the rules for them should be simplified to allow them to report in a more suitable way in order to ensure full transparency. The EESC welcomes the capacity-building project to assist SMEs to meet these challenges.

⁽¹⁾ COM(2011) 681 final.

1.7. The Committee believes that any further initiative on disclosure of information should focus on the information that stakeholders really need which should include a common set of indicators and at the same time should take into consideration the nature of the company and the sector in which it is operating.

1.8. The Committee stresses that corporate social responsibility (CSR) and transparency policy within an enterprise are ineffective without the commitment of its employees and they should therefore be involved in consultations between the social partners.

1.9. While the audience of corporate reporting is increasing, more stakeholder groups are interested in more aspects of corporate affairs. The Committee thinks it is important, therefore, to evaluate the current reporting model and to make it appropriate to its purpose.

2. A general context

2.1. In 2010, the Commission published a **communication containing 50 proposals for improving the internal market**. It stated that businesses, too, must play their part in the concerted effort by demonstrating their responsibility and transparency towards not only their employees and their shareholders, but also towards society at large. The Commission stressed that there was room for improvement in the management of businesses, especially on the composition and diversity of boards of directors, including the representation of women, in order to improve employment, business and trade ⁽²⁾. Business ethics and values have been recognised as a contribution to economic recovery.

2.2. In 2011, the Commission published a **renewed EU strategy for 2011-2014 for corporate social responsibility (CSR)** ⁽³⁾ in which it put forward a new definition for this as 'the responsibility enterprises for their impact on society'. One building block in the strategy was an action plan that pursues the integration of financial and social reporting.

2.3. In 2012, the Committee adopted its opinion on the EU's renewed CSR strategy ⁽⁴⁾, stressing that in the difficult economic and political climate the CSR policy initiative provided an opportunity to engage positively with the business community. It is important to recognise different motivations behind CSR activity. Various benefits are outlined in the communication, and these should be better promoted alongside good practice examples to inform and encourage enterprises to make a stronger commitment to CSR.

2.4. In recent years, the Committee has produced many other opinions, which are mentioned in this opinion. These opinions stress the importance of corporate social responsibility, company transparency, disclosure of non-financing information and involvement of the relevant stakeholders — investors, consumers, employees and their trade union representatives, NGOs — in the process. In the current opinion the Committee would like to focus on an appropriate framework for the whole process.

3. For socially responsible and transparent companies

3.1. The economic crisis of 2008 and its social consequences have to some extent damaged citizens' confidence in business and public and investor attention has focused on companies' social and ethical conduct. More stakeholder groups are now interested in more aspects of corporate affairs.

3.2. Investors want transparency and control of their investment and want to know how their money is affecting the environment and society in a negative or positive way. The most important sources of non-financial information for investors are sustainability/CSR reports and annual reports. Qualitative policy statements are important to assess financial reward, but quantitative key performance indicators (KPIs) are viewed as essential.

⁽²⁾ COM(2010) 608 final.

⁽³⁾ COM(2011) 681 final.

⁽⁴⁾ OJ C 229, 31.7.2012, p. 77.

3.3. Workers are the first casualties of companies that play little heed to legal rules and their lack of transparency. And yet, employees play a pivotal role in the development of their companies: their job security, their pay, their health and their working conditions depend on this. They have the right to require transparency and to be informed and involved in the decision regarding the financial situation and the social, environmental and economic policies in their companies.

3.4. Consumers want transparency and expect it in specific areas important for them. It is very much in the interests of companies, in terms of their relations with other stakeholders (workers, citizens and consumers) to pursue a policy of transparency. This often simply means giving customers the facts and helping them make informed buying decisions. In the end, it is these businesses that will earn the loyalty of more informed customers⁽⁵⁾. The food industry is a highly sensitive area in this respect. The latest research from the Centre for Food Integrity (CFI)⁽⁶⁾ proves that increased transparency translates into increased consumer trust in food and sets out a clear path to achieve this.

3.5. With globalisation, a large number of business partners and stakeholders are interested in more information on a wider range of corporate affairs from a large number of countries.

3.6. Transparency builds trust and businesses need society's trust. Nevertheless, there is frequently a gap between what the public expects and how they perceive businesses to behave. This gap is caused partly by instances of irresponsible behaviour by some enterprises, as well as by some enterprises exaggerating their environmental or social credentials. Insufficient public awareness of the achievements of enterprises and the constraints under which they operate also contributes to this discrepancy.

3.7. **This was the reason that, in 2009, the European Commission started a series of workshops on corporate transparency.** European businesses welcomed this as an initiative coming at exactly the right time — amid the crisis, when transparency and corporate social responsibility (CSR) in general might have the potential to help restore public trust in business, which had also been to some extent damaged by the ongoing crisis. The initiative targeted the various groups of stakeholders (employers, trade unions, NGOs and the media) and the probe was supposed to serve as a guideline for further steps to be taken by the Commission.

3.7.1. The lessons drawn from the initiative:

- Many companies have already achieved positive results in transparency. CSR is now part of companies' business strategies.
- Access to information is important for a range of stakeholders, but they require different information for different purposes. The conditions and needs in different sectors vary.
- Opinions vary, in particular, when it comes to key performance indicators (KPIs). Most other interests in Member States prefer a clear core of indicators, including labour and environmental issues. The view of businesses is that flexibility is needed and one model for all is not the right solution.
- The key question for SMEs is the capacity to provide information. Where there is a wide spectrum of stakeholders, each one requiring different information and with different expectations, the administrative burden for enterprises can be high.
- The transparency process should focus both on results achieved as well as the process of reporting and disclosure of information. CSR should be incorporated into business strategies and integrated reporting is one way to do it.

⁽⁵⁾ <https://www.visioncritical.com/5-brands-employed-transparency-marketing-and-won/>

⁽⁶⁾ *A clear view of transparency and how it builds consumer trust*, 2015 Consumer trust research, The Centre for Food Integrity.

— Transparency and the practice of publishing CSR reports is an extra asset for companies and their employees, for the beneficiaries of their products and services — who are the consumers and citizens — and for investors.

4. The Commission is stepping up the requirements on transparency and non-financial reporting

4.1. In the EU strategy for CSR, the Commission states that disclosure of social and environmental information, including climate-related information, can facilitate engagement with stakeholders and the identification of material sustainability risks. It is an important element of accountability and can contribute to building public trust in enterprises. To meet the needs of enterprises and other stakeholders, information should be material.

4.1.1. The Commission also acknowledges that a growing number of companies disclose social and environmental information. SMEs often communicate such information informally and on a voluntary basis. One source estimates that about 2 500 European companies publish CSR or sustainability reports, which puts the EU in a position of global leadership⁽⁷⁾.

4.2. In 2013 the Commission, acting on a European Parliament initiative, drew up a legislative proposal concerning **the transparency of the social and environmental information provided by undertakings in all sectors**⁽⁸⁾. The goal of the amendment to the ‘accounting directives’ was to set a requirement for certain large companies (for the moment around 6 000 companies and entities in the EU) to disclose relevant non-financial and diversity information in their annual reports.

4.2.1. The directive is in some countries transposed into national law following a consultation with businesses, so that the implementation takes advantage of the flexibility of a directive, does not go beyond its scope, provides legal security for businesses and meets their real requirements. In this connection, the EESC has drawn up an opinion⁽⁹⁾ in which it stresses the right to benefit from this flexible and appropriate mechanism for improving communication with shareholders, investors, workers and other stakeholders and welcomes the fact that this proposal is targeted only at large companies.

4.2.2. The Commission is just preparing non-binding guidelines on non-financial reporting based on the outcomes of the public consultation. To facilitate the follow-up consultation with the stakeholders⁽¹⁰⁾ the EC has introduced an illustrative background paper mapping the key principles on non-financial disclosure. The reported non-financial information should be material, reliable, balanced and understandable, comprehensive and concise, strategic and forward looking, stakeholders-oriented, company/sector specific, qualitative and quantitative, and consistent.

4.3. In line with the Europe 2020 strategy, which calls for improvement of the business environment in Europe, the Commission in 2014 published a **proposal for a directive, the aim of which is to support the creation of a modern and efficient corporate governance framework for European undertakings, investors and employees**⁽¹¹⁾ that corresponds to the needs of today’s society and to the changing economic environment.

4.3.1. The proposal should contribute to the long-term sustainability of EU companies and to a more long-term perspective for shareholders, that ensures better operating conditions for companies whose shares are traded on regulated markets in the EU. In its opinion⁽¹²⁾ the Committee stressed that the proposal would lead to a more stable, sustainable corporate governance and investment environment in Europe and also noted that in its impact assessment the Commission argues that its proposals would lead to only a marginal increase in the administrative burden on listed companies. It will be important to assess this balance during the evaluation of the directive.

4.4. In October 2015, the Commission published a new strategy entitled ‘Trade for all: Towards a more responsible trade and investment policy’, which offers a vision of EU policy directed at reflecting the need for a more responsible and more transparent trade policy.

⁽⁷⁾ CorporateRegister.com.

⁽⁸⁾ COM(2013) 207 final.

⁽⁹⁾ OJ C 327, 12.11.2013, p. 47.

⁽¹⁰⁾ Workshop with stakeholders relating to the non-binding guidelines on disclosure of non-financial information, 27.9.2016 in Brussels organised by the Commission’s DG FISMA.

⁽¹¹⁾ COM(2014) 213 final.

⁽¹²⁾ OJ C 451, 16.12.2014, p. 87.

4.4.1. In the chapter entitled 'A trade and investment policy based on values', the Commission announces a strengthening of consumer rights by reinforcing corporate social responsibility initiatives and due diligence across the production chain, with a focus on respect of human rights and the social — including labour rights — and environmental aspects of value chains. The Commission wants to proceed by improving the sustainable development dimensions of free trade agreements.

4.4.2. In its opinion ⁽¹³⁾ focused on decent work in global supply chains (GSCs) the Committee says: 'The EESC has much experience in the field of sustainability, with participation in the implementation and monitoring of dedicated chapters in the free trade agreements (FTAs), involvement in a wide range of civil society committees that enable it to propose a fair balance between necessary legal requirements in the field of human and labour rights, transparency, the fight against corruption and the necessary flexibility of MNEs to organise and develop their global supply chains (GSCs) in an effective manner suited to the various local situations'.

4.4.3. Higher standards for the publishing of reports on non-financial matters could be an important issue in trade policy. Regulation at the global level, including trade agreements, should boost transparency on the publication of non-financial information in countries such as the United States and China to ensure a level playing field for European companies.

4.4.4. The EC intends to strengthen incentives, in particular for multinationals, to provide information on due diligence, **a more ambitious approach to mineral extraction in conflict-affected areas** ⁽¹⁴⁾, a search for new areas for an enhanced partnership for responsible value chains and the publication of an overview of companies' reports on the responsible value chain.

4.4.5. As far as the Commission's requirements regarding ethical trade and promotion and protection of human rights are concerned, new requirements on businesses can also be expected as a result of the implementation of its Action Plan on Human Rights 2015-2018 ⁽¹⁵⁾. In its conclusions the Foreign Affairs Council (June 2016) underlines the critical role of business transparency in enabling markets to recognise, incentivise and reward respect to human rights.

4.5. In January 2016, the Commission presented its **anti-tax avoidance package** with a view to ensuring efficient taxation and greater tax transparency.

4.5.1. One of the areas being carefully scrutinised that **will affect multinational enterprises and groups** is **country-by-country reporting** (the obligation to prepare a statement containing the transactions in the group, data concerning revenue, profit, income tax paid, and so on and submit it to the tax authorities). At this stage, the package covers the sharing of information between Member State tax authorities.

4.6. At the beginning of April 2016 ⁽¹⁶⁾, the Commission proposed that multinationals publish a separate statement on the income tax they pay, along with other tax information. Multinationals with a consolidated net turnover exceeding EUR 750 million will have to meet these additional transparency requirements, whether or not they are domiciled in the EU. This obligation also applies to their branches and subsidiaries. In this context the Committee has just adopted an opinion on combating tax evasion ⁽¹⁷⁾ in which it encourages the Commission to be more ambitious in requiring fiscal transparency from companies by lowering the EUR 750 million turnover threshold or by drawing up a schedule stipulating a gradual decrease in the threshold.

4.6.1. Nevertheless the Commission should take into consideration the principles of the EU internal market and the competitiveness of the Union. Unilateral demands within the EU could lead to unintended consequences if non-EU enterprises were exempted from this obligation. Non-EU enterprises should therefore be covered by this obligation via the negotiation of international trade agreements.

⁽¹³⁾ OJ C 303, 19.8.2016, p. 17

⁽¹⁴⁾ JOIN(2014) 8 final

⁽¹⁵⁾ SWD(2015) 144 final

⁽¹⁶⁾ COM(2016) 198 final.

⁽¹⁷⁾ OJ C 487, 28.12.2016, p. 62.

4.7. The European Commission works with other international organisations, such as the Organisation for Economic Cooperation and Development (OECD), the International Labour Organisation (ILO), the WHO and the World Bank and strengthens synergies with their instruments for good corporate governance, transparency and corporate responsibility⁽¹⁸⁾. These instruments are regularly revised and establish requirements for the responsibility and transparency of companies in their social, environmental and human-rights policies. They also encourage risk prevention and analysis and stipulate due diligence measures. The instruments are primarily meant for multinationals, but they are also supposed to serve as guidelines for companies operating at national levels. Any revision of such instruments should focus particularly on their better implementation.

4.8. The increasing global and European demands for corporate transparency are transferred to companies operating in the Member States. The role of the European Commission should be to guide and coordinate EU Member State policies and thus to reduce the risk of divergent approaches⁽¹⁹⁾.

4.8.1. The Commission's strategy for responsible business and the recommendations for the Member States often prompt the assumption at national level that responsible entrepreneurship and transparency should be administered and supervised only by the state.

4.8.2. Business recognises itself as a driver for transparent and responsible behaviour. This was also recognised in the Commission communication on 'Implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility'⁽²⁰⁾.

4.8.3. The primary responsibility of every company is to create value not only for its shareholders but also for its employees, its environment and its community and to generate and preserve jobs. The Member States should create the right conditions to facilitate this and support companies' efforts to be responsible and transparent.

5. To look for an appropriate framework for corporate reporting

5.1. The Committee recognises that non-financial reporting is very important for corporate reporting as it helps create a complete picture of corporate affairs.

5.2. For companies, the regulatory environment for doing business is getting more and more complex. To better address stakeholders' needs an appropriate framework of corporate reporting should be set and, at the same time, unnecessary administrative and financial burden should be avoided. CSR and transparency should also be promoted and used as an opportunity for companies to avoid social risk and ensure their own sustainable development.

5.3. During the last decade, the focus on different aspects of Non-financial information (NFI) has been increasing. There are a number of international frameworks for the disclosure of social and environmental information, including the Global Reporting Initiative (GRI).

5.4. The question raised is *whether all these stakeholders can be served by the same report or with a set of reports*. Should there be a patchwork of reports or a concept of a single comprehensive one — like, for example, the concept 'Core&More'⁽²¹⁾ proposed by the Federation of European Accountants (FEE) in 2015?

5.5. The discussion of future corporate reporting needs to take into account the variances in the information needs of different stakeholders groups depending on the size and nature of the reporting entity.

⁽¹⁸⁾ OECD Guidelines for Multinational Enterprises; ILO Tripartite declaration of principles concerning multinational enterprises and social policy.

⁽¹⁹⁾ COM(2011) 681 final.

⁽²⁰⁾ COM(2006) 136 final.

⁽²¹⁾ The future for corporate reporting — creating the dynamic for change, FEE, October 2015.

5.6. As the European Economic and Social Committee points out in its opinion on 'Disclosure of non-financial information', the Commission is asked to launch or facilitate a process that brings together the 'multiple stakeholders' ⁽²²⁾ in order to better define the guiding principles and benchmarks that will aid comparison and, in the long term, standardisation'.

5.6.1. The Committee has in this respect already underlined the need for corrective action against the distortion of corporate values through short-term thinking. It also urged in its opinion on 'Employee involvement' ⁽²³⁾ the need to map out ways in which EU policy can redirect the current trend for one-sided corporate transparency in the interests of shareholders towards a broader understanding of a business as a 'sustainable company', which is in the interests of long-term corporate development.

5.7. Even if the future of sustainable business will be strongly linked to the social environment and consumer respect, any further initiative on disclosure of information should focus on stakeholders' real needs.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽²²⁾ OJ C 327, 12.11.2013, p. 47.

⁽²³⁾ OJ C 161, 06.06.2013, p. 35.

Opinion of the European Economic and Social Committee on ‘The main underlying factors that influence the Common Agricultural Policy post-2020’

(own-initiative opinion)

(2017/C 075/04)

Rapporteur: **Mr Simo TIAINEN**

Plenary Assembly decision	21.1.2016
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1. Conclusions and recommendations

1.1. For half a century, the CAP has helped to build the European Union. At this point in time, a return to basics should be an opportunity for a new long term vision for the CAP to give clear and concrete guidance not only to farmers, but also to millions of citizens. As consistently stated by the Committee, the future CAP should defend the European agricultural model, which is based on the principles of food sovereignty, sustainability and responsiveness to the real needs of European citizens, be they farmers, agricultural employees or consumers.

1.2. The EESC welcomes the initial discussions and thoughts about the future of the CAP post-2020. While the objectives of the CAP set out in the Treaty — which have remained unchanged since 1957 — and the new challenges that it must address have never been so pertinent, it is of utmost importance to make an in-depth analysis of the current CAP and the result of the previous reform. The purpose of this opinion is to make some suggestions and take part in the reflection on the future of the CAP.

1.3. First of all, in view of the complexity of the CAP and the difficulty in implementing of the last reform, political stability and a long term vision of agricultural policy are needed by farmers. Especially under the Lisbon Treaty, several years will inevitably be needed to reflect, to share objectives, to discuss challenges and to find solutions. Therefore, the European institutions should quickly agree to extend the term of the current CAP by at least two years.

1.4. The setting up of young and new men and women farmers should be reinforced in the CAP, not only with specific tools, but with real stability in the policy. Indeed, farmers need more stability to be able to invest for decades and take up the challenge of generational renewal.

1.5. The future CAP should take into account, on the one hand, the diversity of farming models and regional specificities, and on the other, the diversity of its objectives: economic, social and environmental. Own food production and own agriculture is important and part of the culture of every nation in the world. A European food policy should be based on healthy and good-quality food and create synergies with the CAP. One of the main principles of the CAP should be to keep agriculture alive and sustainable in all regions of the EU.

1.6. Simplification should be the first underlying priority for the next CAP reform. Implementation of the CAP must be smoother and more reasonable control and sanction systems need to be developed. It is of utmost importance to ensure timely payment to farmers.

1.7. Considering that the CAP is a policy involving direct intervention at European level, and that the breakdown of Community preference will lead to lower producer prices, the future CAP has to be able to respond to all the challenges it is facing including market turbulence. It is thus necessary to reorient the policy framework to address all these new challenges and to provide adequate tools at European level.

1.8. In 2017, the European Commission will take forward its work and consult widely on the simplification and modernisation of the CAP. It is important that European civil society has an active role in this process. The EESC should set up a study group to follow and contribute to this process.

2. Introduction

2.1. Agriculture is central to the strategic, economic, environmental and social challenges of tomorrow. The CAP has been a success story for Europe mainly as European consumers have benefited from safer food with decreasing prices over the last decades. However, in some areas we are facing problems with biodiversity, the environment and landscapes which have to be addressed. Production of high quality food with sustainable agriculture is at the core of citizens' and consumers' concerns. To meet these expectations there is a need for a Common Agricultural Policy in order to guarantee healthy and safe food, high quality at a fair price, environmental protection, landscape conservation and a dynamic economy in rural areas.

2.2. When farmers produce food in our market-oriented society, thereby ensuring food security, they also impact upon water availability and quality and air and soil quality, or the natural environment as a whole, while providing employment in rural areas and maintaining rural landscapes. Many of these by-products should be seen as public goods.

2.3. Agriculture and forestry are closely interlinked as they account for a major part of land use in the EU. Therefore, forestry often participates in the provision of public goods.

2.4. The factors that influence the CAP post-2020 are firstly the challenges facing agriculture, but also the fact that it is a European question, with a specific reform process and budget availability and above all a clear vision for the next decades.

2.5. The Common Agricultural Policy has always been one of the key policies of the EU. The CAP is broadly in the interests of European civil society. It is therefore important for the EESC to be proactive in preparing for the next reform of the CAP which relates to the period after 2020.

3. Agriculture faces important challenges

The food security challenge

3.1. Given expected global demographic trends, there will be around 9 billion people to be fed in 2050. With the improvement of living standards in several regions of the world, we observe increased food demand and a shift to diets including more animal products. These developments would lead to a doubling of food demand in 2050. The EU must assume its responsibility for the world's food security; however the export of European agricultural products does not solve the problem of world hunger. It is worth noting that food security should be based on sustainable local food systems. Every nation needs to bear responsibility for their own food security, which is also recommended by the FAO. The EESC finds it necessary that the EU concentrates also on knowledge transfer and experience-sharing about how more and better food can be produced sustainably and locally in other parts of the world.

3.2. At the same time, the expectation is that demand for food in Europe will remain quite stable but diverse as regards quality, health, ethics, origin, etc.

Environmental challenges

3.3. Agriculture and the environment are very closely interlinked in a range of ways in all regions. Agriculture and forestry are essential to nature conservation, biodiversity protection, water quality, soil quality and lower pollution.

The energy challenge

3.4. The EU climate and energy framework has set a target of increasing the share of renewables to at least 27 % of energy consumption by 2030. This share is set to increase in the future. Agriculture and forestry could provide biomass to reach this target within a green growth economy. They must also improve their own energy efficiency.

Climate change: adaptation and mitigation

3.5. On 20 July 2016 the Commission presented a package of legislative proposals laying down detailed rules for the EU's climate and energy policy framework towards 2030. This will be the EU's response in order to mitigate climate change as agreed in the COP21 agreement in December 2015. Agriculture and forestry are part of the solution to reduce emissions and to stock carbon in soil or wood. In order to respond to the food security challenge and to mitigate climate change, green growth, an agro-ecological approach and sustainable intensification within efficient agricultural production, will be necessary. Furthermore, adaptation to climate change will be crucial for future agriculture.

Balanced rural development

3.6. Agriculture and forestry, and all parts of the bioeconomy linked to them, are fundamental to maintaining rural dynamism and to reinforcing balanced rural development. They are important in terms of employment, culture, territorial cohesion and tourism in rural areas throughout the EU. Depopulation and ageing in many remote areas, mountainous regions or less favoured areas remains the dominant demographic trend. Public policies, especially the CAP, should act to maintain agriculture and support producers across the EU, including regions with specific problems. Payments to farms in rural zones with natural handicaps are essential to rural development. Farming in such areas would not be viable otherwise.

3.7. Synergies between the two pillars of the CAP are important and should be reinforced. The latest reform reinforces the link and coherence between all ESI funds, and this should be continued.

3.8. The EESC is in favour of Community-led Local Development (CLLD) being extended and made mandatory for all ESI Funds in order to achieve a balanced development of rural areas. Using Local Action Groups (LAGs) as local partnerships — with farmers involved — to seek out and finance local projects brings benefits for people's quality of life. This could help in effectively combating depopulation and population ageing in the EU's rural areas.

3.9. To maintain agriculture, generational renewal is a key question and setting up young and/or new men and women farmers should be reinforced through all available tools. Coupled payments are also a necessity for those sectors or those regions where specific types of farming or specific agricultural sectors are particularly important for economic or social or environmental reasons. The CAP should also have a clear focus on encouraging active farmers and production.

Price and income volatility

3.10. Agriculture is a specific economic activity which does not comply with normal economic law. In a market economy, variations in prices and incomes are the result of shifts in supply and demand. But the nature of food as a basic necessity means that it is, by definition, price inelastic. Nor can the supply of food respond quickly to price changes. Therefore, unexpected changes in output volumes often require a longer period of time and large price changes to restore market equilibrium. For these reasons agricultural markets are considered to be highly volatile. Other innovative market mechanisms could also be trialled.

Consumer demand

3.11. Consumers demand safe, sustainable, nutritious and high-quality food. They also want food at affordable prices and this has been reinforced by economic crisis. Many consumers appreciate traceability and locally produced food. The Special Eurobarometer 410 shows that knowing the origin of meat is regarded as necessary by a large majority of respondents in all Member States. It is the duty of all stakeholders in the food chain to respond to this challenge.

Sustainable development

3.12. The next CAP, like other EU policies, should be consistent with the sustainable development goals (SDGs). The CAP is relevant to numerous goals, but the most relevant is Goal 2: 'End hunger, achieve food security and improved nutrition, and promote sustainable agriculture'.

Uncertainties in international trade

3.13. The role of international trade will inevitably increase in the future. Nevertheless, the recent Russian ban on food products originating from the European Union has led to major uncertainties in relation to international trade. Russia's embargo has put enormous pressure on EU agricultural markets, especially in some Member States. Combating challenges related to uncertainties in international trade will be crucial for the future of agriculture.

Shift in bargaining power in the food supply chains

3.14. In recent years, there has been a shift in bargaining power in the food supply chain, mostly to the advantage of the retail sector and some transnational companies and to the detriment of suppliers, in particular farmers. The future CAP should enhance the bargaining power of farmers.

4. In the EU, agriculture is a European question

4.1. Agriculture is a key issue for the EU. The objectives of the Common Agricultural Policy were laid down in the initial Treaty of Rome in 1957. They are still valid. New challenges — such as environmental concerns, rural development questions, as well as quality and health issues and global hunger — have also arisen, and the Treaties have not yet been adapted to reflect them.

4.2. The CAP is a fundamental European and integrated policy, which is increasingly interlinked with other policies such as employment, environment, climate, competition, budget, trade and research with specific European added value.

4.3. The CAP is a precondition for achieving a single market in the food sector in the EU. The European food industry is the biggest industrial sector in the EU, providing more than five million jobs.

Preparation for the next CAP reform

4.4. Complexity and subsidiarity are key words in adapting to all sectors and territories. These features have been enhanced with the latest reform. Preparing and negotiating common rules under the Lisbon Treaty, and with the involvement of 28 Member States and the European Parliament, has been a particularly complex task.

4.5. Assessments of current policy measures have not yet been carried out. Assessing the implementation of the first year of greening obligations is still underway. The same is true for Ecological Focus Areas. It is important not to rush into another CAP reform without a clear and thorough assessment of the current CAP, so as to identify to what extent policy measures have reached their policy objectives. This requires a proper assessment, especially for measures where more time is needed to see the results, e.g. greening obligations.

4.6. Considering that the last reform was launched in 2010 and its implementation started in 2015, it took five years to conclude the reform. During the current mandate of the Commission and EP there will be no time to conclude the next CAP reform for possible implementation in 2021. Therefore, a transitional period is needed to continue the current CAP for a sufficient period of time after 2020.

Subsidiarity and European added value

4.7. The CAP has been founded since 1962 on three basic principles: market unity, Community preference and financial solidarity. The single market is a fact nowadays, but Community preference and financial solidarity have to be reaffirmed at political level.

4.8. With globalisation, the USA uses financial support to promote its agriculture through consumers with the food stamp programme and the 'Buy American Act'. The European Union should implement reciprocal measures and could highlight the strategic importance of European preference with a 'Buy European Act'.

5. General comments

Brexit

5.1. Brexit is going to have a major impact on the EU, especially on the single market and on international trade, and therefore on the future of the CAP. During the Brexit negotiations, if the UK is to leave the EU customs union, the current trade flows should be used as the key criterion for dividing the EU-28 WTO quota between the UK and the new EU.

Competitiveness, productivity and sustainability

5.2. Since the 1992 reform, competitiveness has become the first priority of the CAP with the introduction of direct payments. But to press ahead with competitiveness, productivity and sustainability new incentives are needed to concentrate on promoting innovation (development, dissemination and uptake of new technologies).

5.3. The farming sector needs major investment which could be achieved if the expected income is sufficient and economic risks are manageable. Supporting farm incomes with direct payments is, in the current situation, a necessity.

Managing risks and crisis in agriculture

5.4. EU producers are no longer isolated from the world market and its higher price volatility. Moreover, agriculture is subject to extreme natural events, and more health problems due to increased mobility of goods and people (pandemics) with considerable losses to production. The CAP should provide specific tools to enable the agricultural sector to limit and manage these risks.

5.5. There are some risk management tools available in the current CAP. Intervention price, private storage, promotion or futures markets and tools provided by the single CMO should be maintained or developed.

5.6. But there is a clear need to develop new tools:

- **market observatory mechanisms** must be further developed. The European Commission should define different levels of crisis in order to act more efficiently in preventing them. Better market transparency concerning volume of production and prices is crucial to the proper functioning of the supply chain.
- Experimentation with mutual fund systems or **insurance schemes** (crops, turn-over or income) should be pursued to investigate whether insurance companies or other bodies are able to provide efficient options. We note that the latest US Farm Bill introduced an option to use insurance schemes, but that none of our trading partners are using the green box to notify such insurance tools to the WTO. Under no circumstances should any movement in that direction increase the distortion in competition between producers. It is also necessary to determine the cost of this mechanism.

The environmental dimension of the CAP

5.7. Environmental preoccupations are clearly a priority in farming. As a result, greening was introduced in the last reform. Policy makers repeatedly highlight this major evolution of the CAP. The environmental dimension of the CAP is both global and complex as farming deals with soil, water, biodiversity, forestry and CO₂ emissions. A more efficient policy should be more understandable, feasible and simpler for farmers.

5.8. There is a need for payments which compensate farmers for providing public goods (especially ecosystem services).

A Common Food Policy

5.9. The Dutch EU Presidency in particular has promoted the idea of a Common Food Policy. With the new CAP, the EU recognises that European agriculture needs to attain higher levels of sustainable production of safe and quality food. The CAP promotes school fruit and milk schemes for schoolchildren aimed at encouraging good dietary habits from an early age. It also promotes organic production by ensuring an informed choice with clear labelling rules and specific support schemes under rural development policy.

5.10. Currently the promotion of public health, healthy diets and lifestyles is a matter of national competence. But the European Union must ensure access to healthy and good-quality food for all Europe's citizens through sustainable food systems. Whereas European actions complement and coordinate national efforts, more synergies should be developed between the CAP and a future European food policy.

5.11. Bearing in mind public expectations and consumer demand, a special effort should be made to develop Local Food Systems (LFS) and hence short supply chains, particularly in the mass catering sector.

Climate policy and the CAP

5.12. Since 1990 the environmental footprint of agriculture has become smaller. Nevertheless, there is still a need to reduce agricultural emissions by 2030. This must be done in keeping with a European model of agriculture and with a cost-efficient emissions reduction policy. There is potential to increase the carbon content in the soil and to substitute fossil energy and petrochemicals with agricultural and forestry products.

5.13. The multiple objectives of the agriculture and land use sector, with their lower mitigation potential, should be acknowledged, as well as the need to ensure coherence between the EU's food security and climate policy objectives ⁽¹⁾.

Research, innovation and advisory systems

5.14. At farm level, in experimental stations and in laboratories important innovations are discovered continuously. Efforts towards research and development should be stepped up to accompany the evolution of farming towards more sustainable systems. It is also crucial to make these innovations known to other stakeholders. Extension services, cooperation between stakeholders and other means of disseminating innovation and sharing best practices should be promoted.

5.15. The EU research programme on agriculture should be reinforced in the next programming period to take into account the challenges and the geostrategic importance of food in the 21st century. The digital economy could be the next 'agricultural revolution' after the green revolution of the 20th century.

Functioning of the supply chain

5.16. There is clear evidence of the malfunctioning of the supply chain in almost every Member State due to high concentration downstream. Distribution of added value between stakeholders in the food supply chain is unfair.

5.17. Due to EU competence in competition and single market issues, this problem should be tackled at European level. The European Commission should propose European regulatory frameworks for arranging contractual relations within the chain and legal possibilities for organising collective actions by farmers. Indeed, producer organisations are important players in the food supply chain and contribute to strengthening the position of producers. The next CAP should enhance the bargaining power of producer organisations. The results of the work by the Agricultural Market Task Force (AMTF) should be taken into account.

5.18. The CAP has to be adapted to the reality and the rapidity of economic change. In the CAP, Articles 219 to 222 of Regulation (EU) No 1308/2013 must be developed to be workable and achievable for the European Commission and the producer.

⁽¹⁾ Point 2.14 Council Conclusions, 23-24 October 2014.

International trade

5.19. World trade and open markets strengthen competitiveness and could reduce the price of food. Nevertheless, fair trade is of utmost importance for the EU in order to compete with the same production methods and rules with third countries. Non-tariff barriers could jeopardise international development. In the various and numerous solutions to achieving global food security, trade has its role to play as regards increasing agricultural exports.

5.20. Nevertheless, the CAP and trade policy should enable European producers to compete on a level playing field with imported products. Therefore, the EU should require that imported products meet the same standards.

European budget

5.21. Historically the CAP has been financed at European level. The CAP accounts for an important share of the EU budget (38 % in 2015), but amounts to only about 0,4 % of European public expenditure. The CAP budget is lower than its US or Chinese equivalents. Moreover, it has been stable or decreasing for several years, in spite of EU enlargement. The CAP has to respond to the many important challenges it will face in the future; it is necessary therefore to increase the budget for agricultural policy at European level.

5.22. Specific aspects of the European budget, such as annuality, represent a huge constraint for CAP design. Mutual funds or crisis measures are limited by these constraints. Furthermore, budget distribution is a source of political tension and could result in inefficiencies.

Simplification

5.23. Simplification has been a priority for many years in the CAP and particularly in the first years of implementation of the 2013 CAP reform. Nevertheless, simplification should be the first underlying priority for the next reform. In particular, adequate controls and proportionate sanction systems should be improved. Currently, payment reductions for greening and cross compliance measures can be unreasonable and disproportionate. It is of the utmost importance to ensure the timely payment of direct supports.

Structure of the CAP

5.24. For the past decades the structure of the CAP has been based on two pillars. While the pillar I is entirely EU-financed, pillar II is co-financed and adapted to each Member State's needs by means of multiannual programmes. The diversity of Member States and regions and their different needs requires that the two pillar structure be retained in the future CAP.

Preparation for CAP post-2020

5.25. In its 2017 work programme published on 25 October 2016, the Commission states that it will work and consult widely on the simplification and modernisation of the CAP to maximise its contribution to the Commission's ten priorities and to the Sustainable Development Goals. It is important that European civil society is actively involved in this process.

Brussels, 15 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on ‘Towards applying Nudge Thinking to EU Policies’

(own-initiative opinion)

(2017/C 075/05)

Rapporteur: **Thierry LIBAERT**

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1. Conclusions and recommendations

1.1. ‘Nudges’ are emerging as a public policy tool to complement those already used by European public authorities (information and awareness-raising, financial incentives, legislation and exemplarity). However, they are proving to be particularly useful for overcoming certain social, environmental and economic challenges.

1.2. **Encourage the use of nudges in public policy-making** in conjunction with traditional tools, and in particular their change in approach to individual behaviour. Nudges could thus be integrated into the general public policy framework and accelerate public policy implementation at very little cost. Given their flexibility and simplicity, they can be used simultaneously in different contexts and by different categories of stakeholder: intergovernmental bodies, the internal departments of each ministry, local and regional authorities, NGOs, private organisations, and so on.

1.3. **Prioritise in particular the nudges which meet environmental, social and other objectives** (energy/ecological transition, reducing resource wastage, enhancing social well-being, improving population health, etc.). They can thus be used as part of measures which address predefined collective objectives, for which traditional public policy tools have proven ineffective and/or too costly.

1.4. **Promote the exchange of information and good practices on nudges** between all potential participants (public institutions, authorities, businesses, associations, NGOs, etc.) at EU level. A platform mapping out the initiatives and/or a dedicated observatory are possibilities to consider.

1.5. **Study in greater depth the different effects of nudges** according to culture, socioeconomic profile, geographical area and so on. This would give rise to a better understanding of the advantages and constraints of the scope of nudges and their implementation among countries and sectors, etc. In particular, the question of the duration of the effect of nudges on behaviour deserves to be looked at in greater detail.

1.6. **Identify general conditions of use for nudges** so as to reduce their negative impact and ensure that they are ethically acceptable. They could be gathered together in a good practice charter, jointly drawn up by stakeholders and adopted at EU level before being applied in the Member States. In addition, a guide could be published and distributed to interested parties.

1.7. **Introduce information procedures** on the use of different types of nudge to ensure transparency for those who are 'nudged'. Nudges should be understood, discussed and shared to be accepted in the best possible way. This would avoid 'abuse' and the risk of manipulation when using nudges.

1.8. **Provide a proper code of ethics for nudges** to prevent them drifting towards irresponsible objectives. The following four conditions should be met when organising a nudge: the transparency of the process, flexibility for the persons involved who should always have the choice of acting in one way or in another, the reliability of the information given to them and not making individuals feel guilty.

1.9. **Develop monitoring and evaluation procedures for nudges** according to different criteria (social, environmental and economic). This may involve an initial testing phase to gain an understanding of the exact impact of the nudge according to its type, the target group, the context and so on. Swift adjustments could therefore be made if the results of the nudge prove disappointing, or the nudge could even be dropped if deemed ineffective.

1.10. **Encourage the teaching of disciplines related to behavioural economics in training courses** (both new and ongoing). This would improve understanding of the tool and encourage various groups (civil servants, company employees, elected representatives, etc.) to use it wisely and critically. This also calls for the barriers between academic disciplines to be broken down since the nudge is based on a cross-cutting approach.

1.11. **Retain a degree of flexibility when using nudges** in order to exploit their full potential. As with the other tools available to public authorities, nudges are not a miracle tool, nor are they completely new. However, they can prove very useful in conjunction with other tools in changing certain behaviours. The main attraction of this concept is that it encourages psychological consideration of behaviour when developing public policies, rather than focusing solely on their 'economic rationality'.

1.12. **Organise, on the initiative of the EESC, the first EU conference on nudges**, which would represent a unique opportunity for those working with this tool within the EU to exchange their experiences.

1.13. In order to deal with the radical shift towards a new economic model which will have major systemic consequences in a number of areas, **create a new horizontal permanent body within the EESC that would be tasked with analysing these developments**, including nudge thinking and other related subjects such as the circular, sharing economy and functional economy.

2. A fifth tool for public authorities

2.1. Public authorities have traditionally used four types of tool to change the behaviour of individuals: information and awareness-raising, financial incentives, legislation (prohibition or obligation) and exemplarity. These four tools have limitations, however, with regard, in particular, to behaviour and responsible consumption, or rather consuming fewer natural resources. There is still a disparity between individuals' knowledge levels and how they behave on a daily basis.

2.2. The reasons for the gap between actions and intentions have been analysed through behavioural economics, a discipline which looks at the factors which influence individual behaviour. According to researchers in this discipline, individual actions are determined by many factors. We are complex, deeply emotional beings with limited rationality, influenced by others and social interactions, but also by context and the environment in which we make our decisions.

2.3. In the end, our decisions and behaviour are largely the result of what Daniel Kahneman, winner of the Nobel Prize for Economics, calls our 'System 1': a largely unconscious, automatic and super-fast way of thinking which enables us to take many decisions a day with minimal effort and by saving on our attentional resources. However, this system feeds on stereotypes and associations and often leads us away from mathematical rationality.

3. Using behaviour to influence choices

3.1. In behavioural economics, traditional public policy levers may not be enough to change behaviour because they do not take into the account the various factors that influence the decision-making process. In 2008, two American professors, Richard Thaler (professor of economics in Chicago and leading figure in behavioural economics) and Cass Sunstein

(Harvard law professor) started from this assumption and published the first ever work on nudges⁽¹⁾, based on the idea that behavioural changes should come from 'gentle nudges'. The authors define a nudge as 'any aspect of the architecture of choice which changes people's behaviour in a predictable way, without eliminating any of the options or drastically changing financial incentives'. To be considered a simple nudge, individuals must be able to avoid the action easily, i.e. nudges are in no way obligatory.

3.2. The nudge is designed to create 'architectures of choice', highlighting the choice seen as most beneficial to the individual and/or group, without changing the number or nature of the choices available. The user or consumer is steered towards what is considered the best choice. Nudges have three characteristics: they provide total freedom of choice for individuals, are simple to implement and cost little to put into practice.

3.3. Public authorities in some countries are showing increasing interest in nudges as they have two major advantages: they do not restrict the freedom of individuals, and they cost very little but have the potential to make a considerable impact. They can therefore be used as a complementary tool for public policies which seek to make individuals behave more responsibly towards their health, the environment and so on. Nudges give individuals a simpler choice which aids in the decision-making process.

4. Nudges: one concept, many levers

4.1. Choice by default. This concept is the process of automatically applying the default solution which the implementing authority considers best, but also simplest to apply. It is based on the inertia of individuals. For example, French income tax declarations have assumed since 2005 that households own a television by default. The estimated fraud rate has fallen from 6 % to 1 % as a result. Default choices are also being used increasingly by banks, energy providers and other businesses which send out electronic bills by default, rather than paper bills printed double-sided, and so on.

4.2. The strength of social norms, which nudge advocates see as a powerful behavioural determinant. Social norms can be used to encourage individuals to act in a given way. More specifically, this strategy involves highlighting a behaviour exhibited by the majority of those around you (neighbours, colleagues, etc.). It is supposed to encourage individuals to behave in the same way so that they conform to social norms. In 2011, the energy provider OPOWER conducted an experiment in the US. Using information collected about the energy consumption of 600 000 households, letters were sent out which said, for example: 'Last month you used 15 % more electricity than your most energy-saving neighbours'. Infographics helped them to compare their household's energy consumption with that of their neighbours and other consumers, and they received a happy 'smiley' when their consumption was low. According to OPOWER, following this correspondence, energy consumption fell by an average of 2 % in participating households, which generated a total saving of USD 250 million⁽²⁾. Many similar experiments have shown a reduction in energy consumption of between 1 and 20 %.

4.3. Risk of loss, which is designed to highlight what an individual could lose (particularly in financial terms) if they do not change their behaviour, for example with regard to energy consumption. The concept involves giving the individual an estimate of how much they are losing by not changing their behaviour, or, conversely, how much they stand to gain if they do. Non-financial indicators (calories, CO₂ emissions, etc.) can also be used to visualise the loss.

4.4. Emulation, which, for example, is the practice of organising competitions to encourage certain practices, such as in the fight against waste. The French NGO Prioriterre is eager to encourage the public to take an interest in energy-saving. To do so, it organises a 'Positive-energy family' challenge every year, which in 2014 brought together around 7 500 families. Families had to decrease their energy consumption by 8 % in order to win various prizes⁽³⁾.

4.5. Using games and entertaining concepts. Amsterdam airport introduced one of the most well-known nudges: fake flies were painted inside urinals to encourage men to take proper aim. In 2009, Volkswagen transformed the stairs leading to the exit of Odenplan station, Stockholm, into an enormous keyboard. When pressure was applied to a step, a musical note sounded⁽⁴⁾. The aim was to encourage passengers to use the stairs, rather than the escalators. In South Korea, markings on the ground show the risk of being overweight for people using escalators.

⁽¹⁾ Thaler, Richard & Sunstein, Cass, *Nudge: Improving Decisions about Health, Wealth, and Happiness*, Yale University Press, 2008.

⁽²⁾ Opower.com

⁽³⁾ <http://www.prioriterre.org/ong/particuliers/a2210/une-nouvelle-edition-familles-a-energie-positive.html>

⁽⁴⁾ <https://www.youtube.com/watch?v=2lXh2n0aPyw>

4.6. Nudges can also be used to change how choices are presented and the appearance of certain products, in an effort to highlight those considered healthiest or most environmentally-friendly, etc. This type of nudge is sometimes likened to the principle of branding. Several experiments have also been carried out in canteens with the aim of encouraging customers to eat healthy foods. Healthy foods were displayed at the start of the display stand, which in some cases can double their consumption compared to when they are displayed in the middle or at the end. Other canteens have attempted to reduce waste by reducing plate size: customers filled their plates just as much, but less food was served (bearing in mind that customers can always go back for more if they wish) ⁽⁵⁾.

5. A tool used increasingly by public authorities

5.1. Since 2008, more and more countries have become interested in the potential of public policy tools based on nudges, which have the triple advantage of being low-cost, effective and more attractive to the public than regulations or taxes. The following paragraphs provide a number of non-exhaustive examples.

5.2. In 2010, David Cameron's British government created the '*Behavioural Insights Team*', headed by David Halpern and responsible for applying behavioural science to public policy in the UK. For example, the group made changes to the government website for organ donor registration. It wrote: 'Every day, thousands of people who see this page decide to register' and displayed the logo of the NHS (*National Health Service*), the British social security system, on the website. In one year, sign-up rates went from 2,3% to 3,2% (+ 96 000 registrations). Since 2014, the 'Nudge Unit' has functioned independently and advises foreign governments, local authorities, businesses and so on ⁽⁶⁾.

5.3. In 2014, the Obama administration also launched a *Nudge Squad* under Maya Shankar. In an executive order published in September 2015, President Obama 'encouraged' government departments and agencies to use the findings of behavioural science ⁽⁷⁾. The governments of Singapore, Australia and Germany have also set up teams of experts in behavioural economics.

5.4. In France, the General Secretariat for the Modernisation of Public Action (SGMAP) and the Directorate-General for Public Finances (DGFiP) ⁽⁸⁾ have been experimenting further with nudges since 2013.

5.5. The European Commission has set up a Foresight and Behavioural Insights Unit within the Joint Research Centre, headed by Xavier Troussard. In 2016, it published a report which highlights the fact that EU public policies are increasingly incorporating elements of behavioural economics ⁽⁹⁾. The unit believes that exchanges on the subject should be developed between universities and the political sphere. Above all, it recommends increasing the use of behavioural economics tools in all stages of public policy-making, but also improving discussion of their use and understanding of their impact.

6. Risks and constraints which cannot be ignored

6.1. Nudges have their limitations. They need to be carefully designed and implemented and raise both technical and ethical questions. Nudges are not a substitute for informing individuals and educating them about their choices, nor can they substitute the traditional government activities of legislation and financial incentives. Furthermore, the risks and constraints associated with their use must not be under-estimated.

6.2. Currently, few studies on the effectiveness of nudges are available, particularly in the medium and long term. Some stress the fact that individual reactions to this tool differ markedly. In the experiment carried out by OPOWER, for example, households whose energy consumption was already lower than average tended to increase their consumption when informed of their place in the ranking. Conversely, nudges can instil a sense of guilt or inferiority in those who learn that they consume more energy than their neighbours. Some studies have found that receptiveness to nudges can vary according

⁽⁵⁾ Liebig, Georg, *Nudging to Reduce Food Waste*, URL: http://www.wiwi-experimente.tu-berlin.de/fileadmin/fg210/nudging_to_reduce_food_waste_Georg_Liebig.pdf

⁽⁶⁾ Nudge Unit Website: <http://www.behaviouralinsights.co.uk/>

⁽⁷⁾ *Executive Order — Using Behavioral Science Insights to Better Serve the American People*, 15 September 2015. URL: <https://www.whitehouse.gov/the-press-office/2015/09/15/executive-order-using-behavioral-science-insights-better-serve-american>

⁽⁸⁾ See, for example, *Le nudge: un nouvel outil au service de l'action publique*, 13 March 2014. URL: <http://www.modernisation.gouv.fr/les-services-publics-se-simplifient-et-innovent-par-des-services-numeriques-aux-usagers/le-nudge-au-service-de-laction-publique>

⁽⁹⁾ http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100146/kjna27726enn_new.pdf

to individual values and opinions⁽¹⁰⁾, but also according to political and cultural context. More generally, the studies highlight the different impacts of nudges according to population groups, cultures and contexts. It is therefore necessary to assess the effects of nudges, either directly or randomly.

6.3. Another issue is the duration of the effects of nudges. Studies on water and electricity consumption have shown that the repeated effects of social norms tend to diminish over time, even though they can last to a lesser degree for several years⁽¹¹⁾. The long-term effect of nudges depends on whether they can make a real change to habits. Once a default option is changed, if it is kept that way, there is no reason to believe that behaviour will not stay the same. This is more a question of whether it is possible to go further or to modulate the action taken. In fact, it appears easier to adjust a tax or a rule gradually rather than a default option.

6.4. Nudges can have negative effects, as demonstrated by the fact that an individual may tend to act more virtuously after having behaved badly, and vice versa. For example, experiments have shown that buying 'green' products could be followed, under certain circumstances, by an increase in negative behaviour, such as cheating or stealing⁽¹²⁾. Attempts to encourage virtuous behaviour in some areas can thus have a negative impact in others. These adverse effects, if they do exist, make assessing the overall impact of nudges very difficult. They are apparently very rare and do not call into question the usefulness of nudge-based approaches. However, it is important not to rule out the possibility of such effects.

6.5. The effectiveness of a nudge is measured in relation to a desirable behaviour, which raises the question of how to define and measure what is desirable. It can be very difficult to assess individuals' happiness. Nudges also raise the issue of who makes the decision about the objective to be followed, or rather about what is desirable for the individual and/or for society. A public decision-maker could steer the objective and the nudge in a particular direction for opportunistic reasons, although it might also be less intentional, for example as a result of lack of information.

6.6. Finally, the line between information, communication and manipulation is sometimes blurred. For example, some of the many hotels that encourage their customers to reuse their towels deliberately 'inflate' the numbers of hotel guests who do so already⁽¹³⁾. The aim of these messages is not to trick their target audience, but to establish a sort of self-fulfilling prophecy by ensuring that they come true. However, customers are in fact led to base their behaviour on a lie. Lying, even if it leads to more virtuous behaviour, is not judged morally acceptable, and even less so by public decision-makers. It can also tarnish the reputation of the decision-maker and reduce the effectiveness of nudges by talking down to consumers.

Brussels, 15 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁰⁾ Costa, Dora L. and Kahn, Matthey E., 'Energy conservation "nudges" and environmentalist ideology: Evidence from a randomized residential electricity field experiment', *Journal of European Economic Association*, 2013.

⁽¹¹⁾ Ferraro, Paul J., Miranda, Juan Jose and Price, Michael K., *The persistence of treatment effects with norm-based policy*, *American Economic Review*, vol. 101, No 3, May 2011.

⁽¹²⁾ Mazar, Nina and Zhong, Chen-Bo, *Do green products make us better people?*

⁽¹³⁾ Simon, Stephanie, *The Secret to Turning Consumers Green*, *The Wall Street Journal*, 18 October 2010. URL: <http://www.wsj.com/articles/SB10001424052748704575304575296243891721972>

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

521RD EESC PLENARY SESSION, 14 AND 15 DECEMBER 2016

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 agenda for the collaborative economy’*(COM(2016) 356 final)**(2017/C 075/06)*Rapporteur: **Mr Carlos TRIAS PINTÓ**Co-rapporteur: **Mr Mihai MANOLIU**

Consultation	European Commission, 8.12.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	17.11.2016
Adopted at plenary	15.12.2016
Plenary session No	521
Outcome of vote	157/1/4
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The emergence of a decentralised digital economy suggests that a significant proportion of new economic peer-to-peer exchange will be intertwined with social relations and embedded in communities, which will lead to a transformation of what it means to set up a business or have a job, in terms of ‘democratising how we produce, consume, govern, and solve social problems’. At the same time, it is necessary to ensure that this is not accompanied by job insecurity and tax avoidance, and that the value added does not massively shift away from industrial players towards the owners of proprietary digital platforms ⁽¹⁾.

1.2. Faced with this new paradigm, the EESC encourages the Commission to develop a more detailed and inclusive conceptual approach to the collaborative economy, in order to avoid any bias that equates it with the digital economy. The collaborative economy, which embraces a democratic and participatory dynamic similar to that of the social economy, therefore has the following features:

- a) it does not always take place in a digital environment, but also in local areas, meaning that interpersonal relations can be emphasised (for example, the exchange of goods);

⁽¹⁾ OJ C 389, 21.10.2016, p. 50.

- b) it is often not-for-profit, in many cases drawing on principles of cooperation and solidarity (for example, certain kinds of crowdfunding such as donation-based crowdfunding);
- c) it does not always take place on a global or transnational scale; its ecosystem can also often be found in smaller and more localised areas (for example, groups producing for their own consumption);
- d) it is not limited exclusively to economic aspects, but also touches upon environmental and social issues (for example, sustainable mobility);
- e) it is not just a new way of providing on-demand services where the shared good is work capacity, but also highlights ways of accessing these services (for example, sharing goods);
- f) it is not restricted to tangible goods that have a high economic value, but can be applied to any type of product or service (e.g. time banks).

1.3. Ultimately, the collaborative economy encompasses a range of methods with specific contributions and challenges. The 'access economy', for example, brings underused properties to the market, creating greater supply for consumers and more efficient use of resources, but entails the risk of stimulating overall production through the rebound effect. In the 'low demand economy', the workforce is fragmented, creating more flexibility, but increasing the risk of employment insecurity. And the 'gift economy', in which goods and services are shared on an altruistic basis, helps build stronger communities, but often remains invisible to administrations.

1.4. For their part, digital platforms, in particular those that support gainful activity, deserve the full attention of the European Commission, in order to regulate and harmonise their activity and ensure a level playing field on the basis of transparency, information, full access, non-discrimination and appropriate use of data. In particular, it is essential to redefine the concept of legal subordination with regard to the economic dependence of workers, and guarantee labour rights regardless of the type of activity.

1.5. The challenge, therefore, consists in drawing a line between the different forms that this economy can take and proposing differentiated regulatory approaches ⁽²⁾, giving priority to those digital initiatives that are founded on democratic, solidarity-based and inclusive governance, in harmony with social innovation, which results in the need to inform consumers about their identity-giving values and their organisation and management arrangements. In this regard, the EESC recommends carrying out qualitative research into the network of relationships established by its agents in the collaborative economy environment itself.

1.6. As a result, the EESC calls for the development of a specific methodology for regulating and measuring a new economy with different standards. From this perspective, the value of trust — from the point of view of information symmetry — plays a central role. The criteria for transparency, honesty and objectivity in assessing the product or service should also be strengthened, rather than simply resorting to algorithms automatically.

1.7. The EESC likewise recommends that an independent European rating agency for digital platforms be created, with harmonised competences in all Member States, which can assess the governance of these platforms with regard to competition, employment and taxation.

1.8. Moreover, the Communication's approach to the collaborative economy ignores fundamental issues such as those related to virtual and social currencies as operational instruments of that economy, as well as knowledge, information and energy as objects of its practice, or the role that co-creation and technological innovation, among others, play in the collaborative economy.

1.9. With regard to the complex approach of the collaborative economy in the current context, the EESC recommends ensuring balanced coexistence between models that guarantees its full development without causing negative externalities in the market, especially when it comes to protecting **competition, taxation and high-quality employment**. To this end an appropriate framework for following-up and monitoring the new parameters of the collaborative economy should be designed in cooperation with stakeholders (business organisations, trade unions, consumer associations, etc.).

⁽²⁾ OJ C 51, 10.2.2016, p. 28.

1.10. Finally, in order to tackle the transition to a **new economy** with significant systemic consequences, it is recommended that the EESC create a permanent horizontal structure to analyse these emerging phenomena, interweaving its efforts with those of the European Commission, the Committee of the Regions and the European Parliament.

2. Introduction and background

2.1. Social culture, consumption patterns and the ways of meeting consumers' needs are undergoing a period of profound change. Consumption is being overhauled and rationalised from a more inclusive perspective; issues of pricing are interwoven with the environmental and social footprint of products and services, all of which is influenced still further by the disruptive effect of the internet and social networks.

2.2. The possession of goods for personal use, hard currency and **on-site**, fixed and salaried jobs, will give way to virtual exchanges, shared access, digital money and greater flexibility of the workforce.

2.3. In the transition towards new forms of production and consumption, certain sectors of economic activity have been swept up in a powerful tsunami resulting from the incursion of new actors. Some of these actors are motivated by cooperation and a sense of commitment to their community, while others are simply driven by the opportunity to do business (and do not always respect the idea of a level playing field).

2.4. As many voices have called for a new planning framework⁽³⁾ for collaborative consumption (that encourages the use of digital technology to tap into decentralised excess capacity, rather than creating new monopolistic centralised systems), the European Commission has decided to launch *A European agenda for the collaborative economy* having observed that the EU's national and local authorities have been addressing the situation via a patchwork of different regulatory measures. This is because collaborative consumption comes in different forms depending on the sector in question.

2.5. The disjointed approach of these new business models generates insecurity (economic, regulatory, workforce-related) and uncertainty (regarding questions of trust, new digital tools such as blockchains, security networks and privacy) between incumbent operators, new service providers and consumers, restricting innovation, job creation and growth.

2.6. As a result, the Commission has published the following guidance for market operators and public authorities of the various Member States:

- **Market access requirements:** service providers should only be obliged to obtain business authorisations or licences in order to meet relevant public interest objectives. Absolute bans of an activity should only be a measure of last resort. Platforms should not be subject to authorisations or licences where they only act as intermediaries between consumers and those offering the actual service (e.g. transport or accommodation services). Member States should also differentiate between private individuals providing services on an occasional basis and providers acting in a professional capacity, for example by establishing thresholds based on the level of activity.
- **Liability regimes:** collaborative platforms can be exempted from liability for information they store on behalf of those offering a service. However, they should not be exempted from liability for any services they themselves offer, such as payment services.
- **Protection of users:** Member States should ensure that consumers enjoy maximum protection from unfair commercial practices, while not imposing disproportionate obligations on private individuals who provide services occasionally.
- **Employment relations (employed and self-employed):** Labour law mostly falls under national competence, supplemented by minimum EU social standards and jurisprudence. Member States may consider criteria such as the degree of subordination to the platform, the nature of the work or the salary received when deciding whether a person can be considered as an employee of a platform.

⁽³⁾ One of the first was that of the EESC — see OJ C 177, 11.6.2014, p. 1.

- **Taxation:** Collaborative economy service providers have to pay taxes. Relevant taxes include tax on personal income, corporate income and Value Added Tax. Member States are encouraged to continue simplifying and clarifying the application of tax rules to the collaborative economy. Collaborative economy platforms should fully cooperate with national authorities to record economic activity and facilitate tax collection.

3. General comments on the Commission's proposal

3.1. The Commission is causing confusion by placing digital platforms and the sharing economy in the same basket, without taking on board the idea that the collaborative economy and the common interest may be linked, based on a recognition of its positive externalities with regard to putting values such as cooperation and solidarity into practice.

3.2. In its Communication, the Commission misses what should be its main objective, failing to respond to the legitimate expectations of relevant stakeholders — defining a model and parameters within a clear and transparent legal framework in which the multiple forms of the collaborative economy can develop and operate in the European area, be supported and implemented and gain credibility and trust.

3.3. For its part, the digital economy model presents four specific characteristics: relocation of activities, the central role of digital platforms, the importance of networks and the mass exploitation of data⁽⁴⁾. Despite belonging to a different sphere, it intersects with the collaborative economy as they often operate in similar spheres: crowd-based networks; blurring lines between private and working life, stable and casual labour, self-employment and employment; etc.

3.4. In order to make it easier to establish these conceptual limits, the EESC recommends that the European Commission incorporate the notion of the **'non-reciprocal prosocial behaviour'** of the collaborative economy, which clearly differentiates not-for-profit shared use and provides a space to interact for the purpose of consumption, production, financing and knowledge sharing.

3.5. In short, the collaborative economy model implies not only economic but also social and environmental change. The Communication indicates this by referring to sustainability and the transition to a circular economy, or when describing social markets as a niche of the collaborative economy.

3.6. Ignoring these circumstances means addressing the current significance of collaborative initiatives in a partial way. The same applies if the analysis is limited to the exchange of services or to collaborative platforms, without taking into account aspects such as recirculation and exchange of goods, optimisation of the use of assets, or networking.

3.7. Regarding issues related to uncertainty in applying legal frameworks for regulating collaborative economy initiatives, although the difficulties that the Communication raises are genuine, so is the intention to 'normalise' and 'adjust' a new economic model to 'traditional assessment criteria'. This may require an effort to establish new criteria and standards in its legal, labour and tax treatment, especially regarding transition towards a new production and consumption model and redefining the actors involved.

3.8. Likewise, a **new, more inclusive economy that generates social cohesion** is only possible if every person is provided with the digital and financial skills to access and make use of it. Furthermore, public policies should ensure full access for the people that are most vulnerable to digital exclusion, particularly those with disabilities.

3.9. Finally, the EESC cannot overlook the following elements that were not covered in the Commission's Communication:

- Operational instruments of common action such as digital, virtual and social currencies need to be addressed in the debate on the collaborative economy. Due to the blockchain factor, the second generation of internet users, entrepreneurs and incumbents alike, are devising new ways of performing the eight core functions of financial intermediaries via a global distributed ledger, technology, and bitcoin.
- If we consider that the two main pillars of collaborative change are the energy-information combination, no analysis of the collaborative economy should overlook the transfer of intellectual property from shared knowledge and open access sources, nor should it ignore the energy sector.

⁽⁴⁾ Charrié J. and Janin L., *Le numérique: comment réguler une économie sans frontière*, 2015.

- The effects on the labour market, such as the trend towards an excessively flexible labour market, the erosion of the powers of collective bargaining for workers in the collaborative economy, the risk of individualisation in the labour market, lack of training, and any (adverse) effects of rating systems, and the treatment of algorithms need to be addressed in greater depth.

4. Specific comments on the Commission's proposal: key issues

4.1. Market access requirements, economies of scale and local 'network effects'

4.1.1. The EESC understands that under existing EU legislation, particularly the Services Directive and the e-Commerce Directive, Member States need to boost access to collaborative markets (as a more varied range of products stimulates consumption), establishing — where necessary — constraints that are exclusively motivated by public interest, which would need to be duly justified. A conflict of laws can be expected because a sharing economy creates new ways of providing familiar services that have traditionally been highly regulated.

4.1.2. It is worth noting that because the collaborative economy is a melting pot of initiatives unrestricted by place or time, they should be subjected to open and delocalised treatment. This means that any limitation based on restrictive territorial criteria can result in tax and social competition that distorts their positive effects.

4.1.3. Therefore, far more than simply making a transnational case for market access, the collaborative economy must be seen as an expression of empowerment for citizens (human capital gains) that should be paralleled by two basic issues: firstly, a principle of harmonisation that may avoid disparities in treatment which could generate new market asymmetries; and secondly, the need to make progress with shared regulatory practices⁽⁵⁾ (models: peer regulation, self-regulatory organisations, and delegated regulation through data).

4.1.4. Like the Commission, the EESC supports more flexible service and market regulation (new definitions of sharing economy labour) and therefore calls for an assessment in each Member State of justifications for the applicable legislation with regard to the collaborative economy and proportionality, in accordance with **public interest** objectives (regulation aimed at addressing market failure, facilitating the fostering of trust), taking into consideration the specific characteristics of different business models and access to quality and security of instruments.

4.1.5. Likewise, the EESC highlights the fact that while the specificities of the model generate tools assessing the rating and reputation of suppliers that satisfy the public interest objective of reducing risk to consumers associated with information asymmetries, they can also lead to 'adverse selection' and 'moral hazard'. In this respect, public authorities and digital platform managers must ensure the quality and reliability of information, assessments and collaborative platform ratings, making use of independent monitoring authorities.

4.1.6. The EESC is of the view that the establishment of thresholds for distinguishing, sector by sector, the provision of professional services from that of non-professional services, could lead to the development of a useful methodology for overcoming the fragmentation of EU markets. However, this may not be as effective as anticipated when it comes to integrating non-professional activities between peers.

4.2. Liability and insurance regimes

4.2.1. The EESC understands that maintaining the current intermediaries liability regime⁽⁶⁾ is fundamental to the development of the European Union's digital economy.

4.2.2. With a view to reinforcing credibility and confidence, which is crucial to the development of the collaborative economy, the EESC joins the Commission's communication in calling for the adoption of restrictive voluntary measures to combat illegal online content, by means of related or underlying activities, without relinquishing the benefits of exemption from liability.

⁽⁵⁾ OJ C 303, 19.8.2016, p. 36.

⁽⁶⁾ In accordance with the Directive on eCommerce.

4.2.3. However, the EESC reiterates the desirability of addressing collaborative activity in-depth, independently of the central value that is attributed to digital platforms, in order not to distance it too far from the citizen-based spirit that inspires it.

4.3. *Consumer protection*

4.3.1. In a new context in which lines between producer and consumer are blurred ('empowered people makers, co-creators, crowd funders, peers, customers'), the EESC calls for a system guaranteeing consumers' rights. However, given the collaborative economy's specific characteristics, the range of initiatives on offer should not be restricted.

4.3.2. Therefore, the multilateral relations formed as a result should incorporate those arising from the emergence of **prosumers** (the most important economic inputs of the collaborative economy, which must be protected, secured and focused), which are set to play a highly significant role in the collaborative economy, as are processes to create shared value, especially from the perspective of the circular economy and functionality.

4.3.3. The EESC has always advocated a level playing field. In accordance with the principles guiding unfair trading practices, the factors that must be taken into account with a view to identifying consumers and traders in a non-restrictive way⁽⁷⁾ are: **frequency of services, profit-making, and volume of business.**

4.3.4. The EESC endorses this approach, but warns that it will be necessary to revise its view as well as the timeliness of other factors when applying criteria for an appropriate categorisation. It does not however seek to be exhaustive, given the complexity and variability with which the collaborative economy can express itself and the difficulty involved in outlining its future (a model that should be independent, portable, universal, and supportive of innovation).

4.3.5. The EESC reiterates that the most useful way of improving consumer confidence is to increase peer-to-peer service credibility and confidence (a 'safe harbour' for specific collaborative economy platforms allowing benefits, training, insurance and other forms of protection) by means of appropriate online assessment services⁽⁸⁾, external certificates (quality labelling) and a new system of 'civil arbitration'. This argument is closely related to the confidence and reputation of the collaborative economy's harmonious development in a new economic, social and environmental system of coordinates.

4.4. *Workers and the self-employed in the collaborative economy*

4.4.1. In the context of the European Pillar of Social Rights, the EESC unequivocally endorses the revision of the legal *acquis* in order to ensure fair working conditions and adequate social protection, based on the — cumulative — criteria of subordination of the person offering the service, the nature of the work, and the salary.

4.4.2. More specifically, with due regard for national competences, a legal framework should be established for workers that precisely specifies the relevant employment statuses: a decent wage and the right to take part in collective negotiations, protection against arbitrariness, the right to log out in order to keep digital working time within the bounds of decency, etc.

4.4.3. Moreover, the EESC advocates a more in-depth analysis of those work patterns of the collaborative economy that are related to non-reciprocal pro-social behaviour.

4.4.4. The collaborative economy's unique nature as a catalyst for job creation should be addressed in a similar way in all Member States so that the policies enacted do not undermine collaborative practice and are more entrepreneurial in incubation, independence, and infrastructure.

4.5. *Taxation*

4.5.1. The EESC, conscious of the risks of aggressive tax planning and financial secrecy in the digital economy field, advocates strengthening a system for monitoring trade flows via digital platforms, because these can trace the product or service and facilitate tax income. The example of carpooling platforms in Estonia constitutes an example that could be replicated in the other Member States.

⁽⁷⁾ As the Commission points out, none of these would be sufficient in and of itself for a provider to be regarded as a trader.

⁽⁸⁾ They should be made subject to close supervision and monitoring.

4.5.2. The adjustment of taxes, in particular VAT, to collaborative economy models will entail significant revisions. Likewise digital platforms — whose profits are largely linked to the sale of individuals' data to businesses — must be fully liable for corporation tax in the location in which their business takes place, in order to avoid tax competition between Member States.

4.5.3. The EESC, aware of the importance of good tax governance, advocates the creation of ad hoc instruments (one-stop shops and online information exchanges) as well as measures aimed at administrative simplification, harmonisation, transparency and cooperation between tax administrations.

4.6. **Monitoring**

4.6.1. The monitoring activities proposed in the Communication are appropriate to the objective being pursued. In particular, the EESC calls for dialogue to be strengthened between stakeholders (trade unions, business organisations, consumer associations, etc.) in order to identify best practices and develop self-regulatory and co-regulatory initiatives that address the collaborative economy's new parameters⁽⁹⁾ at European level (e.g. in the accommodation, transportation, commercial real estate, health care provision and energy distribution sectors).

Brussels, 15 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁹⁾ OJ C 303, 19.8.2016, p. 36.

Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — The annual Union work programme for European standardisation for 2017

(COM(2016) 357 final)

(2017/C 075/07)

Rapporteur working alone: **Elżbieta SZADZIŃSKA**

Consultation	European Commission, 17 August 2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	17 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote	206/0/3
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The European Economic and Social Committee welcomes the EU's 2017 annual work programme on European standardisation, which forms part of a comprehensive standardisation package.

1.2. The Commission's proposed annual plan follows on from, and adds to, the measures outlined in the 2016 plan, on which the Committee has already commented in earlier opinions ⁽¹⁾.

1.3. The Committee reiterates the importance of standards for making the single market more competitive and developing innovative products and services, and for increasing their quality and safety for the benefit of consumers, workers, businesses and the environment.

1.4. As the representative of organised civil society, the Committee supports such a standardisation system which meets the needs both of society and the economy.

1.5. The Committee points out once again that ensuring the pluralism of European standardisation systems by including the organisations referred to in Annex III of Regulation (EU) No 1025/2012 guarantees greater transparency and access to this system. The participation of society representatives in the standardisation system must not be limited to the EU level. These stakeholders should be involved in national standardisation systems too.

1.6. Standards are developed in support of EU legislations and policies ('new legislative approach' related standards, Energy Union, etc.). In addition, the development of digitalisation in industry, the supply chain and services means that ICT standards and standards for services are key to conducting business in different sectors of the economy. The Commission recognised in this connection that measures in both of these areas will be a priority and this is welcomed by the Committee.

1.7. At the same time, the Committee points out that competitiveness of SMEs should be supported by involving them in the process of drafting and implementing standards, and by adopting appropriate educational measures to raise awareness of the benefits of standards.

⁽¹⁾ OJ C 303, 19.8.2016, p. 81, opinion on European standards for the 21st century (INT/794, OJ C 34, 2.2.2017, p. 86) and opinion on ICT Standardisation Priorities for the Digital Single Market (OJ C 487, 28.12.2016, p. 92).

1.8. The TTIP negotiations currently being conducted by the Commission and the completed CETA negotiations show that standardisation, on account of the various systems involved, is a major point of discussion. According to the Committee, therefore, stakeholders need to be informed about the differences between the standardisation systems of the negotiating parties and the potential risks and benefits arising from these differences should be highlighted.

1.9. The Committee supports the proposal to establish an interinstitutional dialogue on standardisation — a view it has already expressed in an earlier opinion ⁽²⁾.

1.10. The Committee also welcomes the Commission proposal to carry out research into the impact of standards on the economy and society.

2. European Commission proposals

2.1. In line with Regulation (EU) No 1025/2012, the Commission communication sets out the EU's 2017 annual work programme on European standardisation.

2.2. The annual programme is part of a comprehensive package, including the Commission communication on European standards for the 21st century, a staff working document on service standardisation and the communication on the Article 24 report on the implementation of the regulation.

2.3. The 2017 work programme on standardisation adds to the measures outlined in the 2016 programme, most of which are at the implementation stage.

2.4. The strategic priorities for European standardisation in 2017 are as follows:

- ICT standardisation in the digital single market ⁽³⁾,
- services standardisation,
- drafting by European standardisation organisations of standards and standardisation documents relating to the connected digital single market, a resilient Energy Union with a forward-looking climate change policy, and a deeper and fairer internal market with a strengthened industrial base,
- international cooperation on standardisation,
- support for standardisation through scientific research.

2.5. To enhance the evidence base of the annual governance cycle on EU standardisation policy, the Commission will also:

- examine the economic and societal impact of standardisation,
- set up an inter-institutional dialogue.

3. General comments

3.1. The Committee welcomes the next annual work programme on standardisation since applying standards to production and services helps increase competitiveness in the single market — a view it has already expressed on several occasions.

3.2. The Committee takes a positive view of the fact that the measures outlined in the Commission's previous annual plan will continue, ensuring continuity and enabling the priorities of the single market strategy to be met.

⁽²⁾ Opinion INT/794 on European standards for the 21st century (OJ C 34, 2.2.2017, p. 86).

⁽³⁾ The subject of Commission communication COM(2016) 176 final of 19.4.2016, on which the EESC drew up an opinion (OJ C 487, 28.12.2016, p. 92).

3.2.1. The 2017 annual work programme sets out in more detail, and adds to, the priorities already being implemented. The objective here is to adapt the European standardisation system to the changing international situation and challenges in the global market.

4. Strategic priorities for European standardisation

4.1. At a time of rapid development in information technology, it is essential to draw up appropriate standards to ensure interoperability and security in cyberspace.

4.1.1. Technologies such as 5G communications, cloud computing, the internet of things (IoT) and big data technologies are used in the following areas: e-health, smart energy, smart cities, advanced technologies and smart factories, and networked and automated vehicles, and they require standards for cybersecurity, risk management and monitoring guidelines for supervisory bodies and regulators.

4.1.2. The level of security, data protection and access to the internet of things still need to be improved. Standardisation in this area may be a precondition for the interoperability of the IoT and for ensuring cybersecurity, data protection and accessibility for consumers.

4.2. The Committee welcomes the fact that the Commission will ask European standardisation organisations to carry out a check of existing appropriate standards before requesting for new standards for services to be developed.

4.2.1. At the same time, the Committee considers that, for the purpose of future work, it is good practice to notify stakeholders of the Commission mandates on which work is still being carried out and which mandates have been completed or suspended.

4.2.2. When assessing existing standards, it is important to take into account whether they meet the specific needs of vulnerable groups, such as people with disabilities. One example might be standards relating to the electronic signature, which do not meet the needs of consumers with disabilities. In this case, recommending that a new standard be drafted would be justified.

4.2.3. When new standardisation processes are initiated, the specific needs of vulnerable groups, such as people with disabilities, must be taken into account, where relevant, as part of the definition of the terms for the standardisation process. A new procedure should be adopted allowing accessibility experts and disability organisations to participate without cost in standardisation processes where relevant.

4.3. The Committee has underlined on several occasions the considerable impact of standards on the quality of products and services in the single market. It therefore welcomes the Commission's plans to improve development of standards for services by monitoring national standards and market requirements and identifying areas where there is a need for new standards.

4.3.1. The Committee agrees with the Commission's suggestion that national standardisation bodies deciding on whether to develop a national service standard should consider the European dimension and whether it might be better to develop a European standard. This could help remove barriers and potential conflicts in the area of services.

4.4. The ever increasing reach of online services, both private and public (hospitals, care institutions, smart transport, etc.) requires technical solutions to ensure greater anonymity for consumers and to limit the risk of their data being processed excessively.

4.5. Future work on standardisation should help improve quality, accessibility and safety of transport services, and limit the environmental pollution caused by transport.

4.6. In the energy field, the Commission's work will be aimed at linking up infrastructure, diversifying energy sources, limiting use of energy and promoting climate-friendly technologies.

4.6.1. The Committee agrees that drawing up uniform standards for smart energy networks will improve the interoperability of the network, and that optimising all elements of that network will contribute to lower costs and increased effectiveness while helping to integrate distributed energy sources, including renewable energy. This will allow end users to make full use of smart energy systems.

4.7. The Committee welcomes the fact that the Commission document raises the issue of the biodegradability of plastic packaging, production of sustainable chemicals using secondary materials and the methods for assessing the risks of substances not included in the relevant lists but used to produce plastic products intended to come into contact with food.

4.7.1. Taking into account the high risks involved, standards concerning the above areas should include strict requirements to protect both consumer health and the environment.

5. International cooperation

5.1. The Commission encourages European standardisation organisations to promote international and European standards across the world, as a way of supporting European industry and facilitating market access.

5.2. At a time when the CETA agreement negotiated with Canada is proving controversial in Member States, and with the TTIP negotiations still ongoing, the role played by standards in world trade needs to be continually stressed.

5.2.1. Apart from delivering the benefit of removing technical barriers to trade, dialogue with non-European partners (China, India, etc.) should contribute to the roll-out of the European standardisation model, exchange of information between European and national standardisation organisations and implementation of ISO and IEC standards, and in sectors where international standardisation is insufficient or lacking, to the development and implementation of European standards.

6. Standardisation as a way of supporting innovation

6.1. The Committee supports the idea of linking standardisation closely with scientific research and converting knowledge into standards.

6.2. Dialogue between research institutions and the technical committees CEN and Cenelec and ETSI as part of the Horizon 2020 programme should boost innovativeness.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

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 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products as regards the date of its application’

(COM(2016) 709 final — 2016/0355 (COD))

(2017/C 075/08)

Rapporteur-general: **Daniel MAREELS**

Consultation	Council, 17.11.2016 European Parliament, 21.11.2016
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible:	Single Market, Production and Consumption
Date of President’s decision	17.11.2016 (Rule 57 urgency procedure)
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	152/1/2

1. Conclusions and recommendations

1.1. In the circumstances and subject to the conditions set out below, the EESC can accept the Commission’s proposal that the date of application of the PRIIPs ⁽¹⁾ Regulation be deferred by one year until 1 January 2018.

1.2. The PRIIPs Regulation contains measures that aim to provide better protection for retail customers and investors and to rebuild consumer trust in the financial services industry by increasing transparency in the retail investment market. In particular, it requires manufacturers of packaged retail and insurance-based investment products (PRIIPs) to produce a KID ⁽²⁾.

1.3. The deferral was requested by the European Parliament and a majority of Member States, after a Commission ‘delegated act’ ⁽³⁾ on PRIIPs was rejected by the European Parliament on 14 September 2016. The aim of the delegated act was to lay down regulatory technical standards for KIDs for PRIIPs, on the basis of the drafts developed by the European Supervisory Authorities.

⁽¹⁾ PRIIPs are ‘packaged retail and insurance-based investment products’.

⁽²⁾ KID stands for ‘key information document’.

⁽³⁾ Delegated acts were introduced by the Lisbon Treaty. Article 290 of the TFEU allows the EU legislator (generally the European Parliament and the Council) to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

For example, delegated acts may add new (non-essential) rules or involve a subsequent amendment to certain aspects of a legislative act. The legislator can thus concentrate on policy direction and objectives without entering into overly detailed and often highly technical debates.

The delegation of power to adopted delegated acts is nevertheless subject to strict limits. Indeed, only the Commission can be empowered to adopt delegated acts. Furthermore, the essential elements of an area may not be subject to a delegation of power. In addition, the objectives, content, scope and duration of the delegation of power must be defined in the legislative acts. Lastly, the legislator must explicitly set in the legislative act the conditions under which this delegation may be exercised. In this respect, the Parliament and the Council may provide for the right to revoke the delegation or to express objections to the delegated act. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Aai0032>

1.4. The EESC has previously adopted an opinion⁽⁴⁾ welcoming the development of PRIIPs and highlighting the importance of this legislation, which for the first time regulates all types of complex financial product and ensures they are comparable, regardless of the type of manufacturer — bank, insurer or investment company.

1.5. In that opinion, the Committee also called for the creation of a single financial market with clear, accurate, straightforward and comparable information, and for a uniform, simplified and standardised information system that would ensure that such information is comparable and comprehensible, increasing market transparency and efficiency⁽⁵⁾.

1.6. The Committee takes the view that, if the application of the regulation had not been deferred, the main objectives set in this field (see above and below) could have been compromised, which would have been extremely unfortunate. The Committee agrees that the increased transparency provided by the PRIIPs Regulation and the harmonisation of the information provision requirements will benefit the internal market in financial services by creating a level playing field among different products and distribution channels. The regulation will therefore not only benefit retail customers and investors, but also help to restore consumer confidence in the financial services sector. Furthermore, the rejection of the delegated act less than four months before the texts entered into application would have led to legal uncertainty and major implementation problems for market operators.

1.7. With regard to the choice of a period of one year, the Committee considers this to be acceptable for the same reasons, all the more so given that its entry into force will now coincide with that of the new MiFID II package. The Committee would stress, however, that this deferral must remain a one-off exception and that the intervening period must be used to adopt and publish the definitive delegated act as soon as possible. It is, after all, important to provide clarity and certainty as soon as possible, both for market operators and for retail customers and investors.

1.8. In the Committee's view, this must not jeopardise the objectives and achievements of the PRIIPs Regulation. Any amendments made to the delegated act therefore need to fit into that framework. All the more so since the review of the PRIIPs Regulation will be carried out after only one year and any issues can be raised at that time, in the light of the initial implementation and supervisory experiences. The aforementioned amendments should, from the outset, effectively contribute to increasing consumer trust. At the same time they should remain consistent with the rules to be laid down in the future MiFID package.

2. Background

2.1. Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁽⁶⁾ (the PRIIPs Regulation) introduced measures to improve transparency in the retail investment market. More specifically, it requires manufacturers of PRIIPs to draw up KIDs.

2.2. The regulation gives the European Supervisory Authorities⁽⁷⁾ (ESAs) the power to prepare regulatory technical standards (RTSs) detailing the elements of the KID.

2.3. After the ESAs had sent their joint draft of the aforementioned standards to the Commission, the latter adopted the delegated act effectively implementing the RTSs at the end of June 2016.

2.4. In its resolution of 14 September 2016, the European Parliament raised objections to the delegated act adopted by the Commission⁽⁸⁾. The EP called on the Commission to review the provisions relating to multi-option PRIIPs, performance scenarios and comprehension alert.

2.5. Moreover, the European Parliament and a large majority of Member States asked for the date of application of the regulation to be deferred.

⁽⁴⁾ See EESC opinion (OJ C 11, 15.1.2013, p. 59, point 1.2).

⁽⁵⁾ See opinion referred to in footnote 4, points 3.2 and 2.3.

⁽⁶⁾ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

⁽⁷⁾ The ESAs are the European Insurance and Occupational Pensions Authority, the European Banking Authority and the European Securities and Markets Authority.

⁽⁸⁾ See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0347+0+DOC+XML+V0//EN>

2.6. The current proposal for a regulation proposes deferring the date of application of the regulation by one year, to 1 January 2018.

3. Observations and comments

3.1. Overall, the PRIIPs Regulation serves to improve protection for retail customers and investors, particularly those who invest in PRIIPs. The proposed increase in transparency and the harmonisation of the information provision requirements will also benefit the internal market in financial services by creating a level playing field among different products and distribution channels. This will also further restore consumer confidence in the financial services industry.

3.2. In order to fulfil these objectives, the regulation requires that PRIIPs manufacturers comply with a uniform set of product disclosure requirements and that retail customers and investors receive the KID on the offered PRIIPs. This should enable retail investors to better understand the economic nature and risks of a particular product and to compare different offers.

3.3. In its original form, the regulation is intended to enter into application at the end of 2016. In principle, the same date also applies to the 'implementing measures' adopted by the Commission by delegated act in the middle of this year, based on the ESAs' draft RTSs. The RTSs specify the presentation and content of the KID, the standardised format of the KID, the methodology underpinning the presentation of risk and reward and the calculation of costs, as well as the conditions and the minimum frequency for reviewing the information contained in the KID and the conditions on fulfilling the requirement to provide the KID to retail investors.

3.4. While the Council raised no objections to the Commission's delegated act during the scrutiny period, the EP rejected the text in a resolution on 14 September 2016⁽⁹⁾.

3.5. Although the PRIIPs Regulation is directly applicable as of the end of 2016 and the production of a KID is not linked to the adoption of the delegated act, the EP at the same time requested that its application date be postponed. A large majority of Member States also made the same request for deferral, pointing out that the absence of technical standards would hinder the smooth application of the regulation.

3.6. In these circumstances, the EESC can endorse the principle of deferring the date of application of the regulation. There would otherwise be a risk of the main objectives set (see above and below) not, or not fully, being achieved. Furthermore, the delegated act was rejected less than four months before the texts would have entered into application, which would have led to legal uncertainty and major implementation problems for market operators.

⁽⁹⁾ The resolution rejected the delegated act on the following grounds:

- A. whereas it is essential that consumer information on investment products is comparable in order to promote a level playing field in the market no matter what type of financial intermediary manufactures or markets them;
- B. whereas it would be misleading to investors to remove credit risk from the calculation of risk categorisation of insurance products;
- C. whereas the treatment of multi-option products still needs to be clarified, in particular in relation to the explicit exemption granted to UCITS funds under Regulation (EU) No 1286/2014;
- D. whereas the delegated act as adopted by the Commission contains flaws in the methodology for the calculation of future performance scenarios and does not therefore fulfil the requirement under Regulation (EU) No 1286/2014 to provide information which is "accurate, fair, clear and not misleading" and, in particular, does not show for some PRIIPs, even in the adverse scenario, and even for products which have regularly led to losses over the recommended minimum holding period, that investors could lose money;
- E. whereas the lack of detailed guidance in the delegated regulation on the "comprehension alert" creates a serious risk of inconsistent implementation of this element in the key information document across the single market;
- F. whereas Parliament remains of the view that further standardisation of when the comprehension alert will be used should be introduced as an additional RTS mandate;
- G. whereas, left unchanged, there is a risk that the rules set out in the delegated regulation go against the spirit and aim of the legislation, which is to provide clear, comparable, understandable and non-misleading information on PRIIPs to retail investors;
- H. whereas in the letter of 30 June 2016 sent to the Commission by the Chair of the Committee on Economic and Monetary Affairs, Parliament's negotiating team asked the Commission to assess whether the implementation of Regulation (EU) No 1286/2014 should be delayed.'

3.7. Moreover, the EESC points to its previous opinion on PRIIPs, in which it welcomed the proposals made and the approach taken⁽¹⁰⁾. In that opinion, the Committee highlighted the importance of this legislation, which for the first time regulates all types of complex financial product and ensures they are comparable, regardless of the type of manufacturer — bank, insurer or investment company.

3.8. The Committee also called in this connection for the creation of a single financial market with clear, accurate, straightforward and comparable information⁽¹¹⁾, and stated that a uniform, simplified and standardised information system would ensure that such information is comparable and comprehensible, increasing market transparency and efficiency⁽¹²⁾. The Committee would now add that the future RTSs should, from the outset, effectively contribute to increasing consumer trust. Thus, it needs to be clear to consumers which products are complex, they should be able to make informed decisions, and there should be a focus on cost and return. In order to avoid inconsistencies, account should be taken of the rules that will be laid down in the future provisions of the MiFID Regulation⁽¹³⁾.

3.9. The Committee also considers the choice of a period of one year to be acceptable, on condition that the deferral remains a one-off exception and that the intervening period is used to adopt and publish the definitive delegated act. This should be done in the shortest possible time in order to provide clarity and certainty for market operators, retail customers and investors as soon as possible.

3.10. Moreover, by opting for a period of one year, the entry into force of the PRIIPs Regulation will again coincide with the entry into force of the MiFID II Regulation⁽¹⁴⁾ which will also benefit consumers. The entry into force of MiFID II was previously also deferred by one year⁽¹⁵⁾ — a deferral that was approved by the Committee⁽¹⁶⁾.

3.11. This must not jeopardise the abovementioned objectives, which the Committee endorses. Any amendments made to the delegated act therefore need to fit into the current PRIIPs framework.

3.12. As regards the other elements, and insofar as may be necessary, it would seem more appropriate to await the review of the PRIIPs Regulation, which, owing to this proposed postponement, will now happen only one year after the regulation comes into effect⁽¹⁷⁾. It will be possible at that stage to take account of the initial implementation and supervisory experiences.

Brussels, 14 December 2016.

*The President
of the European Economic and Social Committee
Georges DASSIS*

⁽¹⁰⁾ See opinion referred to in footnote 4, point 1.2.

⁽¹¹⁾ See opinion referred to in footnote 4, point 3.2.

⁽¹²⁾ See opinion referred to in footnote 4, point 2.3.

⁽¹³⁾ See Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁽¹⁴⁾ The new MiFID II package will enter into force on 3 January 2018. That is two days after the date laid down in the current proposal to amend the new PRIIPs Regulation.

⁽¹⁵⁾ See the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories as regards certain dates, COM(2016) 57 final — 2016/0034 (COD) (<http://eur-lex.europa.eu/legal-content/FR/TXT/?qid=1486717110458&uri=CELEX:52016PC0057>).

⁽¹⁶⁾ The EESC endorsed postponing the entry into force of MiFID II, see EESC opinion (OJ C 303, 19.8.2016, p. 91).

⁽¹⁷⁾ See Article 33 of the PRIIPs Regulation, which is not changed by the proposal under consideration. That Article provides for a review of the regulation 'by 31 December 2018'.

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds

(COM(2016) 461 final)

(2017/C 075/09)

Rapporteur: **Giuseppe GUERINI**

Co-rapporteur: **Michael IKRATH**

Consultation	Council of the European Union, 27 July 2016 European Parliament, 12 September 2016
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Date of Bureau decision	12 July 2016
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	29 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	117/1/2

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the efforts of the European Commission and Member States in recent years to overcome economic stagnation. At the same time, it cannot but urge the EU institutions to show more determination in the establishment and implementation of a comprehensive strategy for financing the real economy.

1.2. The EESC believes that it is important to ensure that European investment primarily benefits the real economy that is characterised by innovativeness, growth and social responsibility.

1.3. Small and medium-sized enterprises (SMEs) are the backbone of the European economy. Ensuring satisfactory access to financing for SMEs and fast-growing companies is therefore a crucial precondition both for the development of these companies and for innovation, economic growth, employment, safeguarding Europe's competitiveness and assuming social responsibility. Loans are the main source of funding for SMEs in the EU. In the light of the need to develop new areas of growth and ensure that Europe is an innovation leader, it is necessary to develop new methods of financing to support start-ups, innovative SMEs and fast-growing enterprises (scale-ups).

1.4. The EESC calls for the development of the European venture capital funds (EuVECA) and the European social entrepreneurship funds (EuSEF) and points out that investor protection must be guaranteed.

1.5. The EESC is therefore convinced that the traditional debt financing of the companies mentioned in point 1.2 needs to be complemented by alternative methods of financing, such as venture capital, crowdfunding, private equity, etc. The EU therefore needs to adopt concrete and consistent measures, on the one hand to enable banks once again to perform their core task of financing the real economy, and on the other to substantially improve the opportunities for equity and capital market funding and to gradually reduce the existing barriers to this in the process of building a capital markets union.

1.6. The EESC therefore welcomes and supports the European Commission's initiative to anticipate the review of the Regulations on European venture capital funds and European social entrepreneurship funds.

1.7. The EESC believes that the instrument of a regulation can reduce the danger of different interpretations at national level, thus promoting the establishment of a capital markets union. It also calls for the existing differences of interpretation at national level to be eliminated.

1.8. The EESC also calls on the European Union to commit to strengthening synergies between the objectives of the Europe 2020 strategy, such as the digital single market and the energy union/COP 21, and the UN's 17 Sustainable Development Goals, in order to provide long-term investments with high impact. The deepening of economic integration to ensure the EU's global competitiveness must also have top priority in all investment strategies.

1.9. The EESC notes that parts of the financial sector, rather than investing in the real economy, prefer alternative investment objectives. These are often aimed at maximising return on investment (ROI) and associated with a high level of speculative risk. The capital adequacy requirements applicable to European banks, which clearly favour investment in government bonds rather than loans to companies, also contribute to this. It should also be noted that the EU legislation has so far done alarmingly little to regulate purely speculative financial enterprises (hedge funds, shadow banks). The EESC therefore recommends that the EU institutions strongly promote productive investment in the real economy and discourage high-risk financial speculation. A current example of this trend: at this year's IMF meeting in Washington the financing of the green economy — green finance — was a central theme. The Chinese recognised this new field early on and promoted it during their G20 presidency. The EU is therefore urged, also in the framework of the EuVECA/EuSEF, to adopt measures to promote and strengthen the financing of the green economy (in the wake of COP 21) in order to forestall financial speculation in this area ⁽¹⁾.

1.10. In the specific case of the present Regulation, the EESC points out that at EU level there are now a large number of substantial financing sources, such as InnovFin under Horizon 2020, COSME and EaSI, to list only the main sources, alongside ESIF and EFSI. The EESC therefore expects there to be close coordination in connection with the new direction of EuVECA and EuSEF. It should be ensured that the hitherto very restrictive access criteria, as well as other restrictive conditions, are significantly relaxed by the Commission in order to enable the funds to achieve their objectives much more effectively. A high degree of flexibility should be the guiding principle.

1.11. The EESC hopes that the review will also lead to changes in the credit rules of the Basel III Accord, with the *SME supporting factor* being complemented by the introduction of a new *social enterprise supporting factor*. In this way investments in social enterprises would be given a lower credit-risk weighting when calculating minimum capital requirements.

1.12. In order to expand participation in such investment funds, the EESC proposes the establishment of 'funds of funds'. This could increase the involvement of non-institutional investors — including interest groups — by setting up guarantee funds supported by public money and managed at European level. Such funds should support investment in businesses and institutions with a strong social dimension.

1.13. The EESC considers it equally important to create an environment in which the financing objectives of social investment funds, such as social enterprises (SEs) and social sector organisations (SSOs), can develop. This will require the removal of barriers that make it extremely difficult for these actors to operate in a 'level playing field' market environment. There is a particular need for innovative instruments that enable the public sector to engage in socially orientated initiatives in association with SEs/SSOs.

⁽¹⁾ www.blackrock.com/corporate/en-mx/literature/whitepaper/bii-pricing-climate-risk-international.pdf

1.14. The EESC, in line with its opinion TEN/584, e-seniors, a potential 25 % of the European population, calls for the 'Silver Economy's' access to financing to be made easier in connection with the EuVECA and the EusSEF. This will also have a positive impact on the budgets of the Member States, as pressure on the pensions system will be relieved by active older people starting up their own businesses. A new value chain will develop, which will open up new sources of revenue for the State. This also applies to women⁽²⁾ as entrepreneurs and founders of start-ups, social entrepreneurs, etc.

2. Gist of the Commission proposal

2.1. The proposal pursues the objective of coordinating the EuVECA and EuSEF funds with the measures already adopted at EU level to stimulate an economic upturn (e.g. Investment Plan for Europe, Action Plan on Building a Capital Markets Union, European Fund for Strategic Investments).

2.2. The Commission believes that access to venture capital and social entrepreneurship capital is key to financing the growth of EU start-ups, innovative SMEs and social enterprises.

2.3. However, with regard to its venture capital market, the EU is falling further behind the USA rather than closing the gap.

2.4. The Commission is therefore amending the framework of the EuVECA and the EuSEF even before the planned review (2017) to ensure that they — in coordination with other measures — do more to support venture capital and social investment throughout the EU.

2.5. The proposed amendment focuses on the following provisions: (i) the way the funds invest in assets; (ii) the way the managers run the funds; (iii) how the two Regulations interact with other existing fund laws; and (iv) the requirements funds comply with to benefit from the passport across borders.

2.6. The Commission proposal is based on Article 114 TFEU and follows an extensive impact assessment⁽³⁾.

3. General and specific comments

3.1. The EESC welcomes the European Commission's initiative to anticipate the review of the regulations on European venture capital funds (EuVECA) and European social entrepreneurship funds (EuSEF); as early as 2012, when the first suggestions to bring them in were made, it expressed its approval in opinions on European Venture Capital Funds⁽⁴⁾ and European Social Entrepreneurship Funds⁽⁵⁾, particularly in view of the EU action plan on building a capital markets union⁽⁶⁾.

3.2. The EESC endorses and supports the endeavour to enhance the financing of new businesses. The target group consists of innovative SMEs, especially start-ups and one-person businesses, and not just in the initial phases, but mainly in the second and third growth phases. SMEs that have the potential to grow rapidly but are too small for the capital market and do not meet the criteria for loans should be a particular focal point. It is just as important to focus on businesses with social objectives and sustainable business models (social entrepreneurs).

3.3. The EESC is of the opinion that the EU institutions and the Member States must take measures to develop instruments providing capital, investment and financing for business activities as a complement to bank loans. Meanwhile, we have to recognise that many European banks — particularly regional banks such as cooperatives and savings banks in the Member States — have adopted measures to support new businesses and are among the most important lenders to social entrepreneurs and innovative start-ups⁽⁷⁾.

⁽²⁾ <http://www.imf.org/external/pubs/ft/sdn/2013/sdn1310.pdf>

⁽³⁾ The proposal is also based on previous public consultations — on the Green Paper on Building a Capital Markets Union (18 February 2015 to 13 May 2015), a public consultation on the review of Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 (30 September 2015 to 6 January 2016), a public consultation in the form of a call for evidence: EU regulatory framework for financial services (30 September 2015 to 31 January 2016) and a technical workshop (27 January 2016).

⁽⁴⁾ OJ C 191, 29.6.2012, p. 72.

⁽⁵⁾ OJ C 229, 31.7.2012, p. 55.

⁽⁶⁾ OJ C 133, 14.4.2016, p. 17.

⁽⁷⁾ See the report of the Italian Ministry of Economic Development, which concludes that funding granted to innovative start-ups by small banks, and especially by cooperative banks, has increased significantly (figures are given below in the text).

3.4. However, it should be noted that in many cases SMEs, and also social entrepreneurs and start-ups, have limited capital. For this reason, they are unable to meet the creditworthiness criteria — which CRR/CRD IV in particular have made radically more stringent — for bank loans. Basel IV risks making this unsatisfactory situation even worse.

3.5. In this context, the EESC believes that, while updating the EuVECA and EuSEF regulations is a useful step, it is not the only necessary measure. As well as improving these regulations, further steps are needed to create a more dynamic investment culture that is oriented towards all business forms currently present on the market. This will strengthen entrepreneurship while also helping to bring about the EU's social pillar.

3.6. It is unfortunately evident that a section of the financial world has absolutely no interest in sustainably financing the real economy, instead only investing in ways that allow an immediate and high rate of return. This is often done in a very short space of time, such as between the purchase and resale of a business. The EU institutions have done little to limit the impact of these kinds of purely speculative investment funds/banks (hedge funds, shadow banks) and to subject them to robust regulations.

3.7. The EU institutions should make investment in the entrepreneurial activities of the real economy — and not only in financial instruments — increasingly attractive, by means of tax incentives, for example, and put forward an ambitious development agenda.

3.8. The EESC agrees with the Commission's view that further development of the EuVECA and EuSEF funds will give innovative enterprises and social entrepreneurs — as well as SMEs more generally — access to bank loans and will enable financing by means of loans and venture capital to be combined, exerting a positive leverage effect. The EESC recommends developing a 'European way of venture capital funding'.

3.9. Furthermore, analysis of the European venture capital funds shows that 8 of the 11 most active funds are supported by public funds or at least count on the significant involvement of public bodies. Each Member State acts differently in this regard. The EESC therefore recommends that key European projects, such as the action plans for the digital single market and the energy union as well as establishing the EU social pillar, should be taken into consideration when setting a direction for the funds.

3.10. The new direction for the EuVECA and EuSEF measures must be rapidly brought into line with the following instruments: a) the European Investment Fund; b) the initiative for a capital markets union; c) the European Fund for Strategic Investments (which is becoming ever more important but should perhaps be taken more into consideration by national economic and banking systems, which are not yet harnessing its full potential).

3.11. The proposed review of the EuVECA and EuSEF regulations contributes to achieving a central EU policy goal: improving SMEs' and social enterprises' opportunities to access loans. The EESC is therefore convinced that the credit regulations in this regard set out in the Basel III Accord — which are enacted within the EU by means of a directive (CRD IV) and a regulation (CRR) — must be revised: alongside the 'SME supporting factor', an additional 'social enterprise supporting factor' should be included in the CRR so as to drastically reduce the capital requirements for credit risk with regard to financial involvement in social enterprises. The coefficients involved are easily calculated and do not represent an expense for Member States' public finances. The EESC considers this to be essential, as SMEs are the backbone of the EU economy and safeguard the EU's global competitiveness. As such, they are key to growth and employment.

3.12. It should be remembered that it is frequently not just social economy enterprises, but also various SMEs that display strong links to the local community and might be interested in investing in social amenities or in community energy supply using renewable energy sources, for example⁽⁸⁾. The current regulations governing the EuVECA and EuSEF funds only allow the involvement of professional investors. However, if efforts are to be made to further expand investment, the EESC is of the view that the range of potentially interested investors should be broadened.

⁽⁸⁾ For example, the cooperative banks in Italy (*banche di credito cooperativo* — BCC) used their national umbrella organisation to create the Consorzio BCC Energia energy consortium, which involves more than 110 credit unions and uses public procurement to acquire energy (generated exclusively from renewable sources) on the free market at 5-10 % lower costs. The energy is now also offered to members of the cooperative and to customers (households, businesses, local authorities) in the communities where the various credit unions are active.

3.13. Notwithstanding the need to ensure appropriate investor protection, motivated non-institutional investors could be permitted to participate in this fund. Alternative methods to raise capital such as crowdfunding — methods that are often completely informal and do not have clear rules — are already on the rise. It could therefore be appealing to give some opportunity to non-institutional investors to participate in the EuVECA and EuSEF funds. The possibility of organising non-institutional investors in homogeneous groups might even be considered.

3.14. The attention paid to medium-sized enterprises (up to 499 employees) is also welcome; they must not be neglected so that their growth — which is often due to the development of businesses that originally started as SMEs — can be consolidated and even, if possible, further enhanced.

3.15. The principle of subsidiarity is duly respected in the proposal; thus measures at EU level (as opposed to national level) via the EuVECA and EuSEF funds are welcome so as to create a harmonised framework at European level without overly constraining Member States' freedom as regards their general approach to the issue of venture capital. In this context, the EESC welcomes the approach of adopting a regulation. A more harmonised framework could help to prevent the concentration of venture capital in a small number of Member States and could contribute to a broader geographical spread and a more marked effect. Investment in the form of venture capital currently constitutes only 0,1 % of the EU's GDP and is concentrated in a small number of Member States.

3.16. Allowing alternative investment fund managers (under Directive 2011/61/EU) access to EuVECA and EuSEF funds seems to be an appropriate solution to ensure that these funds are used and are effective by linking in with existing provisions at European level.

3.17. The qualitative and quantitative expansion of enterprises' opportunities to access the funds is therefore fully in line with the Commission's general approach to strengthening the two funds.

3.18. The decision to retain a minimum investment threshold for access to the funds also makes sense, although mechanisms to widen participation should be promoted: one conceivable suggestion would be to enable the creation of 'funds-of-funds' — a possibility that is also raised in the European Commission's analysis that accompanies the proposal to review these regulations.

3.19. The proposed reduction of administrative costs for registration is very welcome, especially in so far as this aims to remove bureaucratic obstacles to the full implementation of the measures promoted by the Commission so that potentially interested investors are not deterred by the entry costs. They should be able to focus on the development potential of the businesses that are being granted access to venture capital, and not on the cost of accessing an over-complicated system.

3.20. Technical regulation in terms of own funds that investors must possess in order to be granted access to the funds is rightly given over to a technical body such as the ESMA. It is best placed to guarantee a high standard of regulation in a very technical field. The EESC expects that this secondary implementing regulation can come about in dialogue with stakeholders and with the involvement of the social partners, giving them the opportunity to make observations and comments on a provisional version of the text, including with regard to the simplification of occasionally excessive rules.

3.21. The EuVECA and EuSEF funds could have a particularly important role to play in terms of orienting and organising investments in the areas of innovation, social innovation and environmental sustainability, in line with the European Commission's current priorities. In this regard, the introduction of 'guarantee funds' — supported by public funds and ideally managed at European level — to promote investment in areas that are highly valuable in social, employment or environmental terms could be extremely useful. Finally, the EESC stresses that the European Commission must support comprehensive measures to promote the development of an overarching and holistic strategy. The sum of the individual measures is no longer sufficient to improve the competitiveness of the European economies in an increasingly complex global environment.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 99/2013 of the European Parliament and of the Council on the European statistical programme 2013-2017, by extending it to 2018-2020

(COM(2016) 557 final — 2016/0265(COD))

(2017/C 075/10)

Rapporteur: **Petru Sorin DANDEA**

Consultation	European Parliament, 15 September 2016 Council of the European Union, 26 October 2016
Legal basis	Articles 304 and 338 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	29 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	221/1/4

1. Conclusions and recommendations

1.1. The EESC endorses and supports the Commission's proposal to extend the current European statistical programme (ESP) to cover the 2018-2020 period.

1.2. The EESC considers that the preferred policy option chosen by the Commission responds best to calls by data users and will also contribute to the development of statistical products useful to policymakers, who would thus have enhanced statistical support when framing policies for the European Semester.

1.3. The EESC considers that improving existing products and developing new ones is necessary to measure the EU's progress on the 17 goals and 169 targets of the UN sustainable development strategy and must be a priority for the European statistical system (ESS).

1.4. The EESC reiterates a proposal put forward previously⁽¹⁾ and recommends that the Commission seize the opportunity provided by this regulation to introduce measures to develop statistical research at EU and Member State level enabling the economic value of volunteering to be evaluated. The EESC considers that the methodological approach should be based on the International Labour Organisation's Manual on the measurement of volunteer work.

1.5. The EESC considers that the new statistical products proposed by the Commission measuring globalisation should include statistical surveys measuring the positive or negative effects on the single market, such as the impact of relocations on the EU labour market or pressure of unfair competition based on cheap labour and non-compliance with International Labour Organisation (ILO) standards on employment relationships, particularly in the European industrial and services sector.

1.6. The EESC endorses the Commission proposal to begin exploratory work on a future EU social survey. This survey should also include data on the suitability of social security systems and their sustainability in the new demographic situation.

⁽¹⁾ See EESC opinion on *Statistical tools for measuring volunteering* (OJ C 170, 5.6.2014, p. 11).

1.7. Given the increase in migration flows, the EESC recommends that shortcomings in statistical surveys on migration and asylum be identified swiftly and redressed. The programme on the integration of migration statistics needs to be implemented fully, in cooperation with national statistics institutions.

1.8. The EESC recommends that Member States step up investment in developing the ESS so that it can cope with the growing demand for statistics, which it must also be able to develop and disseminate swiftly.

1.9. The EESC reiterates the proposal put forward in previous opinions⁽²⁾, calling for Eurostat as well as national statistical institutions to have the best possible human, financial and IT resources, because this is essential to fulfilling the increasingly demanding tasks inherent in providing high-quality statistical information in an ever shorter time frame.

1.10. The EESC points out that the efforts made by the Commission and the ESS to improve the quality of statistics and to develop new statistical products must not result in an excessive increase in the administrative burden on data providers, households or businesses.

1.11. Since the social partners and civil society organisations can make a key contribution to improving statistical products so that they respond more effectively to calls for data, the EESC endorses the Commission proposal regarding the regular dialogue which should take place between data users and the ESS.

2. Proposal for a regulation drawn up by the European Commission

2.1. The European Commission's proposal for a regulation⁽³⁾ amends Regulation (EU) No 99/2013 of the European Parliament and of the Council on the European statistical programme 2013-2017, by extending it to 2018-2020.

2.2. Regulation (EC) No 223/2009 stipulates that the European statistical programme must provide the framework for the development, production and dissemination of European statistics for a period corresponding to the multiannual financial framework. Regulation (EU) No 99/2013 covers only the period from 2013 to 2017, whilst the multiannual financial framework runs until 2020. Consequently, the European statistical programme must be extended until 2020.

2.3. The objective of the proposal is to extend the ESP to cover the 2018-2020 period and provide the financial support that the ESS needs in order to be able to:

- provide high-quality statistical information and close the statistical gaps that need to be addressed most urgently, focusing on a number of priority areas that reflect the Commission's 10 political priorities,
- build the permanent capacity needed to respond more quickly to emerging needs and to adapt the statistical infrastructure so as to harness the potential of new data sources, and
- strengthen partnership within the ESS and beyond in order to further increase its productivity and secure its leading role in official statistics worldwide.

2.4. Having carried out an impact assessment and consulted stakeholders⁽⁴⁾, the Commission has chosen a preferred policy option from the five initially drawn up. The chosen option 2c would have the most favourable impact on timeliness, with new actions focusing on enhanced timeliness for statistics on inequality, poverty and material deprivation, and for energy and environmental data.

2.5. The budget allocated for the extension of the programme (2018-2020) is EUR 218,1 million.

⁽²⁾ See EESC opinion on the *Community Statistical Programme 2008 to 2012* (OJ C 175, 27.7.2007, p. 8).

⁽³⁾ COM(2016) 557 final.

⁽⁴⁾ Consultation conducted via the 'Your voice in Europe' online platform between 23 July and 15 October 2015 and publicised through Eurostat communication channels and the national statistical institutions (NSIs).

3. General and specific comments

3.1. Given that the European statistical programme needs to be aligned with the multiannual financial framework, the EESC endorses and supports the Commission's proposal to extend the current ESP to cover the 2018-2020 period.

3.2. The preferred policy option chosen by the Commission should align statistical indicators more closely with the Commission's 10 political priorities by improving current statistical instruments and developing new products. The EESC considers that this option responds best to calls by data users and will also contribute to the development of statistical products useful to policymakers, who would thus have enhanced statistical support when framing policies for the European Semester.

3.3. The EESC endorses the initiative to include surveys measuring progress on the UN Sustainable Development Goals in the new statistical products. Improving existing products and developing new ones is necessary to measure the EU's progress on the 17 goals and 169 targets of the UN sustainable development strategy and must be a priority for the European Statistical System.

3.4. For a long time, GDP (gross domestic product) was the statistical indicator used at global level to measure development. The Commission recognised the limitations of this indicator when it came to correctly evaluating social or environmental development in a communication ⁽⁵⁾ in 2009. The EESC reiterates the proposals put forward in opinions ⁽⁶⁾ both at that time and subsequently, considering them to be highly pertinent to the Commission's proposal for a regulation.

3.5. The EESC reiterates a proposal put forward previously ⁽⁷⁾ and recommends that the Commission seize the opportunity provided by this regulation to introduce measures to develop statistical research at EU and Member State level enabling the economic value of volunteering to be evaluated. The methodological approach should be based on the ILO's Manual on the measurement of volunteer work, which defines and describes this concept, highlighting three fundamental characteristics. Volunteer work is defined as work which is: productive, unpaid, not compulsory and not beneficial to the volunteer's own household.

3.6. National accounts must take greater account of social and environmental indicators. The EESC urges the Commission to keep up its efforts in this area under the 2018-2020 ESP.

3.7. With regard to the new statistical products measuring globalisation, the EESC considers that these should include statistical surveys measuring the positive or negative effects on the single market, such as the impact of relocations on the EU labour market or pressure of unfair competition based on cheap labour and non-compliance with International Labour Organisation (ILO) standards on employment relationships, particularly in the European industrial and services sector.

3.8. The EESC considers that data users may become more confident as Member State governments implement the recommendation ⁽⁸⁾ drawn up by the ESGAB (European Statistical Governance Advisory Board) on establishing CoCS (Commitments on Confidence in Statistics).

3.9. The EESC endorses the Commission proposal to begin exploratory work on a future EU social survey. Given Europe's ageing population, this survey should also include data on the suitability of social security systems and their sustainability in the new demographic situation. Shortcomings in statistical surveys on migration and asylum should also be identified swiftly and redressed.

⁽⁵⁾ *Communication from the Commission to the Council and the European Parliament — GDP and beyond: measuring progress in a changing world*, COM(2009) 433 final.

⁽⁶⁾ See EESC opinions on *GDP and beyond — the involvement of civil society in choosing complementary indicators* (OJ C 181, 21.6.2012, p. 14) and *GDP and beyond — Measuring progress in a changing world* (OJ C 18, 19.1.2011, p. 64).

⁽⁷⁾ See footnote 1.

⁽⁸⁾ <http://ec.europa.eu/eurostat/documents/34693/7723121/ESGAB+Annual+Report+2016>

3.10. The EESC reiterates the proposal put forward in previous opinions⁽⁹⁾, calling for Eurostat as well as national statistical institutions to have the best possible human, financial and IT resources, because this is essential to fulfilling the increasingly demanding tasks inherent in providing high-quality statistical information in an ever shorter time frame. The EESC recommends that Member States step up investment in developing the ESS so that it can cope with the growing demand for statistics, which it must also be able to develop and disseminate swiftly.

3.11. The EESC points out that the efforts made by the Commission and the ESS to improve the quality of statistics and to develop new statistical products must not result in a significant increase in the administrative burden on data providers, households or businesses.

3.12. The EESC endorses the Commission proposal regarding the regular dialogue which should take place between data users and the ESS. Civil society organisations can make a key contribution to improving statistical products so that they respond more effectively to calls for data. In its annual report for 2016, the ESGAB made a proposal to this effect.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁹⁾ See footnote 2.

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub

(COM(2016) 597 final — 2016/0276 (COD))

(2017/C 075/11)

Rapporteur: **Alberto MAZZOLA**

Consultation	Council of the European Union, 26 September 2016, and European Parliament, 3 October 2016.
Legal basis	Articles 172, 173, 175 and 182 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	29 November 2016
Adopted at plenary	15 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	172/0/3

1. Conclusions and recommendations

1.1. The European Economic and Social Committee strongly endorses the Commission's initiative to extend the duration and increase the financing of the European Fund for Strategic Investment (EFSI) and agrees with its purpose and its importance for ensuring stability and certainty for investors and project promoters. The Committee is also in favour of extending EFSI timescales and funding to include an even longer-term outlook, to make sure that intervention is systematic and uninterrupted.

1.2. The EESC welcomes the positive results of the first year of the EFSI in immediately mobilising the value of investment forecasted and judges in particular the SME 'investment window' a success. The Committee's Single Market Observatory should undertake constant monitoring of EFSI deployment for SMEs using impact indicators.

1.3. In the Committee's view, EFSI 2.0 should aim for ever greater involvement of private capital, topping the 62 % achieved in the first year. In that respect the Committee proposes to carefully consider the extension of its scope to other branches of finance in addition to banks: the bond market and insurance and pension funds. European and international insurance and pension funds could play a crucial part in investments.

1.4. The EESC stresses the importance of keeping a market-driven emphasis, seriously considering the employment and social impact of the EFSI, reinforcing the additionality of the EFSI vis-à-vis other EU instruments and normal EIB business. The EESC regrets that the EFSI does not ensure that funds will be invested in countries with greatest needs. It calls for the EFSI to ensure geographically balanced coverage across the EU, taking on board the overall economic activity of each country, the creation of new jobs and the initiative's demand- and market-driven character, without setting quotas in advance and maintaining enough flexibility among the sectors in which it is used.

1.5. The Committee's view is that EFSI 2.0 should focus its own interventions on sectors of the future such as Industry 4.0, smart energy, digital and transport infrastructure networks and environmental protection, cross-border projects, including large-scale European projects in sectors with the highest GDP economic multipliers, based on the amount of investment potential, while not losing sight of agriculture, in order to maximise the impact of growth and jobs — including the possibility of opening up other EU funds, including dual technologies related to the security and defence industries and amend accordingly the list of sectors excluded from the EIB.

1.6. The EESC recommends bolstering the European Investment Advisory Hub (EIAH), which should step up its own operations in the various countries and take a proactive role in the least-favoured regions in particular, strengthen the role of national promotional banks as well as the creation of territorial platforms of assistance. The possibility should also be considered of using the Structural and Investment Funds to co-finance EFSI projects seamlessly and without bureaucratic hurdles and to ensure better dialogue with local and regional authorities.

1.7. The EESC calls for reinforcement of the social dimension of EFSI deployment such as in education, training and vocational training for skills and lifelong learning, developing the creative and cultural industries, innovation in healthcare and medicine, and social services, social housing and childcare, tourism and environmental protection infrastructure. The Investment Plan for Europe should clearly support the COP 21 commitments.

1.8. The EESC recommends raising the visibility of EFSI funding by means of a major information campaign on the ground throughout the Union, launching an EFSI logo to appear on initiatives financed — especially those for SMEs — and strengthening dialogue with local and regional authorities.

1.9. Given the importance of the success of the EFSI for civil society and the European brand, the Committee asks to be regularly consulted to provide information reports on financial and investment operations and the functioning of the guarantee fund. Particular attention will be given to job creation and environmental impact as well as the evaluation by independent experts of the application of the EFSI regulation and changes using clear socioeconomic and environmental indicators and clarifying the additionality of this initiative.

1.10. Against the background of the multiple positive effects of social investment, particularly for the labour market and public finances, the EESC believes that further consideration should be given as to how to link the 'Juncker Plan 2' with the Social Investment Package objectives.

2. The EFSI development context: situation now

2.1. On 28 June 2016, the European Council concluded that '[t]he Investment Plan for Europe, in particular the European Fund for Strategic Investments (EFSI), has already delivered concrete results and is a major step to help mobilise private investment while making smart use of scarce budgetary resources'.

2.2. Since an Investment Plan for Europe was presented in November 2014 some elements of confidence has started to return in the economy and growth. Even so, there are still 22 million people unemployed, investment remains 15 % below that recorded before the crisis in 2008 and a further EUR 300 billion of investment would be needed annually to get back to pre-crisis levels. For the fourth consecutive year the EU is recording moderate recovery, with a GDP growth of 2 % in 2015: although larger investment projects cannot produce macroeconomic effects immediately, the commitment wholeheartedly embraced with the investment plan is already yielding tangible results.

2.3. In its first year of operations, the EFSI has demonstrated the solidity of the initial plan: implemented and co-sponsored by the EIB Group, it is on track to deliver the objective of mobilising at least EUR 315 billion in additional investments in the real economy by mid-2018. Operations approved in that first year were worth more than EUR 115 billion, 62 % of it financed by private investors — at 15 November 2016, EUR 154 billion and 49 % of the expected total⁽¹⁾.

2.4. Take-up from the market has been particularly swift with regard to the SME window, where EFSI results far exceed expectations: for this reason, the window was scaled up in July 2016 by EUR 500 million within the existing parameters of Regulation (EU) 2015/1017. At the end of the first year, operations benefiting SMEs had been approved to the tune of more than EUR 47 billion — 64 % of what had been expected for the entire three years.

⁽¹⁾ EIB Group figures. 12 October 2016.

2.5. A joint initiative of the European Commission and the European Investment Bank, but with its own governance, the EFSI is also helping to fund innovation and infrastructure projects in a number of sectors: at 15 November 2016, research and development (20 %), energy (22 %), digitalisation (12 %), transport (7 %), the environmental and efficient use of resources (4 %), and social infrastructure (4 %).

2.6. The Committee welcomed the launch of an Investment Plan for Europe and appreciated 'the change of tone away from austerity and fiscal consolidation'. It stressed that the 'Investment Plan is a step in the right direction but it does face a number of serious questions about its size relative to Europe's huge investment needs, the high degree of leverage expected, the potential flow of suitable investment projects, the involvement of SMEs — with particular attention to micro- and small-sized enterprises — and the Plan's timescale' ⁽²⁾. Nevertheless the EESC regrets that the EFSI did not ensure that funds were invested in countries with greatest needs, Member States experiencing excessive deficit procedures under the corrective arm of the stability Pact cannot benefit from any possible flexibilities (Ecofin 2012 and Ecofin 2014).

2.7. The Committee has benefited from the experience and the opinions, largely positive on EFSI, of representatives of the social partners and of organised civil society at the hearing held on 10 November 2016.

3. The Commission's proposals

3.1. The Commission proposes extending the duration of the EFSI by two more years — to 2020 — and raising the EU guarantee from EUR 16 to 26 billion and the EIB contribution from EUR 5 to 7,5 billion — the aim being to trigger investment for around EUR 500 billion over the duration. To this end, the Commission proposes increasing the guarantee fund by EUR 1,1 billion, bringing it up to EUR 9,1 billion. This hike will mostly be financed with Connecting Europe Facility (CEF) funds and the revenue from EFSI-related EIB operations.

3.2. EFSI 2.0 multiannual strategic objectives to support investment for growth in line with EU budget priorities have been drawn up for the following priority sectors:

- strategic infrastructure with digital and energy investments in line with EU policies,
- transport infrastructure in industrial centres, the environment, education, and research and innovation,
- investments boosting employment, in particular through SME funding and measures for youth employment,
- human capital, culture and health.

3.3. According to the European Commission, the initiative should enable the EIB and the EFSI to carry out higher-volume financing and investment operations in these areas and, in the case of the EIB, in more risky but economically sustainable projects thanks to the EU guarantee it receives. The multiplier effect involved is capable of generating a EUR 15 investment in projects for each euro of guarantee — totalling at least EUR 500 billion between now and the end of the current multiannual financial framework.

3.4. The main changes the Commission proposes to Regulation (EU) 2015/1017 concern:

- strengthening the additionality of projects, including cross-border infrastructure projects and related services, which have been specifically identified as providing additionality,
- increasing the penetration of the EFSI in less developed and/or transition regions and making it easier to combine the European Structural and Investment (ESI) Funds, Horizon 2020 and the Connecting Europe Facility with EFSI support,
- support to less-developed and transition regions through an explicit reference to any industry that would not otherwise be covered in the general objectives,
- greater EFSI concentration on projects to meet COP 21 goals and climate change priorities,

⁽²⁾ EESC opinion on 'An Investment Plan for Europe' (OJ C 268, 14.8.2015, p. 27).

- the possibility of including defence-related investment projects in EFSI, given the significant economic multiplier effect,
- promoting the EFSI's sectoral and geographical diversification goals while safeguarding the market-driven emphasis,
- greater transparency in the EFSI governance process.

4. General comments

4.1. The EESC welcomes and strongly endorses the Commission's initiative to extend both the duration and financing of the European Fund for Strategic Investment (EFSI), agreeing with the purpose and its importance in promoting the development of investment in the European Union. The Committee reiterates the position it voiced earlier⁽³⁾ on the need for a European growth and jobs plan that incorporates a more ambitious EFSI together with other Community growth programmes, especially Horizon 2020, the CEF and the Structural Funds. The EESC supports the opening up of other EU Funds to financially support the investment guarantee in their specific sectors.

4.2. These grant programmes as well as public investments have to be maintained and not undermined in their specificity for their importance and their scope for growth and employment.

4.3. The EESC welcomes the positive outcome of the first year of the EFSI in immediately mobilising the value of investment forecast — while still waiting for more precise quali-quantitative analysis of the results — and judges the SME 'investment window' a success. It delivers what the Committee has said about the role of the EFSI regarding risk capital and the need to finance the growth of job creation, business, especially SMEs⁽⁴⁾.

4.4. The Committee's view is that the success of the EFSI for SMEs comes partly as a result of persistent problems in the mechanism for transferring funds from banks to companies, as demonstrated by the deposits left untouched at the ECB: in this connection, the EESC's Single Market Observatory should constantly monitor the deployment of the EFSI for SMEs using impact indicators.

4.5. In the Committee's view, EFSI 2.0 should aim for ever greater involvement of private capital, if possible topping the 62 % achieved in the first year. In that respect the Committee proposes to carefully consider the extension of its scope to other branches of finance apart from banks: financial sectors, the bond market and insurance and investment funds⁽⁵⁾. The EESC agrees with the need for an additional fund geared primarily to mobilising private investment. At European level, institutional investors manage assets to the tune of EUR 13 500 billion⁽⁶⁾, less than 1 % of which is invested in infrastructure.

4.6. The EESC asks the European institutions to reflect on the possibility of allowing more flexibility for Member States in difficult situations to increase public investments, to fund through the EFSI infrastructure and research, high-quality education, childcare, healthcare and social services.

4.6.1. Increasing these funds requires changing the rules of the single market for capital, such as Solvency II, that hamper infrastructure investment by European insurance and pensions funds. In Canada, for example, the share of these funds in infrastructure investment — including European infrastructure — reaches 15 % of managed assets. A platform financed by the CEF, the EIB and insurance funds could alleviate these problems and guarantee the proper use of these funds.

4.7. It is important for the success of EFSI 2.0, in the Committee's view, to maintain its market-driven character and to strengthen the EFSI's additionality vis-à-vis other EU instruments and the EIB's core activity: each individual project should not only be consistent with EU policies, but also judged on its own merits and the economic outcomes expected.

⁽³⁾ See footnote 1.

⁽⁴⁾ EESC opinion on 'Growth and sovereign debt in the EU: two innovative proposals' (OJ C 143, 22.5.2012, p. 10).

⁽⁵⁾ See footnote 1.

⁽⁶⁾ EU Action Plan making the best use of new financial schemes.

4.8. The EESC agrees on the necessity to bolster the additionality of EFSI-supported projects and so increase the bankability/financeability of riskier projects. In addition, admissibility criteria must include the requirement that supported projects address market failures and suboptimal investment situations, and that cross-border infrastructure projects and related services are specifically identified as projects that intrinsically meet the requirement of additionality, thus ensuring that the investment plan effectively reboots Europe's economy and promotes job creation and economic and social cohesion.

4.9. The EESC calls emphatically for the EFSI to be deployed more intensively in education, training and vocational training for skills and lifelong learning, in developing the creative and cultural industries, healthcare and social and tourism infrastructure.

4.10. The Committee maintains that the EFSI must move towards a balanced geographical coverage across the EU that takes on board the overall economic activity of each country and the initiative's demand- and market-driven ethos, without setting quotas in advance and while maintaining enough flexibility in allocating funds between sectors. The EESC agrees that it makes sense to strengthen the European Investment Advisory Hub (EIAH) so that it steps up its own operations in the various countries. It also endorses the possibility of using the Structural and Investment Funds to co-finance EFSI projects seamlessly and without bureaucratic hurdles.

4.10.1. The role of the European Investment Advisory Hub (EIAH) and that of national promotional banks should be expanded not only to provide technical assistance services more targeted at the local level throughout the EU, but also to ensure better communication between local and regional authorities and EFSI 2.0.

4.10.2. The role of the national promotional banks in the success of EFSI is also essential. The EU and national government, through the EFSI, helped and should continue to increasingly support both greenfield and brownfield projects that would otherwise not be financially viable. This is particularly true for projects with unquantifiable usage/demand risk. Some of this risk could be mitigated through partial usage of guarantees provided by national promotional banks, which in many cases could turn an unmarketable transaction into one which would be marketable to institutional investors.

4.11. The EESC agrees with the idea that: 'contributions to the European Fund for Strategic Investments (EFSI) from Member States will not be included in budget deficit calculations' and would like to see this principle extended to investment programmes, e.g. in the form of a full-blown 'Golden Rule' for strategic public investment.

4.12. In the Committee's view, in order to both trigger European investment and attract foreign investment ⁽⁷⁾ — to be provided for in the regulation on a reciprocal basis — and to effectively achieve a 1 to 15 leverage between guarantee and investment, not only do Europe's economy and growth have to be rebooted, but the full implementation of the third pillar of the investment plan has to be accelerated by making structural reforms, removing obstacles to investment, and incorporating the EFSI contribution.

4.13. The EESC recommends making EFSI funding more visible by means of a major information campaign on the ground and putting the EFSI logo, particularly in the case of SMEs, on every funding contract that includes EFSI support. The Committee considers the monitoring of financing and investment operations and of the running and workings of the guarantee funds to be important for the whole of civil society that it represents and for local and regional authorities — as, too, is the evaluation by independent experts of the application of the EFSI regulation and amendments to it. The EESC therefore requests that reports of this kind be presented not just to Parliament and the Council, but also to the EESC and the CoR.

⁽⁷⁾ See, for example, the Chinese 'One belt, one road' programme.

5. Specific comments

5.1. In terms of priority sectors, EFSI 2.0 should provide balanced and flexible funding, based on the volume of potential investment, to the various sectors of the economy and especially to energy and digitalisation, the circular economy and the COP 21 goals, sustainable transport and cross-border networks, as well as sectors such as agriculture, bioeconomy, manufacturing and services in less-developed and transition regions in order to make the best possible impact on employment, including dual technologies related to the security and defence industries supporting the launching of a single strong and more clearly defined European defence technological and industrial base (EDTIB) with 'stronger coordination and joint planning, with a view to moving towards a European defence union' ⁽⁸⁾.

5.1.1. The Committee especially recommends supporting the digitalisation of the manufacturing industry (Industry 4.0), the secure and uniform development of cloud networks and data centres.

5.2. As far as EFSI governance is concerned, the EESC thinks it would make sense to rotate representation from the European Commission, except for DG ECFIN, and the EIB in the steering committee so as to bring in representatives of DGs in sectors such as transport, digitalisation and the environment, in order to promote balanced funding across all sectors. The committee for investment that decides which projects will be supported by the EU guarantee must also be entirely independent and take transparent decisions without interference from the EIB, the European Commission or other public or private contributors. It should also be expanded to include sector-specific experts who can provide specialist knowledge on the situation of geographical markets for intervention.

5.3. The EFSI has far greater funding than other Community initiatives and as such enables investment in large-scale European projects worth more than EUR 10 billion, supported mainly by private capital ⁽⁹⁾. To implement these projects, the Committee thinks the Commission's proactive role needs to be strengthened so it can support the joint launching of various European programmes and determine the appropriate regulatory framework, especially in the sectors of transport, energy and ICT networks, which have the highest GDP economic multipliers.

5.4. In the EESC's view, the EFSI should place more focus on collaborative digital economy in Europe promoting European investment platforms to nurture the growth of start-ups in this sector creating quality jobs. Rights of workers shall be guaranteed, as well as consumer protection.

Brussels, 15 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁸⁾ See EESC opinion on 'The new EU strategy on foreign and security policy' (OJ C 264, 20.7.2016, p. 1).

⁽⁹⁾ For example: the European air traffic control system, the European railway traffic management system (ERTMS), connected and automatic driving, the North Sea meshed offshore grid for wind farms, industrial gigabyte, high-performance computing and broadband roll-out across Europe.

Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament and the Council ‘Mid-term review/revision of the multiannual financial framework 2014-2020: An EU budget focused on results’

(COM(2016) 603 final)

Proposal for a Council Regulation amending Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020

(COM(2016)604 — 2016/0283 (APP))

Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council

(COM(2016) 605 final — 2016/0282 (COD))

(2017/C 075/12)

Rapporteur: **Stefano PALMIERI**

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1. Conclusions and recommendations

1.1. The EESC appreciates the efforts made by the Commission in proposing the mid-term review of the 2014-2020 multiannual financial framework (MFF) and welcomes the provisions for flexibility introduced to deal with the unexpected crises of recent years. It nevertheless considers that the framework put forward is not enough to tackle the challenges and priorities of the European Union (EU), especially with regard to the European political project which is today being brought into serious question.

1.1.1. The solution to global-scale challenges and crises must necessarily be sought at European level. For this reason the EESC considers that the present MFF and the post-2020 version should concentrate their own resources sufficiently, directing them towards programmes that can:

- relaunch economic, social and environmental development (including the Paris climate change agreement), employment, innovation and competitiveness,
- respond to the migration and refugee crisis, to internal security issues, external emergencies and the crisis in the agricultural sector.

1.2. In the EESC's view, the mid-term review of the 2014-2020 MFF and full compliance with Article 3 of the Lisbon Treaty should be a guiding principle of the debate on the post-2020 MFF, ensuring that EU citizens are guaranteed decent living conditions that preserve their well-being, and with Article 311 of the TFEU, in keeping with which '[t]he Union shall provide itself with the means necessary to attain its objectives and carry through its policies'.

1.3. The EESC warns in particular of a crisis of solidarity within the EU that must be faced and overcome. It is unacceptable for some Member States to accept the sound principle of solidarity when 2014-2020 MFF resources are being distributed, but at the same time to reject it when it is a matter of dealing with the refugee and migrant emergency.

1.4. The EU's capacity to respond to current and future challenges will depend on the quality and the scale of its intervention strategies. The debate on the MFF must focus on its adequacy — in terms of both the resources allocated and of the budget structure — for giving the EU the wherewithal to pursue its strategic priorities without increasing the fiscal burden on the public and businesses, i.e. its ability to provide European added value with Europe's citizens sharing the burden equally. This European added value should meet with a broad political consensus in support of EU action that can deliver real benefits for its citizens.

Among the aspects of greatest European added value, the EESC would single out: contributing to the funding of major investments and innovation (European Fund for Strategic Investments); highlighting the potential benefits of migrants and refugees for the economy, the labour market and a dynamic society; carefully monitoring implementation of the 2014-2020 European Structural and Investment Funds (ESIF) cycle; and strengthening the social pillar. A specific instrument could be helpful and indeed necessary in order to tackle youth unemployment, job insecurity and the increasing number of young people who are 'not in education, employment or training' (NEET).

1.4.1. Regarding the quantitative aspect of the MFF review, the EESC agrees with the increase in resources for some areas of expenditure considered to be highly effective, i.e. Horizon 2020, the Connecting Europe Facility (CEF), Erasmus+, COSME (Competitiveness of enterprises and small and medium-sized enterprises) and Wi-Fi4EU, together with the expansion of the European Fund for Strategic Investments (EFSI) and the Youth Employment Initiative (YEI).

1.4.2. The EESC also agrees with the new funds allocated to tackle the migration crisis (European Border and Coast Guard, Europol, the Asylum Agency, the Dublin common asylum system, emergency support within the Union and the entry/exit system) and political and economic instability in the EU and in neighbouring countries (partnership framework, European Fund for Sustainable Development, macro-financial assistance, an external lending mandate for the European Investment Bank and technical adjustment of the cohesion policy envelopes).

1.5. Turning to the qualitative aspect of the MFF review, the EESC agrees with the objective of introducing simpler, more flexible general and sectoral financial rules, and therefore particularly welcomes the streamlining of the administrative requirements applying to beneficiaries of EU resources, as well as of controls, auditing and reporting.

1.5.1. However, the introduction of principles concerning better spending and performance-based budgeting must not unduly serve as a means of cutting spending in sectors or programmes which are less easy to evaluate than others, either because the benefits are visible only in the long term or because they are more difficult to quantify. This could be particularly detrimental to programmes such as Horizon 2020, CEF and COSME.

1.5.2. The EESC supports, firstly, incentives that can promote responsible spending, and secondly, an appropriate and rapid system to monitor objectives in the various sectors in which the EU budget operates.

1.6. Regarding the debate on the post-2020 MFF, the EESC calls for the results of the current budget to be carefully evaluated as of now, not least in the light of the mid-term review, discussing the necessary priorities and changes.

1.7. The EESC considers it would be useful to align the duration of the next MFF with the political cycle of the Commission and Parliament. It agrees with the proposal for a duration of 5 + 5 years with a mandatory mid-term revision for certain items requiring long-term programming (in particular cohesion and rural development policies), and a medium-term duration of 5 years, aligned with the European elections, for all other items.

1.8. The EESC supports the Commission's efforts to introduce new types of own resources, and the work being carried out by the High Level Group on Own Resources (HLGOR). The proposals to be drawn up by the Commission on the own resources system should however be discussed in 2017, with the due involvement of the EESC, for the preparation of the post-2020 MFF.

1.8.1. Against this backdrop, the EESC points to the need for the EU to equip itself with an independent, transparent and fair own-resources system, winding down the system of national contributions from the Member States but without increasing the tax burden, especially on the most disadvantaged people. The EESC also emphasises the importance of combating tax evasion — including through greater transparency⁽¹⁾ — together with all forms of unfair tax competition between the Member States.

1.8.2. The EESC calls on the Commission to estimate at the earliest opportunity the budget loss caused by the United Kingdom leaving the EU.

1.9. The Committee endorses the message that more (and better) Europe is needed — not less⁽²⁾. The crisis in the EU is caused by the lack of a strategic vision of Europe's future. This crisis may get worse if the post-2020 MFF does not get to grips with its causes, which relate to the democratic deficit, the rule of law deficit and the impact on those social groups and economic sectors that are 'losing out' from globalisation. The Union must once again adopt a far-reaching vision for its future if it is to compete with the main global players, and to do this it needs an ambitious MFF that is commensurate with the challenges that await us.

1.10. If the objectives of the MFF are to be duly achieved, the new EU budget should be exemplary, efficient, effective and transparent, so that it gains credibility in the eyes of the European public and serves as a clear illustration of both the advantages of Europe and the costs of 'non-Europe'.

2. General comments

2.1. The package proposed by the European Commission as part of the mid-term revision of the 2014-2020 multiannual financial framework (MFF) includes legislative amendments and the reallocation of EUR 12,8 billion of resources by the end of the period, including the 2017 draft budget, targeting growth and employment, migration and security. More specifically, the review entails:

- on the quantitative side, more resources for programmes deemed to be urgent and more efficient, such as the European Fund for Strategic Investments (EFSI),
- on the qualitative side, simplified general and sectoral rules and greater flexibility in implementing EU funds, applying the BFOR (budget focused on results) approach.

2.2. The EESC has previously argued⁽³⁾ — as it does again in the present opinion — that it understands the balance that the European Commission struck on the MFF in 2013 by mediating between two opposing constraints in a difficult social, economic and political environment. The first was the intention of some Member States to rein in public spending following the economic and financial crisis. The second was the need to effectively and appropriately tackle the arduous challenges facing the EU, stemming from both the Lisbon Treaty and the Europe 2020 strategy.

2.3. The mid-term review of the MFF is now taking place in a setting which has changed in some respects compared to 2013. The EU is still struggling with the consequences — still severe in some Member States — of the financial and economic crisis, particularly for average and low incomes, combined with the lack of an agreed EU-level response to the crisis itself. This has been compounded by new social, political and institutional concerns, including the recent terrorist attacks in Europe.

2.3.1. Firstly, the flow of migrants and refugees towards Europe, fleeing war and poverty in Africa and the Middle East, is increasing, unsettling European public opinion, especially in the Mediterranean and Balkan countries that bear the initial impact, and in the destination countries that must facilitate their integration.

⁽¹⁾ EESC opinion on public tax transparency (country-by-country reporting) (OJ C 487, 28.12.2016, p. 62).

⁽²⁾ '... by moving the needle on the subsidiarity gauge towards more and better Europe ...', EESC opinion on 'Towards an updated study of the cost of non-Europe' (OJ C 351, 15.11.2012, p. 36).

⁽³⁾ EESC opinion on the 'Proposal for a Council Regulation laying down the multiannual financial framework for the years 2014-2020' (OJ C 229, 31.7.2012, p. 32).

2.3.2. Secondly, there is widespread scepticism as to the capacity of politics — and this includes Member States and the EU — to maintain economic well-being and social cohesion ⁽⁴⁾, with the consequent calls for greater leeway to be given to national governments, just at a key time when the EU should, on the contrary, position itself as a global player.

2.3.3. Thirdly, the Brexit referendum on the United Kingdom's departure from the EU makes it clear for the first time that the EU is not an irreversible choice that can be taken for granted, as well as raising unprecedented institutional and financial problems for the MFF, given that a Member State is on the verge of leaving the Union.

2.4. In this context of rapid change, the evaluation of the MFF's effectiveness hinges on full compliance with the principles underpinning the EU system, and more specifically Article 3 of the Lisbon Treaty, which sets the objective of ensuring that EU citizens are guaranteed decent living conditions that preserve their well-being ⁽⁵⁾, and Article 311 of the TFEU, in keeping with which '[t]he Union shall provide itself with the means necessary to attain its objectives and carry through its policies'.

2.5. The EU's capacity to respond to current and future challenges will depend on the quality and the scale of its intervention strategies. The aim is to identify the best sectors for expenditure in order to achieve growth and jobs and respond to new challenges, how to maximise the effect of expenditure, how to carry out a rigorous assessment of investment rather than simply going through the motions and, lastly, how to provide information on the European institutions' work against a backdrop of widespread public mistrust ⁽⁶⁾.

2.6. It is now true to say, for these reasons, that while appreciating the efforts made by the Commission in proposing the mid-term review of the 2014-2020 MFF, the framework put forward is far from enough to tackle the EU's challenges and priorities.

3. Specific comments

3.1. Turning to the qualitative aspect of the MFF review, the EESC agrees with the objective of introducing simpler, more flexible general and sectoral financial rules, and therefore particularly welcomes the streamlining of the administrative requirements applying to beneficiaries of EU resources, as well as of controls, auditing and reporting.

3.2. However, the introduction of principles concerning better spending and performance-based budgeting must not unduly serve as a means of cutting spending in sectors or programmes which are less easy to evaluate than others, either because the benefits are visible only in the long term or because they are more difficult to quantify. This could be particularly detrimental to programmes such as Horizon 2020, CEF and COSME.

3.2.1. The EESC supports, firstly, incentives that can promote responsible and efficient spending, and secondly, an appropriate and rapid system to monitor objectives in the various sectors in which the EU budget operates.

3.3. By itself, however, this does not seem to be enough to effectively address the growing economic, social and political concerns through a relaunch of growth and employment and through the social pillar. This is all the more true in the absence of additional resources in those sectors where the EU budget offers added value compared to the policies that individual Member States can deliver.

3.4. As pointed out in previous EESC opinions, the challenges that the EU faces make increasing the EU budget not only desirable but also necessary ⁽⁷⁾.

⁽⁴⁾ Only one third of European citizens have confidence in the EU and its institutions. European Commission, *Public opinion in the European Union* — Standard Eurobarometer 85, May 2016, <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2130>

⁽⁵⁾ 'The Union's aim is to promote peace, its values and the well-being of its peoples...'

⁽⁶⁾ Mid-term review/revision of the multiannual financial framework 2014-2020: An EU budget focused on results (SWD(2016) 299 final).

⁽⁷⁾ EESC opinion on the multiannual financial framework for the years 2014-2020 (OJ C 229, 31.7.2012, p. 32).

3.5. Responding to these challenges hinges primarily on strong support and encouragement of public and private investment. The level of investment in 2014 was 15 % lower than in 2007, immediately before the major financial and economic crisis, meaning a reduction of EUR 430 billion compared to the peak level, and some 300 billion compared to the average over recent years. It is worth noting that just five countries (Spain, Italy, Greece, the United Kingdom and France) account for 75 % of this fall⁽⁸⁾.

3.6. In order to indirectly offset the shortfall in investment, the Commission has proposed and implemented the EFSI which, through the EIB, should mobilise private resources in addition to EU ones. It will be evaluated according to its ability to support additional projects to those that would normally have been financed. Initial analyses however reveal that many EFSI projects display a high level of similarity to others financed in the normal way by the EIB, especially in the more developed regions⁽⁹⁾. The EESC calls for a narrower focus on projects that are effectively innovative, risky and that cannot otherwise be financed, but can ensure real economic growth and more jobs in the EU.

3.7. The migrant and refugee crisis does not relate only to reception obligations. The resources allocated by the EU can also be used to turn the feared threats to internal security into opportunities, by highlighting the potential benefits for the economy, the labour market and a dynamic society. The EESC — in line with the European Parliament⁽¹⁰⁾ — considers that the resources allocated under Headings 3 ('Security and citizenship') and 4 ('Global Europe'), in particular for the refugee crisis and external aid, may prove insufficient in the coming months and years, and therefore calls for the planned spending limits to be revised upwards.

3.7.1. The EESC also warns in this respect of a crisis of solidarity within the EU that must be faced and overcome. It is unacceptable for some Member States to accept the sound principle of solidarity when 2014-2020 MFF resources are being distributed, but at the same time to reject it when it is a matter of dealing with the refugee and migrant emergency.

3.8. The European Structural and Investment Funds (ESIF) are at the core of the Europe 2020 strategy and its objectives, with a budget of EUR 454 billion for the 2014-2020 programming cycle. Representing the EU's main investment tool, they can contribute to economic growth and the creation of quality jobs by means of greater social and territorial cohesion. Implementation of the cycle, which has just been launched, must be carefully monitored by the European institutions in order to ensure that the results agreed between the Commission, the Member States and the regions are achieved. This necessarily entails close involvement of civil society organisations and the social partners, represented by the EESC.

3.9. Youth unemployment (some 20 % of the work force, albeit with significant differences between Member States⁽¹¹⁾), job insecurity and the increasing number of young people who are 'not in education, employment or training' (NEETs, 19 % of the 20-34 age group⁽¹²⁾) remain at unacceptable levels, which is detrimental to their level of education and to Europe's human capital in general. To address this, the Youth Employment Initiative (YEI) should be boosted with additional resources under the European Social Fund (ESF), raising the spending limits for Heading 1B ('Economic, social and territorial cohesion').

3.10. Lastly, the question of late payments needs to be resolved. The gap that has opened up over recent years between expenditure commitments and payments made to the Member States amounted to almost EUR 25 billion at the end of 2014, and should be in the process of being closed by the end of 2016. The negative effects of spending delays are felt by all beneficiaries of the EU budget, including businesses, research institutes and local authorities. Faced with a budget which is already very restricted compared to European GDP, it is essential to ensure timely payment of commitments made, taking all necessary measures to prevent this situation from dragging on or recurring in the next MFF.

⁽⁸⁾ European Commission and European Investment Bank, *Why does the EU need an investment plan?*, 2015

⁽⁹⁾ G. Claeys; A. Leandro, *Assessing the Juncker Plan after one year*, Bruegel.org, May 2016.

⁽¹⁰⁾ European Parliament resolution of 6 July 2016 on the preparation of the post-electoral revision of the MFF 2014-2020: Parliament's input ahead of the Commission's proposal (P8_TA-PROV(2016)0309).

⁽¹¹⁾ Eurostat, Unemployment statistics (http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics).

⁽¹²⁾ Eurostat, Statistics on young people neither in employment nor in education or training (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_young_people_neither_in_employment_nor_in_education_or_training).

3.11. The EESC therefore agrees with the increase in resources for some areas of expenditure considered to be highly effective: Horizon 2020, CEF Transport, Erasmus+, COSME and Wifi4EU, together with the expansion of the EFSI and YEI.

3.11.1. The EESC also agrees with the new funds allocated to tackle the migration crisis (European Border and Coast Guard, Europol, the Asylum Agency, the Dublin common asylum system, emergency support within the Union and the entry/exit system) and political and economic instability in the EU and neighbouring countries (partnership framework, European Fund for Sustainable Development, macro-financial assistance, an external lending mandate for the EIB and technical adjustment of the cohesion policy envelopes).

4. The post-2020 multiannual financial framework

4.1. The European Commission will present a proposal for the post-2020 MFF by 1 January 2018. Regarding the debate on the post-2020 MFF, the EESC calls for the results of the current budget to be carefully evaluated as of now, not least in the light of the mid-term review, discussing the necessary priorities and changes. The aim is for the MFF to be commensurate with the EU's long-term challenges and priorities.

4.2. The crisis in the EU is caused by its lack of a strategic vision of Europe's future. This crisis may get worse if the post-2020 MFF does not get to grips with its causes, which relate to the democratic deficit, the rule of law deficit and the impact on those social groups and economic sectors that are 'losing out' from globalisation. If the EU's fiscal rules have constrained the Member States' ability to act independently — creating uncertainty in the labour market and in the welfare system — they have so far failed to put in place a social safety net for citizens at EU level, let alone a truly innovative, competitive European economic system that can compete with global challenges⁽¹³⁾.

4.3. It is crucial, then, for the new MFF to devote more attention, as well as fresh resources, to Europe's main strategic priorities, as these hold the key to the very survival of the EU:

- stimulating growth and employment, especially for young people, focusing on the new jobs generated by the development of information and communications technologies (from the 'internet of things' and Industry 4.0 onwards),
- creating sufficient retraining funds to manage the huge changes under way in the economic system and the labour market, triggered by the new technologies, which will facilitate the emergence of new jobs while destroying others,
- remedying the investment deficit stemming from the economic and financial crisis and tackling the continuing effects of the crisis itself, especially for average and low incomes, which have been amplified by the austerity policies applied by the euro area countries,
- environmental sustainability, partly in the wake of the Paris agreements on climate change, with greater use of common agricultural policy (CAP) resources and the need to reallocate workers and occupations hit by the on-going decarbonisation of the economy,
- handling the United Kingdom's exit from the EU in such a way as not to damage the other Member States' economies or Europeans' job prospects,
- external aid for the neighbourhood and developing countries who look to Europe as a benchmark and a global actor.

⁽¹³⁾ P. De Grauwe, *What future for the EU after Brexit?*, CEPS, October 2016.

4.4. Regarding the duration of the MFF, the EESC — in line with the European Parliament ⁽¹⁴⁾ — advocates aligning it with the political cycle of the Commission and Parliament, so that the debate on EU budget policies is at the heart of the European electoral campaign. It agrees with the proposal for a duration of 5 + 5 years with a mandatory mid-term revision for certain items requiring long-term programming (in particular cohesion and rural development policies), and a medium-term duration of 5 years, aligned with the European elections, for all other items.

4.5. The Commission should urgently draw up a detailed estimate of the effects of Brexit in terms of the impact on the EU's revenue and expenditure ⁽¹⁵⁾ — also needed for the future proposal for the post-2020 MFF.

4.6. Within the euro area, moreover, an appropriate budget must be capable of responding to the specific problems of the Member States that adopt the euro. As previously argued by the EESC, 'we need to be moving towards an appropriate own budget for the euro area, with jointly agreed rules; this is the only way to take steps towards a common fiscal policy and absorbing any shocks that might occur in the future' ⁽¹⁶⁾.

4.7. On the revenue side, the new MFF will have to take account of the proposals currently being prepared by the High Level Group on Own Resources (HLGOR) chaired by Mario Monti, whose final report is expected for the end of 2016, together with a legislative proposal on this matter from the Commission.

4.7.1. The EESC attaches particular importance to a new budget in which carefully targeted and sustainable own resources with respect to national contributions, which have the opposite effect of strengthening the mistaken principle of 'fair return'. To this end, the EESC would return to the position expressed in previous opinions ⁽¹⁷⁾, supporting the European Commission's proposal for own resources, which would be allocated directly to the EU budget without passing through the Member States. Increasing the tax burden, particularly placing a greater load than at present on the most disadvantaged people and on small and medium-sized enterprises, must be avoided under the new system.

4.7.2. A common consolidated corporate tax base (CCCTB) should be established in order to increase tax transparency, help fight tax evasion and enhance job creation, investment and trade in the EU.

4.8. The Committee endorses the message that more (and better) Europe is needed — not less. If the objectives of the MFF are to be duly achieved, the new EU budget should be exemplary, efficient, effective and transparent, so that it gains credibility in the eyes of the European public and serves as a clear illustration of both the advantages of Europe and the costs of 'non-Europe'.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁴⁾ See footnote 10.

⁽¹⁵⁾ The Institute for Fiscal Studies has estimated the United Kingdom's average net contribution to the EU budget at around EUR 8 billion. Cf. Institute for Fiscal Studies, 2016, *The Budget of the EU: a guide*. IFS Briefing Note BN 181. Browne, J., Johnson, P., Phillips, D.

⁽¹⁶⁾ EESC opinion for the next European legislature on 'Completing EMU — The proposals of the European Economic and Social Committee for the next European legislature' (OJ C 451, 16.12.2014, p. 10).

⁽¹⁷⁾ EESC opinion on the EU Budget Review (OJ C 248, 25.8.2011, p. 75).

Opinion of the European Economic and Social Committee Proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries

[COM(2016) 687 final — 2016/0339 (CNS)]

(2017/C 075/13)

Rapporteur-general: **Mihai IVAȘCU**

Consultation	Council, 21 November 2016
Legal basis	Article 115 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	176/1/4

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) values the Commission's ongoing efforts in tackling aggressive tax planning, in the form of the Anti-Tax Avoidance Directive⁽¹⁾, which fits in well with the OECD's BEPS project⁽²⁾ and the requests from European stakeholders, such as civil society, the Member States and the European Parliament.

1.2. Although a precise economic analysis of the impact of hybrid mismatches is difficult to conduct, as also stated by the OECD, the EESC believes that the adoption of the Proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries⁽³⁾ (hereinafter: the Directive) should significantly increase the proceeds from corporate income tax (CIT) in all Member States.

1.3. The EESC considers that this Directive will reach its full potential only if similar rules are implemented in third countries as well. The existence of a level playing field and fairness in global tax policy is of paramount importance to effective implementation. Without this, the single market could lose some of its attractiveness to the benefit of less regulated markets, while the positive impact of the Directive would be minimised.

1.4. The EESC agrees that mismatches must be addressed only when one of the associated enterprises has effective control over the other associated enterprise, through a participation in terms of voting rights, capital ownership or entitlement to profits of 50 % or more.

1.5. The Committee considers that special attention must be given to imported mismatches that undermine the effectiveness of rules intended to eliminate hybrid mismatches and believes that further clarification is needed in order to ensure coherent implementation in all Member States.

1.6. With regard to the different tax accounting periods that appear in different jurisdictions, the EESC agrees that the timing differences should not be a source of mismatches in tax outcomes. However, the taxpayer must announce the payment in both jurisdictions, within a reasonable period of time.

1.7. While it supports the current approach concerning hybrid mismatches, the EESC considers that the Member States should also look at the causes of hybrid mismatch arrangements, close the potential loopholes and prevent aggressive tax planning, rather than just seeking to obtain tax revenue.

⁽¹⁾ COM(2016) 26 final.

⁽²⁾ Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, <http://www.oecd.org/ctp/beps/>.

⁽³⁾ COM(2016) 687 final

1.8. The EESC recommends all Member States to look into the possibility of introducing and applying sanctions to taxpayers benefiting from hybrid mismatch arrangements, in order to prevent and/or tackle such practices.

1.9. The EESC proposes that the Commission sets out to draw up a broad report describing the status of the implementation of the Directive in all Member States as well as the global picture in regard to hybrid mismatch arrangements.

1.10. The EESC considers that the Member States need to share relevant intelligence and best practices in order to speed up the process and ensure uniform implementation.

2. Background to the opinion, including the legislative proposal concerned

2.1. In January 2016, the Commission put forward an anti-tax avoidance package, part of the Agenda for fairer and more effective corporate taxation⁽⁴⁾. The Package contains concrete measures to prevent aggressive tax planning, boost tax transparency and create a level playing field for all businesses in the EU.

2.2. The package comprises an umbrella communication⁽⁵⁾ setting out the political, economic and international backdrop to the fight against aggressive tax planning and the main components of the package: an anti-tax avoidance directive⁽⁶⁾, a directive amending the directive on administrative cooperation⁽⁷⁾ (DAC), a Commission recommendation on tax treaties⁽⁸⁾ and a communication on the EU's external strategy⁽⁹⁾ on cooperation with third countries in the area of tax governance.

2.3. On 12 July 2016, the ECOFIN Council issued a statement on hybrid mismatches, asking the European Commission to put forward a proposal for rules consistent with and no less effective than those recommended in the OECD BEPS report on Action 2, regarding hybrid mismatches involving third countries. Most Member States have committed to implement these recommendations.

2.4. The Directive is an amendment to the Anti-Tax Avoidance Directive and part of a package that includes the Proposal for a Common Consolidated Corporate Tax Base (CCCTB) and the Proposal on a Common Corporate Tax base (CCTB), with the rules regarding the hybrid mismatches on these proposals being correlated with the ones in this Directive.

2.5. In view of the support of the Member States and the statements of the ECOFIN Council on this subject, the Commission has prepared a proposal to amend Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, such as hybrid permanent establishment mismatches, hybrid transfers, imported mismatches and dual resident mismatches.

2.6. Given that Member States cannot be bound by guidance, it is necessary to adopt binding rules to ensure that they effectively tackle these mismatches. Independent action by the Member States would only increase the fragmentation in the internal market, allow mismatches to persist and prevent significant tax collection.

2.7. The Commission's proposal is intended to address mismatch situations attributable to differences in the legal characterisation of an entity or a financial instrument. Furthermore, this proposal addresses mismatch situations arising from different rules on the treatment of a commercial presence as a permanent establishment. Under the rules contained in this proposal, Member States will be obliged to deny the deduction of a payment by a taxpayer or to require the taxpayer to include a payment or a profit in its taxable income, as the case may be.

2.8. Finally, this Directive does not imply full harmonisation, but is limited to tackling aggressive tax planning that uses hybrid mismatch arrangements, by addressing situations where there are deductions in one state without the inclusion of the income in the tax base of the other state or the non-taxation of income in one state without its inclusion in the other state, as well as rectifying double taxation cases.

⁽⁴⁾ http://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en.

⁽⁵⁾ COM(2016) 23 final.

⁽⁶⁾ COM(2016) 26 final.

⁽⁷⁾ COM(2016) 25 final.

⁽⁸⁾ C(2016) 271 final.

⁽⁹⁾ COM(2016) 24 final.

3. General comments

3.1. The EESC acknowledges that the current corporate tax systems have been drafted according to the economic realities of a bygone era, when businesses were physically and legally connected to local markets. As this is no longer the general case, the tax framework must be adapted to the international environment and current challenges.

3.2. The EESC values the Commission's ongoing efforts in this area, in the form of the Anti-Tax Avoidance Directive, which fits in well with the OECD's BEPS project and the requests from European stakeholders, such as civil society, the Member States and the European Parliament.

3.3. The EESC supports the OECD/G20 BEPS conclusions and the regulations introduced through the present Directive.

3.4. The EESC recognises that the proposal pursues the hybrid mismatch arrangements identified in the OECD BEPS Action 2 Report⁽¹⁰⁾ and does not address situations where little or no tax is paid due to a low tax rate or due to a specific tax system of the jurisdiction.

3.5. Hybrid mismatch arrangements are considered a widespread technique of aggressive tax planning used by multinational enterprises (MNEs) that set up legal or commercial offices in multiple countries, whether we are talking about Member States or third countries. Since Council Directive 2016/1164/EC currently only tackles hybrid mismatches occurring at Member State level, the EESC agrees with the need to amend it with specific rules for cases where third countries are involved, with the sole purpose of protecting the single market. However, the EESC points out that the rules applicable in the EU are dependent on whether or not the third country applies hybrid mismatch rules to the specific situation.

3.6. The EESC has already indicated that aggressive tax planning erodes the tax base of Member States by EUR 50 to 70 billion per year⁽¹¹⁾, with hybrid mismatches accounting for a significant percentage and having an important negative impact on tax revenues as well as competition, fairness and transparency. Although a precise economic analysis of the impact of hybrid mismatches is difficult to conduct, as also stated by the OECD, the EESC believes that the adoption of this Directive will significantly increase corporate income tax (CIT) in all Member States.

3.7. No impact assessment was carried out for this proposal, with regard to the Directive it is amending, due to the strong link to the comprehensive OECD BEPS report, the Commission's Staff Working Document⁽¹²⁾ which provides an important analysis, the consultations already carried out, as well as the demand from the Council's Statement for this Directive to be put forward by October 2016. The Member States are obliged to adopt the laws, regulations and administrative provisions needed in order to comply with this Directive, and communicate them to the European Commission, by 31 December 2018 at the latest. The EESC agrees that no impact assessment is needed at this point.

3.8. The Commission is asked to evaluate and report to the Council on the implementation of this Directive four years after it enters into force. However, the EESC suggests that the Commission evaluate the status of implementation yearly, with an implementation assessment presented to the Council one year after the proposed deadline. This implementation assessment should include a study of the status of the legislation implementation in the Member States as well as a comprehensive study on third countries that have implemented or are in the course of implementation the OECD BEPS regulations and the position of the EU single market in the global picture. Furthermore, the EESC recommends that the Commission include in the report any disturbance of national legislative frameworks, meaning other tax, commercial or regulatory outcomes, should these situations occur.

3.9. Following the implementation assessment, the EESC recommends that the Commission draft a broad single market impact assessment of the effects of the Directive. This study should be carried out as soon as the necessary data from the Member States are available.

⁽¹⁰⁾ <http://www.oecd.org/ctp/neutralising-the-effects-of-hybrid-mismatch-arrangements-action-2-2015-final-report-9789264241138-en.htm>.

⁽¹¹⁾ OJ C 264 of 20.7.2016, p. 93.

⁽¹²⁾ SWD(2016) 345 final.

4. Specific comments

4.1. The present Directive adds a comprehensive definition of associated enterprises comprising the entities that are part of the same consolidated group for accounting purposes and enterprises that have a significant role in the management of the taxpayer or in which the taxpayer has a significant influence. The EESC agrees that mismatches must be addressed only when one of the associated enterprises has effective control over the other associated enterprise.

4.2. The EESC supports the additional rules introduced by the Directive. However, the existence of a level playing field and fairness in global tax policy is of paramount importance to effective implementation. Without this, the single market could lose some of its attractiveness, to the benefit of less regulated markets.

4.3. The EESC considers that, in the situation where hybrid mismatch is available, cross-border investments are certainly favoured, compared to domestic investments, causing an obvious distortion in the single market.

4.4. The Council has proposed 31 December 2018 as the deadline for Member States to incorporate the Directive into their legislative frameworks. The EESC sees the deadline as reasonable, but advises that the progress of implementation should be carefully supervised, so that all Member States attain the goals of the Directive by the proposed deadline. If the actions are not applied in a consistent manner, business competitiveness at EU level may be seriously harmed.

4.5. Given that the BEPS action plan is an agreement decided by consensus with no binding provisions and not all EU Member States are OECD members, the EESC values the support of the non-OECD Member States in the coordination and implementation of the BEPS Project. However, the EESC recommends that special attention be paid to the implementation process in these countries, regarding both the Directive and the Anti-Tax Avoidance Directive itself.

4.6. Sanctions for taxpayers are not proposed in the Directive, since it is within the competence of the Member States to apply them or not. The EESC recommends to the Member States that they look into this matter in detail and apply coercive actions, should they consider that this will prevent and/or tackle hybrid mismatches.

4.7. As the Anti-Tax Avoidance Directive fails to address other types of mismatches, such as hybrid permanent establishment mismatches, hybrid transfers, imported mismatches and dual resident mismatches, the EESC finds the expansion of Article 9 to be adequately detailed.

4.8. With regard to different tax accounting periods that appear in different jurisdictions, the EESC agrees that the timing differences should not be a source of mismatches in tax outcomes. However, in order to avoid a deduction without inclusion, the taxpayer must announce the payment in both jurisdictions, within a reasonable period of time.

4.9. The EESC recommends that all Member States look more closely into the root causes of hybrid mismatches, close the potential loopholes and prevent aggressive tax planning from happening, rather than just seeking to obtain tax revenue.

4.10. The Committee considers that special attention must be given to imported mismatches that undermine the effectiveness of rules intended to eliminate hybrid mismatches. The EESC endorses the Commission's efforts to counter double deductions or a deduction without inclusion, generated by imported mismatches as set out in Article 9(4) and (5)), but considers that further clarification is needed.

4.11. Lastly, the EESC recommends that all Member States share relevant intelligence and best practices during the implementation period, in order to speed up the process and ensure that it is coherent.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
George DASSIS

Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

(COM(2016) 378 final - 2016/0176 (COD))

(2017/C 075/14)

Rapporteur: **Peter CLEVER**

Consultation	European Parliament, 4 July 2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Consultation	Council of the European Union 20 July 2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	22 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	195/0/7

1. Conclusions and recommendations

1.1. In the context of demographic change, the EU is dependent in part on immigration of highly skilled workers to ensure growth and prosperity. Activating national labour market potential — however incontestably important this in particular is in national policy — is not enough here: a common EU recruitment strategy is needed, because in the global competition for skilled workers Europe as a bloc can take a stronger position than its individual Member States.

1.2. A common strategy for attracting skilled workers from outside the EU should be comprehensive, covering all the relevant spheres from the initial approach to workers interested in immigrating through to dealing with pension entitlements. This should also mean considering immigrants who have first completed part of their university education in the host country. The implications for countries of origin of skilled workers emigrating must also be taken into account and those countries helped to further develop their education systems.

1.3. It is important in addition to achieve the broadest possible consensus so that the Member States also commit themselves to this strategy and consistently implement the measures decided on at EU level. Care should be taken in the process to ensure close involvement of national and European social partners. Equal opportunities and non-discrimination must be guaranteed in the employing of third-country nationals.

1.4. Admission policy is a key aspect of a coherent labour immigration policy: joint rules can make it easier for third-country nationals to access European labour markets, but at the same time they still always represent an encroachment on national sovereignty. The advantages and disadvantages of further harmonisation must therefore be weighed here. As things stand at present, full harmonisation of admission policy does not appear sensible or necessary.

1.5. The proposal presented by the European Commission to reform the Blue Card system goes too far in the present circumstances, because it takes away the Member States' scope to maintain their own routes for admitting highly qualified workers — routes that are geared to their specific needs. It is nevertheless right to endeavour to ensure that in future more use is made of the Blue Card to admit into the EU highly skilled workers from non-EU countries. Like the Green Card in the United States, the Blue Card could then be a hallmark making the EU attractive as a destination region for highly skilled immigration.

1.6. The Commission's proposal for revising the Blue Card rules is broadly to be welcomed, since it makes the card more attractive as a way of entering the EU and in particular makes it significantly easier for holders of the card to move within the EU. In this context the improvement in opportunities for business stays in other EU Member States is very welcome.

1.7. The measures to facilitate granting of the card are also correct. However, the application of lower salary thresholds has to be viewed with scepticism. A level for highly qualified workers below the average income is not acceptable.

1.8. The same goes for the optional possibility of replacing a university degree with equivalent professional experience. The possibility should be considered of reducing the amount of equivalent professional experience required from 5 to 3 years; it would also make sense to give at least an indication of the criteria on which this would be assessed.

2. Context: the importance for the European Union of labour immigration of highly skilled workers and the need for a European strategy to attract such workers

2.1. Migration policy has various objectives. One is to stabilise the labour pool in countries strongly affected by demographic change. Another is to shoulder social responsibility in the international context by, for instance, accepting refugees. **Considering the complexity of this area, the present opinion focuses on immigration of highly qualified workers from third countries.**

2.2. Without migration from third countries, demographic change over the next two decades will lead to a marked decrease in the working-age population of the EU. At the same time the number of elderly people will significantly increase. **Such a trend poses considerable challenges** for public budget planning, with fewer (net) contributors to, and more (net) recipients of, government benefits. There is also a threat of shortages in the labour market.

2.3. To make these negative effects of demographic change manageable, existing labour potential in the EU Member States must first be increased. A substantial effort must be mounted to equip people with adequate qualifications for the labour market, especially socially disadvantaged target groups. Mobility within the European Union can also help to stabilise the labour pool in the medium term in those countries particularly affected by demographic change. This intra-European mobility is not yet being used as much as would be legally and practically possible. These two things will not be enough, however. **Efforts must be supplemented by a targeted, long-term strategy to promote the legal immigration of qualified workers from outside the EU.**

2.4. **The labour market situation currently varies widely between the EU Member States.** While in some countries there is a shortage of skilled labour, others have high unemployment. This means that there are also fundamental differences in the demand for migrant labour and in integration opportunities for non-EU migrants. **The immigration strategies of the individual Member States must therefore be designed differently too.**

2.5. Closer cooperation is also required in strategies to attract highly qualified workers for labour markets in Europe: unlike workers with low skills, these people also have the opportunity to emigrate to other countries, especially in the English-speaking world, and they are courted by those countries, so that Europe faces competition. **Only 31 % of highly qualified migrants from non-EU countries in the OECD choose to work in an EU country.** Insufficient command of the relevant national language is a critical barrier to immigration of highly qualified workers to the EU. Another hurdle is the fact that the smaller Member States in particular are often virtually unknown outside Europe and therefore wrongly perceived as less attractive.

2.6. In view of these factors, the EU can play an important role in pooling the activities of the Member States to acquire highly qualified workers from non-EU countries, and thus in making those activities more effective. Moreover, in the contest for internationally mobile qualified workers there are considerable advantages in the Member States presenting themselves jointly as Europe. **A targeted EU strategy for recruiting highly qualified workers is needed to increase the attractiveness of the EU as a destination for such workers migrating from third countries**, since this is the only way the EU can keep up and improve its competitive position in the global market for highly qualified workers.

2.7. That said, the success of a European strategy to attract skilled workers depends critically on the extent to which it takes national situations into account and **how committed the EU Member States are to it**. It is therefore of fundamental importance to seek the broadest possible consensus on relevant measures, including as regards the necessary legal framework for the migration of skilled workers.

3. Elements of an EU strategy for attracting skilled workers

3.1. In the context of a joint strategy to promote legal migration of highly qualified workers, measures should be framed at European level **to address and recruit workers from non-EU countries**. A very promising approach here could be a **European skills database** where — along the same lines as EURES — non-EU workers interested in migrating to an EU country can register their qualifications and be approached directly by employers. Other elements of a European strategy to attract skilled workers should include the **provision of information services** on the European Union, relevant immigration rules and the labour market situation in the Member States. An **appropriate framework** should also be introduced for the **mobility** within the EU of workers from third countries, as well as an **agreed procedure for recognising qualifications** from third countries and a **welcoming culture in Europe** to counter anti-immigrant feeling among the local population. National and European social partners should be involved in designing this framework.

3.2. A strategy to promote legal immigration of highly qualified workers from third countries should not just consider people arriving in the EU who have already finished their studies, but also people who are first completing all or part of the studies here. In this context, **we very much welcome** the decision in the **new EU directive on study and research stays (Directive (EU) 2016/801)** to make it easier for students to engage in other activities and the option after completion of a study programme to remain in the country for at least 9 months for the purpose of seeking work. Targeted information and advice services must also be provided at universities to inform students from third countries about their labour market prospects.

3.3. Third-country nationals lawfully registered in the EU **should not be discriminated against**. Above all, they should be paid the same as locals and have the same working conditions.

3.4. **A very cautious approach must be adopted when wooing workers who have completed their studies**, given that many potential countries of origin themselves have shortages of highly qualified workers. Brain drains must be avoided. On the other hand, temporary immigration of workers as part of a 'brain circulation' exercise could make a contribution to economic development in those countries. In this case, it must be ensured that a temporary return to the country of origin does not automatically lead to the cancellation of the existing work permit in the EU Member State. In any case a targeted strategy to attract workers from less-developed countries should be accompanied by development policy measures that help countries of origin — to further develop their education systems, for example. This development policy must be geared to the interests of the countries of origin and its purpose cannot be to increase chances of further recruitment of qualified professionals from these countries.

3.5. To stem illegal immigration the EU is planning to conclude further **special migration partnerships with key countries of origin and transit**. Such partnerships should also be used to promote legal migration. Very little use has been made of this option within the framework of migration partnerships. Specific measures to develop skilled labour in the partner countries and easier immigration to Europe (if necessary subject to quotas) could be agreed on. This is also a way of combating illegal migration, because it creates a legal alternative for many people interested in migrating. This alternative generally requires further investment in training, with potential positive effects on the level of education in countries of origin.

4. Need for and limits of a common admission policy

4.1. Immigrant admission policy is a key part of any strategy to attract skilled workers, regulating not just non-EU nationals' access to the labour market of the host Member State, but also the degree of such workers' mobility within the EU and whether family members can accompany or join them. These issues are also very important in relation to the attractiveness of the EU to workers from non-EU countries.

4.2. **Laying down harmonised rules for granting residence permits that are valid across the EU** always represents a **considerable encroachment on national sovereignty**. It is true to say that, the more the national regulatory framework governing residence is harmonised and the less discretion is left to the Member States, the heavier the encroachment. The decision on harmonised admission criteria must therefore as a matter of principle be preceded by a thorough weighing of the advantages of EU-wide rules against the diversity of national needs and interests.

4.3. **The need for labour from outside the EU varies very widely between the Member States**. Article 79 TFEU therefore rightly permits the EU level to develop a common immigrant admission policy, without nullifying the right of the Member States to pursue their own national admission policies. The reason for this is that national admission criteria for labour migration from non-EU countries are generally more appropriate to the particularities of national labour markets. Labour market checks may also be important in steering labour immigration and should be at the discretion of the Member States.

4.4. **A joint framework is nonetheless urgently needed**, given that the economies of the EU Member States are very closely interwoven within the European single market, with many companies having production sites in several EU countries and selling their goods and services across the EU. Consequently, businesses must often deploy workers from third countries with particular qualifications for short periods in different EU countries. If those workers are not covered by the provisions of the EU directive on intra-group posting (the posting of workers Directive) and their residence permit does not authorise activity in another EU country, it will be difficult to recruit nationals of third countries. Similar problems arise for migrants setting up as self-employed workers in one EU country who wish to, or have to, operate their business in several EU Member States. **It is essential to take account of this need for mobility of highly skilled non-EU nationals.**

5. Experience with the EU Blue Card and need for reform

5.1. Along with other instruments, the EU Blue Card is an important element of a common strategy for acquiring skilled workers. **The Blue Card could help enormously in recruiting workers from outside the EU**, because like the US Green Card it creates a marketing tool promoting the EU as a region to which people can migrate. The card also makes it easier for highly qualified workers who are interested in migrating to assess their chances of entering the labour market in the EU, since the same criteria apply in all EU Member States, at least structurally speaking. This means that the card can also encourage immigration to the EU.

5.2. However, the **Blue Card is not equally successful in each EU Member State**. While it may be an important part of a recruitment strategy in a country like Germany, other countries use it rarely, if at all, and continue essentially to rely on their national residence permit. In 2015 Germany accounted for 14 600 of the first 16 800 Blue Cards issued, or nearly 90 %. The number did not exceed 1 000 in any other EU Member State. Several Member States even issued fewer than 20 Blue Cards, including countries with relatively healthy labour markets, such as the Netherlands and Sweden.

5.3. Thus many EU countries are not using the EU Blue Card as a strategic tool for recruiting highly qualified workers from non-EU countries. This means that non-EU workers interested in emigrating to the EU are not aware of the EU Blue Card as a brand representing the EU's common migration policy in general and that its potential therefore cannot be realised. In view of this, the European Commission has presented a proposal for reform of the EU Blue Card.

5.4. **The Commission's proposal for reforming the Blue Card is broadly to be welcomed**, since its aim is to offer solutions to the important issues of how the card interacts with other national residence permits, mobility of non-EU workers within the EU, and easing of issuing criteria. **Major improvements to the proposal are needed, however.**

5.5. The Commission proposes that highly qualified migrant workers from non-EU countries should no longer be issued with any residence permit other than the EU Blue Card. The only exceptions would be special categories such as self-employed workers and scientists. This rigidity makes it difficult for Member States to design their immigration policy to reflect their labour needs and to respond specifically to particular labour shortage situations. **It is therefore not advisable to completely prohibit other access routes for highly qualified employees. Rather, the Member States must have the option of still retaining their national systems.**

5.6. **The EU Blue Card must nevertheless be more firmly anchored in the immigrant admission policies of the EU Member States.** To this end a passage should be inserted in the Directive's recitals urging the Member States to issue the EU Blue Card in preference to national permits if the applicant meets the criteria for its granting. This would be less of a constraint on national discretion than a ban on other permits. Moreover, it should be noted that the success of the EU Blue Card depends not just on appropriate rules being laid down in the EU Directive, but also on the Member States clearly committing themselves to the card. This will only happen if the EU Member States see the added value of the Blue Card.

5.7. It makes sense to reduce the salary thresholds, but the Commission's proposal goes too far.

5.7.1. The current salary thresholds of at least 1,5 times the average gross national salary, or 1,2 times for shortage occupations, may be a hurdle in certain EU Member States, especially for workers just beginning their careers. Lowering these thresholds is probably a sensible step, but one the trade unions are critical of. In the EESC's view, it must be ensured that highly qualified recent graduates are on no account paid below the average wage. The Commission's proposal of 0,8 is too low.

5.7.2. This estimate is based on all people in employment being included in the calculation of average national salary and on the assumption that highly qualified workers, even if they have only just started their careers, should generally be earning above-average salaries in jobs commensurate with their qualifications. **If there are shortages of skilled workers in a Member State, it makes sense to set relatively low salary thresholds for granting the EU Blue Card, but if unemployment is high even among highly qualified workers, higher thresholds are generally needed.** Moreover, it is necessary to avoid the impression that the EU Blue Card is being used to import 'cheap' labour into the EU. This could also undermine the necessary acceptance of the rules.

5.7.3. It should also be noted that the Directive is still unclear on **how the average salary benchmark is to be calculated**, which may have a major impact on the salary thresholds that will ultimately obtain.

5.8. The planned further easing of conditions for issuing the EU Blue Card should be welcomed.

5.8.1. The Commission's proposal **to reduce** from 12 to 6 months the **minimum duration** of the employment contract that must be presented in order to obtain an EU Blue Card is appropriate, since this will make it easier for employers who have doubts about the actual skills of a highly qualified non-EU national to terminate their contract, thus promoting immigration.

5.8.2. Continuing the **option of allowing relevant professional experience to be considered equivalent to a higher education qualification** should be regarded as positive, but should remain non-compulsory. **Reducing the amount of equivalent professional experience required from 5 to 3 years is a change that should also be reconsidered. There should at least be an indication here** of what criteria the assessment is to be based on, so as to avoid the Member States' interpretations varying too widely.

5.8.3. It would **make sense to offer the EU Blue Card to people from outside the EU with protection status** who meet the requirements for skilled migrants, since well-qualified refugees must be given easier access to the labour market.

5.9. The **new rules on mobility of EU Blue Card holders within the EU** are an important step.

5.9.1. It should also be possible to employ highly qualified workers in other EU Member States for short periods if necessary. The **clear rules** proposed by the Commission on **business trips in other EU Member States** are therefore an important step in the right direction. The proposed maximum duration of 90 days within a 180-day period should be discussed again with experts.

5.9.2. The option of **applying for a Blue Card in another EU Member State after 1 year's residence without another full check of qualifications** is an appropriate way of promoting mobility within the EU.

6. Integration policy as an important component of the EU strategy to recruit skilled workers

6.1. To ensure an adequate labour base in the context of demographic change in Europe it is not enough to attract sufficient workers from non-EU countries via migration, but such people must also be offered **good integration prospects** so that they can fully develop their potential in European labour markets and so that they also decide to remain in Europe in the long term. The European Commission's Action Plan on Integration is therefore also welcome with a view to labour migration.

6.2. Any form of desired immigration is also a rejection of racism and xenophobia. This reflects the values of the EU and is a guiding principle for policy and society.

6.3. It is very positive that the integration plan also considers the **period prior to arrival in Europe**, since important foundations are already laid for successful integration before arrival in the destination country. This applies in particular to language learning. By improving people's career prospects in the EU, language courses and other training geared to possible immigration to the EU make it more attractive as a destination for participants from third countries, directly helping to promote the recruitment of workers from outside the EU.

6.4. Although the integration plan contains certain measures on highly qualified workers, such as closer cooperation in accrediting non-EU education qualifications, it is still essentially intended for other immigration groups with greater support needs, and rightly so. But a common strategy to attract skilled workers from non-EU countries should go beyond the existing integration plan to pool **targeted integration opportunities for highly qualified workers**. In this connection, attention is drawn to the recommendations adopted by the European Forum on Migration in April 2016.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services’

(COM(2016) 128 final — 2016/0070 (COD))

(2017/C 075/15)

Rapporteurs: **Vladimíra DRBALOVÁ** and **Ellen NYGREN**

Consultation	European Parliament, 11.4.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	22.11.2016
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote	180/84/30
(for/against/abstentions)	

1. Conclusions and proposals

1.1. The EESC welcomes the European Commission’s commitment to work towards a deeper and fairer Single Market as one of the chief priorities of its mandate, and its efforts to provide an additional boost to cross-border service provision via its Investment Plan for Europe.

1.2. The EESC supports the EC’s decision to introduce Enforcement Directive 2014/67/EU ⁽¹⁾ to improve a common interpretation and implementation of the Posting of Workers Directive 96/71/EC ⁽²⁾.

1.3. The Enforcement Directive and the current proposal for a targeted revision of the Posting of Workers Directive address different aspects of the practice of posting workers. Not only do they complement one another, but the results expected from the implementation of the Enforcement Directive could also provide a clearer picture of the real situation.

1.4. The EESC supports in principle the Commission’s proposed recast of the Posting of Workers Directive. The principle of equal pay for equal work in the same place is the cornerstone of the pillar of social rights in Europe.

1.5. The EESC considers collective agreements to be the benchmark for levels of remuneration.

1.6. The EESC emphasises that the role of the exclusivity of social partners was not respected and wonders why a proper consultation was not launched with them in accordance with Article 154(2) of the Treaty on the Functioning of the European Union (TFEU).

1.7. The EESC broadly welcomes the fact that the Commission has specifically laid down the maximum duration of postings. The limit of 24 months is a step in the right direction, but a limit of 6 months would be closer to real business conditions.

⁽¹⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 of the European Parliament and the Council on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) (OJ L 159, 28.5.2014, p. 11).

⁽²⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997).

1.8. The EESC calls for the Posting of Workers Directive to include a clarification that the directive sets out a minimum standard, not a maximum. To this end, the legal basis will need to be extended.

2. European political framework

2.1. The free movement of workers, freedom of establishment and the freedom to provide services are fundamental principles of the European Union.

2.2. A distinction should be made between the free movement of workers and the freedom to provide services under Article 56 of the Treaty on the Functioning of the European Union (TFEU). The *free movement of workers* gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions compared to nationals of that Member State.

2.3. In contrast, the *freedom to provide services* gives businesses the right to provide services in another Member State. To that end, they may post their own workers temporarily to the other Member State to carry out the work needed to provide the services.

2.4. On 16 December 1996, the European Parliament and the Council of the European Union adopted **Directive 96/71/EC concerning the posting of workers** in the framework of the provision of services⁽³⁾.

2.5. That directive aims to reconcile exercising the freedom to provide cross-border services under Article 56 TFEU with appropriate protection for the rights of workers temporarily posted abroad for that purpose.

2.6. In October 2010, in its communication ‘Towards a Single Market Act — For a highly competitive social market economy — 50 proposals for improving our work, business and exchanges with one another’⁽⁴⁾, the Commission put forward two proposals designed to restore public confidence and support, one relating to the balance between fundamental social rights and economic freedoms and the other to the posting of workers.

2.7. In March 2010, the European social partners delivered a report⁽⁵⁾ on the consequences of the European Court of Justice rulings, which pointed to their wide divergences. While BUSINESSEUROPE was opposed to a revision of the directive (but accepted the need for clarification of certain aspects related to enforcement), the ETUC wanted it thoroughly amended.

2.8. In December 2012, the Commission published a proposal on the enforcement of Directive 96/71/EC. **The Enforcement Directive**⁽⁶⁾ establishes a common framework of appropriate provisions, measures and control mechanisms necessary for better and more uniform practical implementation, application and enforcement of Directive 96/71/EC, including measures to prevent and sanction any circumvention or abuse of the rules applicable. At the same time, it provides guarantees for the protection of posted workers’ rights and the removal of unjustified obstacles to the free provision of services.

2.9. The deadline for transposition of the Enforcement Directive was 18 June 2016 and by 18 June 2019 at the latest the Commission should present a report on its application and implementation to the EP, the Council and the EESC and propose amendments and modifications where necessary. In its review, the EC shall, after consultation with the Member States and the European Social Partners, assess the adequacy and appropriateness of all the measures introduced and applied, including the adequacy of the data available relating to postings.

⁽³⁾ See footnote 2.

⁽⁴⁾ COM(2010) 608 final/2.

⁽⁵⁾ The text was presented during the Conference on Posting of Workers and Labour Rights organised by Spanish Presidency of the European Union on 23 March 2010 in Oviedo. The debates once again showed that stakeholders’ opinions were divided.

⁽⁶⁾ See footnote 1.

3. Proposal for a targeted revision of the Posting of Workers Directive

3.1. According to the latest available data, there were over 1,9 million postings in the EU in 2014, relating to 0,7 % ⁽⁷⁾ of the total EU labour force. This represents an increase of 10,3 % over 2013 and 44,4 % with respect to 2010. These statistics are based on the number of A1 forms issued by national social security authorities; the number of non-registered de facto posted workers is not known.

3.2. The 1996 Posting of Workers Directive provides an EU regulatory framework for establishing a proper and fair balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection for posted workers and ensuring a level playing field between foreign and local competitors.

3.3. The Commission has now tabled a proposal for the targeted revision of this directive, with the aim of both addressing unfair practices ⁽⁸⁾ and promoting the principle that the same work at the same place should be remunerated in the same manner.

3.4. The proposal was published before the deadline for transposing the 2014 Enforcement Directive and before any assessment of its implementation could be carried out. Many of the challenges concerning the posting of workers continue to be related to poor enforcement and a lack of controls in the Member States. At the same time, the main objective of the proposed revision is to clarify the principle of equal remuneration. This objective can only be achieved through a revision of Directive 96/71/EC itself.

3.5. In this respect, the EESC had already recognised that the effective implementation of the Posting of Workers Directive should 'not exclude a partial revision of the Posting of Workers Directive in order to apply the place of work principle consistently, making it possible to establish by law that the same working and remuneration conditions must always apply for the same work at the same location' ⁽⁹⁾.

3.6. The proposal was published without any prior consultation of the European social partners, who sent a joint letter to the Commission asking to be properly consulted in accordance with Article 154(2) TFEU.

3.7. The publication of the Commission's proposal has generated different points of view, dividing Member States, social partners and companies themselves. The proposed directive should not undermine competitiveness or create new obstacles for cross-border service providers. The revision should at the same time guarantee fair competition in the Single Market and prevent discrimination between workers based on their nationality.

3.8. In line with Protocol No 2 to the Treaties ⁽¹⁰⁾, fourteen chambers of national parliaments sent reasoned opinions to the Commission stating that the Commission proposal on the revision of the Posting of Workers Directive did not comply with the principle of subsidiarity, thus triggering the yellow card procedure. Following its subsidiarity review, the Commission concluded ⁽¹¹⁾, on 20 July, that the proposal for a targeted revision of Directive 96/71/EC complied with the principle of subsidiarity enshrined in Article 5(3) TEU and that a withdrawal or an amendment of that proposal was not required. The Commission therefore maintained the proposal.

3.9. A part of the business community takes the view that the proposal contravenes the proportionality principle. Some companies believe that the proposed changes will lead to legal uncertainty and additional administrative burdens. They think that the revision may particularly affect companies from Member States with lower wages levels that intend to provide cross-border services in the Single Market and that this is contrary to the intention and efforts to strengthen the convergence process within the EU.

⁽⁷⁾ See European Commission 'Posting of workers — Report on A1 portable documents issued in 2014', published in December 2015. It is necessary to take into account the fact that the situation differs from country to country and 0,7 % is only an average. The reality is somewhere between 0,5 % - 3,6 %, and the consequences for the Member States are also different.

⁽⁸⁾ See also the EESC Opinion on *Fairer mobility within the EU*, adopted on 27 April 2016, OJ C 264, 20.7.2016, p. 11.

⁽⁹⁾ EESC Opinion on *The Social Dimension of the Internal Market*, adopted on 14.07.2010, par. 1.7 (OJ C 44, 11.2.2011, p. 90).

⁽¹⁰⁾ Protocol No 2 to the Treaties on the application of the principles of subsidiarity and proportionality.

⁽¹¹⁾ See Communication from the Commission to the European Parliament, the Council and the National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2, COM(2016) 505 final of 20 July 2016.

3.10. Others, including trade unions, consider that the proposed revision — and in particular the idea of ‘equal pay for equal work in the same place’ — would provide for a level playing field for companies and more equal rights for workers in the EU. It will also strengthen the upward convergences process within the EU by, inter alia, eliminating wage differences between workers from the old and new Member States.

3.11. The Commission’s proposal was accompanied by an impact assessment ⁽¹²⁾ stating that the proposed measures for applying the revised directive would have different impacts on different Member States, sectors and companies and noting that strong data limitations on the posting of workers still constituted an ongoing problem.

3.12. In 2010, Eurofound published a report on ‘Posted workers in the European Union’ ⁽¹³⁾, looking at the phenomenon in the EU Member States and Norway. This report maps the available sources of information about the number of postings and provides figures for those countries where data are available. Eurofound’s research shows that there is a lack of data regarding the overall number and characteristics of posted workers throughout the EU.

3.13. This Eurofound report is followed by two recent pieces of research related to fairer mobility on the labour market: ‘Topical update on Member States’ progress in transposing Enforcement Directive on posting of workers’ and ‘Exploring the fraudulent contracting of work in the European Union’ ⁽¹⁴⁾.

4. Main changes in the proposed revision of Directive 96/71/EC

4.1. Remuneration

4.1.1. The Commission proposes replacing the concept of ‘minimum rates of pay’ with ‘remuneration’. According to the EC proposal, remuneration covers all the elements of remuneration that are mandatory in the host Member State.

4.1.2. The Commission tabled the proposal in response to many calls for action to address the causes of wage differentials. According to the Commission, there is a gap between the conditions applied for local workers and those for posted workers. According to the impact assessment accompanying the proposal, the wage differential between posted and local workers is estimated to range from 10 % to 50 % depending on the country and sector. Differentiated pay rules distort the level playing field among companies. The concept of ‘minimum rates of pay’ is not the same as the mandatory rules that are applied to local workers.

4.1.3. According to the Commission, the concept of ‘remuneration’ can therefore better contribute to achieving a level playing field in the Single Market for services. The concept of ‘remuneration’ encompasses all the elements that are paid to local workers if they are laid down by law or by collective agreement which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or in the absence of such a system, by collective agreements which have been concluded by the most representative employers’ and labour organisations at national level and which are applied throughout the national territory. ‘Remuneration’ could include some elements that are not included in the concept of ‘minimum rate of pay’, such as seniority allowances, allowances and supplements for dirty, heavy or dangerous work, quality bonuses, 13th month bonuses, travel expenses, meal vouchers — although most host countries have already included several of those elements in the ‘minimum rate of pay’.

⁽¹²⁾ Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, SWD(2016) 52 final of 8 March 2016.

⁽¹³⁾ Eurofound report on ‘Posted workers in the European Union’, Roberto Pedersini and Massimo Pallini, published in 2010.

⁽¹⁴⁾ Preliminary findings of both research projects were presented during the EESC Labour Market Observatory conference entitled ‘Towards a fairer mobility within the EU’ held on 28 September 2016. See Eurofound (2016) EurWORK Topical update on ‘Member States’ progress in transposing Enforcement Directive on posting of workers’ and Eurofound (2016) ‘Exploring the fraudulent contracting of work in the European Union’.

4.1.4. According to the Commission, the introduction of the concept of 'remuneration' should contribute to improving clarity on the constituent elements of remuneration and to reducing existing cross-sector differences in the mandatory application of collective agreements. The concept of remuneration should also remove any uncertainty as to the level of pay that is to be guaranteed to posted workers. The proposed revision seeks to codify the European Court of Justice case law in case C-396/13 *Sähköalojen ammattiliitto*, thereby considerably increasing legal certainty for workers and companies alike⁽¹⁵⁾.

4.1.5. The Commission affirms that the proposal will not affect Member States' competences and traditions in setting wages and that it respects a strong autonomous role for the social partners. In this context, it is worrying that the Commission proposes to delete the reference in the current directive stating that 'minimum rates of pay are defined by the national law and/or practice of the Member State to whose territory the worker is posted'. This provision is important in order to comply with various national industrial relations systems.

4.1.6. For the purpose of this Directive, the concept of remuneration shall be defined by the national law, collective agreements, and/or practice of the Member State to whose territory the worker is posted.

4.1.7. This Directive shall not prevent application of terms and conditions of employment of the host country or of the country of origin of the posted worker which are more favourable to workers, in particular through the exercising of the fundamental right of workers and employers to negotiate and conclude collective agreements at the appropriate levels and to take collective action to defend their interests, including strike action, to protect and improve the living and working conditions of workers, including the right to equal treatment.

4.1.8. To ensure proper implementation of the Enforcement Directive, Member States are obliged to publish information on terms and conditions of employment applicable to workers posted to their territory on a single website. This process should not be negatively influenced by any new proposal.

4.1.9. EESC members have discussed the question of 'remuneration' in great depth, taking account of all the implications of this new concept.

4.1.10. Some Members consider that the newly-introduced concept is the only way to ensure equal working conditions for both posted and local workers, eliminating wage differentials and guaranteeing a level playing field among companies. In order to ensure that the equal remuneration principle is fully effective, collective agreements that are actually applied at the workplace must be respected — regardless of whether they are universally or generally applicable.

4.1.11. Other Members believe that the introduction of this new concept could result in less legal certainty and clarity and increasing administrative and financial burdens. Any discussion on posting should take account of the fact that the situations of foreign and domestic companies are different. A foreign service provider that wants to post workers bears additional costs resulting solely from performing services in another Member State — additional operating expenses⁽¹⁶⁾ and indirect cross-border labour costs⁽¹⁷⁾.

⁽¹⁵⁾ In case C-396/13 *Sähköalojen ammattiliitto* of 12 February 2015, the European Court of Justice has ruled that 'minimum rates of pay' cannot be a matter of choice for an employer who posts employees with the sole aim of offering lower labour costs than those of local workers. The Court also ruled that daily allowances constituting compensation for being sent away from home must also be paid to posted workers at the same level as they are paid to local workers in a similar situation. The ECJ therefore rejects the claim that an employer could apply the lowest level in the pay classification, regardless of the qualifications or seniority of the workers concerned.

⁽¹⁶⁾ Indirect expenses: cost of becoming familiar with administrative requirements and regulations in other Member States, e.g. notification procedures, translation of documents, cooperation with inspection authorities.

⁽¹⁷⁾ This indirect cross-border labour cost could increase by up to 32%. These are some of the preliminary results of a study on 'Labour cost in cross-border services', conducted by Dr Marek Benio of the Department of Public Economy and Administration of the Krakow University of Economics. These results were presented during the EESC Labour Market Observatory conference entitled 'Towards a fairer mobility within the EU' held on 28 September 2016.

4.2. *Posting exceeding 24 months*

4.2.1. The Commission is addressing the issue of the duration of postings by introducing a proposal that, in cases where the anticipated or the effective duration of posting exceeds 24 months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out. This is applicable from the first day that the posting effectively exceeds a duration of 24 months. The Commission is also introducing a cumulative duration of posting periods in cases where workers are replaced.

4.2.2. The original directive does not set any fixed limit and states that, for the purposes of the directive, 'posted worker' means a worker who, for a *limited period*, carries out his/her work in the territory of a Member State other than the state in which he/she normally works.

4.2.3. The EESC welcomes in principle the limit set on the period of posting in the area governed by the Posting of Workers Directive. In fact, long-term or repeated postings or even chains of postings extending over several years are common practice. The EESC believes, however, that the 24 month period is unrealistic in practice and should be significantly reduced. For comparison, the average period of postings in 2014 was less than four months (103 days). An accumulation rule that only applies to workers posted for at least six months would therefore be ineffective. The maximum duration of postings should be limited to 6 months in total.

4.2.4. The EESC therefore calls for a rule stipulating that periods of posting be aggregated from the first day. To ensure that this rule does not lead to an exchange of posted workers, it is important that reference be made to the specific workplace. The employer should be required to maintain transparency with regard to workplaces and, for example, to provide employees and the competent authorities with information on the number of workers employed and the duration of employment at the workplace in question.

4.2.5. The EESC welcomes the rule whereby, when the maximum posting period is exceeded, the law of the host Member State will in principle apply. The EESC considers it problematic, however, that Recital 8 makes reference to the Rome I Regulation ('The employee will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.'). Under Article 8 of the Rome I Regulation, an individual employment contract is governed by the law chosen by the parties.

4.3. *Subcontracting*

4.3.1. The Commission's proposal gives Member States the option of applying to workers in a subcontracting chain the same conditions as are applied by the main contractor. These conditions would have to be applied in the same way to both national and cross-border subcontractors, in accordance with the principle of non-discrimination.

4.3.2. There are considerable differences between the laws, regulations, administrative provisions or collective agreements applicable in Member States to ensure that subcontracting does not allow undertakings to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. There is no evidence showing how many Member States already apply such a system and the Commission did not present any in-depth analysis of the potential consequences of such rules in its impact assessment.

4.3.3. However, in order for this part of the proposal to be effective in practice, it might be useful to make a reference to a rule on joint and several liability throughout any subcontracting chains introduced by article 12 of the Enforcement Directive⁽¹⁸⁾.

4.3.4. Moreover the phrase 'certain terms and conditions of employment covering remuneration' is vague and will lead to legal uncertainty, differing interpretations, and potential conflicts with other parts of the directive. There would also be problems of comparison and many other purely practical problems, such as access to information (also in connection with the duty of the governments to publish such information under Article 5 of Directive 2014/67/EU) and the availability of collective agreements).

4.3.5. It is also unclear how the Commission would define and apply non-discrimination and proportionality tests for such provisions.

⁽¹⁸⁾ Article 12 of Directive 2014/67/EU on subcontracting liability (see footnote 1).

4.3.6. In addition, it will be necessary to introduce adequate provisions to check the genuine self-employed status of subcontractors, in accordance with Member States' standards.

4.4. *Temporary agency work*

4.4.1. The Commission introduces a new obligation for Member States by adding a new paragraph which establishes the conditions applicable to the workers referred to in Article 1(3)(c) of the Directive, i.e. workers hired out by a temporary agency established in a Member State other than the Member State of establishment of the user undertaking. The undertakings referred to in Article 1(3)(c) will have to guarantee posted workers the terms and conditions which apply pursuant to Article 5 of Directive 2008/104/EC on temporary agency work⁽¹⁹⁾ to temporary workers hired out by temporary agencies established in the Member State where the work is carried out.

4.4.2. The EESC believes that this new provision is not necessary, as the original Posting of Workers Directive already provided for such an option under Article 3(9). Member States may make the provision that the undertakings referred to in Article 1(1) must guarantee workers referred to in Article 1(3)(c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out. The option of applying Directive 2008/104/EC has already been taken up by a majority of host countries.

4.4.3. The EESC considers that the Commission should stick to the existing arrangement. Consideration needs to be given to the fact that the provisions of Directive 2008/104/EC are applicable to the situation in the various Member States, whereas Directive 96/71/EC is applicable to cross-border activities. This was acknowledged by the Commission itself in the Report on the application of Directive 2008/104/EC on temporary agency work⁽²⁰⁾.

4.4.4. The EESC points out that Article 5 of Directive 2008/104/EC is much broader than Article 3(9) of Directive 96/71/EC and that this could paradoxically lead to different conditions for the posting of workers under Article 1(3)(a) and (b) and Article 1(3)(c) of the current law.

5. **Additional action**

5.1. The Commission should encourage Member States to transpose Directive 2014/67/EU⁽²¹⁾ if they have not done so yet and ensure that all Member States implement it properly. After two years, the Commission should assess its impact and determine whether the adopted measures have led to adequate and effective implementation and enforcement, as these are key elements in protecting the rights of posted workers and ensuring a level playing field for service providers.

5.2. The Commission should provide an in-depth analysis of the situation in the various EU Member States, as well as real quantitative information on posted workers and ways of implementing and enforcing the existing directive.

5.3. The availability of reliable data on posted workers is a precondition for an effective debate on their specific characteristics and need for protection.

5.4. If the Commission wants to ensure fair competition, its next steps should also focus on combating fraudulent practices and eliminating the phenomenon of irregular or undeclared work, primarily in the form of the abuse of letterbox companies.

5.5. The Commission should speed up economic and social upward convergence within the EU, while at the same time ensuring fair mobility of workers in the context of cross-border provision of services.

5.6. The Commission should consult social partners, recognise their autonomy and respect collective agreements that are relevant in this field.

⁽¹⁹⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

⁽²⁰⁾ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2008/104/EC on temporary agency work, COM(2014) 176 final.

⁽²¹⁾ See footnote 1.

5.7. The EESC calls for the revision to make it clear that the Posting of Workers Directive is not a pure Single Market instrument, but also an instrument for the protection of workers. This requires the legal base to be extended to include social policy law (Articles 153, 155 TFEU). The revision of the Directive must also correct the false interpretation of the Directive as a maximum standard, which has arisen from a series of ECJ judgments (*Laval*, *Rüffert*, *Commission v Luxembourg*), and re-establish it as a minimum standard.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

APPENDIX

The following counter opinion, which received at least a quarter of the votes cast, was rejected during the discussion:

Counter opinion:

Replace the whole opinion with the following text (reason at the end of the document):

1. Conclusions and proposals

1.1. The EESC welcomes the European Commission's commitment to work towards a deeper and fairer Single Market as one of the chief priorities of its mandate, and its efforts to provide an additional boost to cross-border service provision via its Investment Plan for Europe.

1.2. The EESC supports the EC's decision to introduce Enforcement Directive 2014/67/EU⁽¹⁾ to improve a common interpretation and implementation of the Posting of Workers Directive 96/71/EC⁽²⁾ which nevertheless represents a well-balanced instrument guaranteeing both rights to provide services and rights of posted workers.

1.3. The Enforcement Directive and the current proposal for a targeted revision of the Posting of Workers Directive address different aspects of the practice of posting workers, but they do not only complement one another, but the results expected from the implementation of the Enforcement Directive could also provide a clearer picture of the real situation.

1.4. To date, not all Member States have completed its transposition. The EESC expects that the Commission's report, scheduled for 18 June 2019 at the latest, should provide a reliable overview of the application and implementation of the directive. Some EESC members recommend waiting for this report before any further amendments and modifications are proposed.

1.5. Some EESC members think that the introduction of the targeted revision is premature and does not comply with the better regulation principle. Such an approach may lead to slowing down the transposition of the 2014 Directive mixing enforcement measures with the new proposals.

1.6. The EESC feels that there is still a lack of evidence relating to postings across Europe and this may give rise to concerns as regards the proportionality principle — namely whether the impact assessment accompanying the intended revision provides a clear picture of the real situation.

1.7. Introducing any new changes based only on a very light impact assessment, with insufficient data and without taking account of the different levels of economic performance across the EU can only lead to new divisions among the Member States and undermine the Commission's efforts to encourage convergence, integration and trust in Europe.

1.8. The EESC emphasises that the role of the exclusivity of social partners was not respected and wonders why a proper consultation was not launched with them in accordance with the Article 154(2) TFEU.

1.9. A crucial aspect of the targeted revision proposed by the European Commission is still the concept of 'remuneration'. EESC members are not alone in this respect in rethinking in depth both the option of 'the minimum pay' clarified by case law and a new way of calculating remuneration. Some members consider this new approach as a means of improving and guaranteeing the same conditions for posted workers as for local workers. At the same time, other members do not consider this proposal to be appropriate for the business reality, as it creates uncertainty and greater administrative and financial burdens for companies.

⁽¹⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

⁽²⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997).

1.10. The EESC is not convinced about the need for introducing any strict rules regarding the duration of periods of posting. Experience shows that an extremely long posting is not a major problem in reality for European businesses.

2. European political framework

2.1. The free movement of workers, freedom of establishment and the freedom to provide services are fundamental principles of the European Union.

2.2. A distinction should be made between the free movement of workers and the freedom to provide services under Article 56 of the Treaty on the Functioning of the European Union (TFEU). The free movement of workers gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions compared to nationals of that Member State.

2.3. In contrast, the freedom to provide services gives businesses the right to provide services in another Member State. To that end, they may post their own workers temporarily to the other Member State to carry out the work needed to provide the services.

2.4. On 16 December 1996, the European Parliament and the Council of the European Union adopted **Directive 96/71/EC** concerning the posting of workers in the framework of the provision of services⁽³⁾.

2.5. That directive aims to reconcile exercising the freedom to provide cross-border services under Article 56 TFEU with appropriate protection for the rights of workers temporarily posted abroad for that purpose.

2.6. In October 2010, in its communication 'Towards a Single Market Act — For a highly competitive social market economy — 50 proposals for improving our work, business and exchanges with one another'⁽⁴⁾, the Commission put forward two proposals designed to restore public confidence and support, one relating to the balance between fundamental social rights and economic freedoms and the other to the posting of workers.

2.7. In March 2010, the European social partners delivered a report⁽⁵⁾ on the consequences of the European Court of Justice rulings, which pointed to their wide divergences. While BUSINESSEUROPE was opposed to a revision of the directive (but accepted the need for clarification of certain aspects related to enforcement), the ETUC wanted it thoroughly amended.

2.8. In December 2012, the Commission published a proposal on the enforcement of Directive 96/71/EC. **The Enforcement Directive**⁽⁶⁾ establishes a common framework of appropriate provisions, measures and control mechanisms necessary for better and more uniform practical implementation, application and enforcement of Directive 96/71/EC, including measures to prevent and sanction any circumvention or abuse of the rules applicable. At the same time, it provides guarantees for the protection of posted workers' rights and the removal of unjustified obstacles to the free provision of services.

2.9. The deadline for transposition of the Enforcement Directive was 18 June 2016 and by 18 June 2019 at the latest the Commission should present a report on its application and implementation to the EP, the Council and the EESC and propose amendments and modifications where necessary. In its review, the EC shall, after consultation with the Member States and the European Social Partners, assess the adequacy and appropriateness of all the measures introduced and applied, including the adequacy of the data available relating to postings.

⁽³⁾ See footnote 2.

⁽⁴⁾ COM(2010) 608 final/2.

⁽⁵⁾ The text was presented during the Conference on Posting of Workers and Labour Rights organised by Spanish Presidency of the European Union on 23 March 2010 in Oviedo. The debates once again showed that stakeholders' opinions were divided.

⁽⁶⁾ See footnote 1.

3. Proposal for a targeted revision of the Posting of Workers Directive

3.1. According to the latest available data, there were over 1.9 million postings in the EU in 2014, relating to 0.7 %⁽⁷⁾ of the total EU labour force. This represents an increase of 10.3 % over 2013 and 44.4 % with respect to 2010. These statistics are based on the number of A1 forms issued by national social security authorities; the number of non-registered de facto posted workers is not known.

3.2. The 1996 Posting of Workers Directive provides an EU regulatory framework for establishing a proper and fair balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection for posted workers and ensuring a level playing field between foreign and local competitors.

3.3. However, the Commission has now tabled a proposal for the targeted revision of this directive, with the aim of both addressing unfair practices⁽⁸⁾ and promoting the principle that the same work at the same place should be remunerated in the same manner.

3.4. The proposal was published before the deadline for transposing the 2014 Enforcement Directive and before any assessment of its implementation could be carried out. Many of the challenges concerning the posting of workers continue to be related to poor enforcement and a lack of controls in the Member States.

3.5. The proposal was also published without any prior consultation of the European social partners, who sent a joint letter to the Commission asking to be properly consulted in accordance with the Article 154(2) TFEU. 'We are now writing to ask the Commission to take the time needed to adequately consult with the social partners before launching its proposal⁽⁹⁾.'

3.6. The publication of the Commission's proposal has generated different points of view, dividing Member States, social partners and companies themselves. The proposed directive should not undermine competitiveness or create new obstacles for cross-border service providers.

3.7. In line with Protocol No 2 to the Treaties⁽¹⁰⁾ fourteen chambers of national parliaments sent reasoned opinions to the Commission stating that the Commission proposal on the revision of the Posting of Workers Directive did not comply with the principle of subsidiarity, thus triggering the yellow card procedure. Following its subsidiarity review, the Commission concluded⁽¹¹⁾, on 20 July, that the proposal for a targeted revision of Directive 96/71/EC complied with the principle of subsidiarity enshrined in Article 5(3) TEU and that a withdrawal or an amendment of that proposal was not required. The Commission therefore maintained the proposal.

3.8. A part of the business community takes the view that the proposal contravenes the proportionality principle. Some companies believe that the proposed changes will lead to legal uncertainty and additional administrative burdens. The revision may particularly affect companies from Member States with lower wages levels that intend to provide cross-border services in the Single Market, which is contrary to the intention and efforts to strengthen the convergence process within the EU.

3.9. Others, including trade unions, consider that the proposed revision — and in particular the idea of 'equal pay for equal work in the same place' — would provide for a level playing field for companies and more equal rights for workers in the EU.

⁽⁷⁾ It is necessary to take into account the fact that the situation differs from country to country and 0.7 % is only an average. The reality is somewhere between 0.5 % - 3.6 %, and the consequences for the Member States are also different.

⁽⁸⁾ EESC Opining on 'Fairer mobility within the EU', adopted on 27 April 2016 (OJ C 264, 20.7.2016, p. 11).

⁽⁹⁾ Joint letter of the European social partners (ETUC, BUSINESSEUROPE, UEAPME, CEEP) to president Juncker, 2 March 2016.

⁽¹⁰⁾ Protocol No 2 to the Treaties on the application of the principles of subsidiarity and proportionality.

⁽¹¹⁾ See Communication from the Commission to the European Parliament, the Council and the National Parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2, COM(2016) 505 final of 20 July 2016.

3.10. The Commission's proposal was accompanied by an impact assessment⁽¹²⁾ stating that the proposed measures for applying the revised directive would have different impacts on different Member States, sectors and companies and noting that strong data limitations on the posting of workers still constituted an ongoing problem.

3.11. Comparable figures are based on the A1 portable documents requiring detailed information from companies posting workers to a country. The accuracy of the information contained in A1 portable documents cannot be guaranteed due to the lack of official controls by the authorities in the countries from which workers were sent. Therefore the figures presented in the impact assessment represent merely an estimate of the actual number of postings taking place and do not provide a clear picture of the real situation.

3.12. In 2010, Eurofound published a report on 'Posted workers in the European Union'⁽¹³⁾, looking at the phenomenon in the EU Member States and Norway. This report maps the available sources of information about the number of postings and provides figures for those countries where data are available. Eurofound's research shows that there is a lack of data regarding the overall number and characteristics of posted workers throughout the EU.

3.13. This Eurofound report is followed by two recent pieces of research related to fairer mobility on the labour market: Brief analysis of the EU Member States transposition of the 'Enforcement' Directive 2014/67/EU improving enforcement of Directive 96/71/EC on the Posting of workers and Fraudulent forms of contracting work and self-employment⁽¹⁴⁾.

4. Main changes in the proposed revision of Directive 96/71/EC

4.1. Remuneration

4.1.1. The Commission proposes replacing the concept of 'minimum rates of pay' with 'remuneration'. According to the EC proposal, remuneration covers all the elements of remuneration that are mandatory in the host Member State.

4.1.2. The Commission tabled the proposal in response to many calls for action to address the causes of wage differentials. According to the Commission there is a gap between the conditions applied for local workers and those for posted workers. According to the impact assessment accompanying the proposal, the wage differential between posted and local workers is estimated to range from 10 % to 50 % depending on the country and sector. Differentiated pay rules distort the level playing field among companies. The concept of 'minimum rates of pay' is not the same as the mandatory rules that are applied to local workers.

4.1.3. According to the Commission, the concept of 'remuneration' can therefore better contribute to achieving a level playing field in the Single Market for services. The concept of 'remuneration' encompasses all the elements that are paid to local workers if they are laid down by law or by collective agreement which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, or by collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout the national territory. 'Remuneration' could include some elements that are not included in the concept of 'minimum rate of pay', such as seniority allowance, allowances and supplements for dirty, heavy or dangerous work, quality bonuses, 13th month bonuses, travel expenses, meal vouchers — although most host countries have already included several of those elements in the 'minimum rate of pay'.

4.1.4. According to the Commission, the introduction of the concept of 'remuneration' should contribute to improving clarity on the constituent elements of remuneration and to reducing existing cross-sector differences in the mandatory application of collective agreements.

⁽¹²⁾ Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, SWD(2016) 52 final of 8 March 2016.

⁽¹³⁾ Eurofound report on 'Posted workers in the European Union', Roberto Pedersini and Massimo Pallini, published in 2010.

⁽¹⁴⁾ Preliminary findings of both research projects were presented during the EESC Labour Market Observatory conference on 'Towards a fairer mobility within the EU' held on 28 September 2016.

4.1.5. Nevertheless the term 'remuneration' itself can be seen as imprecise, giving room for various interpretations, and this will create legal uncertainty. The concept of 'minimum rates of pay', despite the various doubts it raises, is more precise and easier to define.

4.1.6. The Commission affirms that the proposal will not affect Member States' competences and traditions in setting wages and that it respects a strong autonomous role for the social partners. In this context, it is worrying that the Commission proposes to delete the reference in the current directive stating that 'minimum rates of pay are defined by the national law and/or practice of the Member State to whose territory the worker is posted'. This provision is important in order to comply with various national industrial relations systems.

4.1.7. For the purpose of this Directive, the concept of remuneration shall be defined by the national law and/or practice of the Member State to whose territory the worker is posted.

4.1.8. This Directive shall not prevent application of terms and conditions of employment of the host country or of the country of origin of the posted worker which are more favourable to workers, in particular through the exercising of the fundamental right of workers and employers to negotiate and conclude collective agreements at the appropriate levels and to take collective action to defend their interests, including strike action, to protect and improve the living and working conditions of workers including the right to equal treatment.

4.1.9. To ensure proper implementation of the Enforcement Directive, Member States are obliged to publish information on terms and conditions of employment applicable to workers posted to their territory on a single website. Member States could delay putting the single website in place, as the applicable terms and conditions are likely to change. This process should not be negatively influenced by any new proposal.

4.1.10. EESC members have discussed the question of 'remuneration' in great depth, taking account of all the implications of this new concept.

4.1.11. Some Members consider that the newly-introduced concept is the only way to ensure equal working conditions for both posted and local workers, eliminating wage differentials and guaranteeing a level playing field among companies.

4.1.12. Other Members believe that the introduction of this new concept could result in less legal certainty and clarity and increasing administrative and financial burden. Any discussion on posting should take account of the fact that the situations of foreign and domestic companies are different. A foreign service provider that wants to post workers bears additional costs resulting solely from performing services in another Member State — additional operating expenses⁽¹⁵⁾ and indirect cross-border labour costs⁽¹⁶⁾.

4.1.13. With regard to extending the scope of application of universally applicable collective agreements to all sectors, the EESC recommends reconsidering whether it is also necessary to automatically extend the sources of employment standards applicable to posted workers in those sectors where no major problems with posting have been recorded.

4.2. Posting exceeding 24 months

4.2.1. The Commission is addressing the issue of the duration of postings by introducing a proposal that, in cases where the anticipated or the effective duration of posting exceeds 24 months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out. This is applicable from the first day that the posting effectively exceeds a duration of 24 months. The Commission is also introducing a cumulative duration of posting periods in cases where workers are replaced.

⁽¹⁵⁾ Indirect expenses: cost of becoming familiar with administrative requirements and regulations in other Member States, e.g. notification procedures, translation of documents, cooperation with inspection authorities.

⁽¹⁶⁾ This indirect cross-border labour cost could increase by up to 32%. These are some of the preliminary results of a pilot study on 'Labour cost in cross-border services', conducted by the Department of Public Economy and Administration of the Krakow University of Economics. These results were presented during the EESC Labour Market Observatory conference on 'Towards a fairer mobility within the EU' held on 28 September 2016.

4.2.2. The original directive does not set any fixed limit and states that, for the purposes of the directive, ‘posted worker’ means a worker who, for a limited period, carries out his/her work in the territory of a Member State other than the state in which he/she normally works.

4.2.3. In order to avoid unclear situations where it is difficult to determine whether or not there is a posting within the meaning of the Posting of Workers Directive, Article 3(1) and (2) of the Enforcement Directive set out a non-exhaustive list of qualitative criteria characterising both the temporary nature inherent in the concept of posting for the provision of services and the existence of a genuine link between the employer and the Member State from which the posting takes place.

4.2.4. One of the main arguments raised was that neither the TFEU nor Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation)⁽¹⁷⁾ provides a basis for adopting a period of 24 months as the reference period for determining the country in which the work is habitually carried out. In addition, it is not appropriate to use a directive to change the application of a regulation, or to define the terms used in the Rome I Regulation differently for the purposes of the Posting of Workers Directive. According to the explanations given by the European Commission’s legal service in its opinion: ‘... (New Article 2a) does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months. The purpose is merely to create legal certainty in the application of the Rome I Regulation to a specific situation, without amending that Regulation in any way.’⁽¹⁸⁾

4.2.5. The EESC is not in favour of setting such a fixed time limit. It goes against the nature of the posting of workers and is contrary to the purpose of the directive. The average duration of posting in the EU is 103 days⁽¹⁹⁾ (only 4-5 % of all postings are longer than 12 months⁽²⁰⁾). There is no evidence that posting periods of longer than two years are a widespread and problematic practice leading to abuse of the rules on the posting of workers.

4.2.6. On the contrary, introducing the term ‘anticipated duration of posting’ and setting rules for replacement of workers could lead to uncertainty and uneven application of the rules on the posting of workers. In the construction sector in particular, it will be difficult to anticipate the ‘duration of work performance’ and for inspection bodies to prove it.

4.2.7. The existing definition is sufficient, and any fixing of a time limit for the posting of workers would run counter to the principle of verifying what is a case of a genuine and justified posting. Moreover, the ECJ has repeatedly confirmed that the term ‘temporary’ has to be considered on a case-by-case basis.

4.2.8. The Commission argues that this change will bring the Posting of Workers Directive in line with the social security rules set out in Regulation (EC) No 883/2004⁽²¹⁾. However, Regulation (EC) No 883/2004 gives Member States the option of extending — through bilateral agreements — the initial two-year period during which social security contributions are paid in the country of origin. The Commission proposal on the revision of the Posting of Workers Directive makes the provision that, when the anticipated or the effective duration of posting exceeds 24 months, all working conditions of the host country would have to be applied from the very first day of posting. This is neither necessary nor consistent.

4.3. Subcontracting

4.3.1. The Commission’s proposal gives Member States the option of applying to workers in a subcontracting chain the same conditions as are applied by the main contractor. These conditions would have to be applied in the same way to both national and cross-border subcontractors, in accordance with the principle of non-discrimination.

⁽¹⁷⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

⁽¹⁸⁾ Opinion of the European Commission’s legal service — institutional file 2016/0070 (COD) of 28 May 2016.

⁽¹⁹⁾ Commission Staff Working Document SWD (2016)52 final, p. 39, J. Pacolet and F. De Wispelaere, *Posting of Workers. Report on A1 portable document issued in 2014*, December 2015.

⁽²⁰⁾ Commission Staff Working Document SWD (2016)52 final, p. 39, L&R Sozialforschung, *Entwicklungen im Bereich des Lohndumpings*, May 2014.

⁽²¹⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

4.3.2. There are considerable differences between the laws, regulations, administrative provisions or collective agreements applicable in Member States to ensure that subcontracting does not allow undertakings to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. There is no evidence showing how many Member States already apply such a system and the Commission did not present any in-depth analysis of the potential consequences of such rules in its impact assessment.

4.3.3. However, in order for this part of the proposal to be effective in practice, it might be useful to make a reference to a rule on joint and several liability throughout any subcontracting chains introduced by article 12 of the Enforcement Directive⁽²²⁾.

4.3.4. Moreover the phrase 'certain terms and conditions of employment covering remuneration' is vague and will lead to legal uncertainty, differing interpretations, and potential conflicts with other parts of the directive. There would also be problems of comparison and many other purely practical problems, such as access to information (also in connection with the duty of the governments to publish such information under Article 5 of Directive 2014/67/EU) and the availability of collective agreements).

4.3.5. It is also unclear how the Commission would define and apply non-discrimination and proportionality tests for such provisions.

4.3.6. In addition, it will be necessary to introduce adequate provisions to check the genuine self-employed status of subcontractors, in accordance with Member States' standards.

4.4. Temporary agency work

4.4.1. The Commission introduces a new obligation for Member States by adding a new paragraph which establishes the conditions applicable to the workers referred to in Article 1(3)(c) of the Directive, i.e. workers hired out by a temporary agency established in a Member State other than the Member State of establishment of the user undertaking. The undertakings referred to in Article 1(3)(c) will have to guarantee posted workers the terms and conditions which apply pursuant to Article 5 of Directive 2008/104/EC on temporary agency work⁽²³⁾ to temporary workers hired out by temporary agencies established in the Member State where the work is carried out.

4.4.2. The EESC believes that this new provision is not necessary, as the original Posting of Workers Directive already provided for such an option under Article 3(9). Member States may make the provision that the undertakings referred to in Article 1(1) must guarantee workers referred to in Article 1(3)(c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out. The option of applying Directive 2008/104/EC has already been taken up by a majority of host countries.

4.4.3. The EESC considers that the Commission should stick to the existing arrangement. Consideration needs to be given to the fact that the provisions of Directive 2008/104/EC are applicable to the situation in the various Member States, whereas Directive 96/71/EC is applicable to cross-border activities. This was acknowledged by the Commission itself in the Report on the application of Directive 2008/104/EC on temporary agency work⁽²⁴⁾.

4.4.4. The EESC points out that Article 5 of Directive 2008/104/EC is much broader than Article 3(9) of Directive 96/71/EC and that this could paradoxically lead to different conditions for the posting of workers under Article 1(3)(a) and (b) and Article 1(3)(c) of the current law.

5. What should be the European Commission's main focus

5.1. The Commission should encourage Member States to transpose the Enforcement Directive⁽²⁵⁾ if they have not done so yet and ensure that all Member States implement it properly. After two years, the Commission should assess its impact and determine whether the adopted measures have led to adequate and effective implementation and enforcement, as these are key elements in protecting the rights of posted workers and ensuring a level playing field for service providers.

⁽²²⁾ Article 12 of Directive 2014/67/EU on subcontracting liability (see footnote 1).

⁽²³⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

⁽²⁴⁾ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2008/104/EC on temporary agency work, COM(2014) 176 final.

⁽²⁵⁾ See footnote 1.

- 5.2. The Commission should provide an in-depth analysis of the situation in the various EU Member States, as well as real quantitative information on posted workers and ways of implementing and enforcing the existing directive.
- 5.3. The availability of reliable data on posted workers is a precondition for an effective debate on their specific characteristics and need for protection.
- 5.4. If the Commission wants to ensure fair competition, its next steps should focus on combating fraudulent practices and eliminating the phenomenon of illegal work, primarily in the form of the abuse of letterbox companies.
- 5.5. The Commission should speed up economic and social convergence within the EU, while at the same time ensuring fair mobility of workers in the context of cross-border provision of services.
- 5.6. Introducing a new concept such as 'remuneration' might prompt questions both from Member States in the Council and from companies during the public consultation. The Commission should carry out an in-depth socioeconomic analysis of the consequences for consumers, companies and generally for EU competitiveness and employment.
- 5.7. The Commission should consult social partners, recognise their autonomy and respect collective agreements that are relevant in this field.

Reason for the amendment:

This amendment seeks to propose a balanced approach to this Commission proposal, which has generated different points of view, both amongst Member States, the social partners and businesses. The aim of this amendment is to adequately reflect those diverging views in a credible and balanced manner, while also showing points where there is a consensus. This amendment, which corresponds to the text submitted by the two SOC section rapporteurs, following the 3rd study group meeting, better presents this balance between different views than the text amended and adopted by the section.

Outcome of the vote

In favour	94
Against	175
Abstentions	23

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)’

(COM(2016) 465 *final*)

and on the

‘Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents’

(COM(2016) 466 *final*)

and on the

‘Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU’

(COM(2016) 467 *final*)

(2017/C 075/16)

Rapporteur: **José Antonio MORENO DÍAZ**

Co-rapporteur: **Cristian PÎRVULESCU**

Consultation	Council of the European Union, 7.9.2016 European Parliament, 12.9.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	22.11.2016
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	211/2/5

1. Conclusions and recommendations

1.1 *General conclusions and recommendations*

1.1.1 The EESC considers it necessary to carry out a fair, effective and efficient reform of the Common European Asylum System (CEAS) and to establish a genuinely common procedure that is reliable, flexible and efficient and improves the fair and legal means of accessing the European Union based on the principle of respecting persecuted people's human rights.

1.1.2 It is also necessary to keep in mind that Article 2 TEU explicitly states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values should be common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

1.1.3 Moreover, Article 78 TFEU determines that the EU will develop a Common Asylum Policy: to that end, a genuine common and obligatory system for all Member States should be proposed in order to harmonise national legislation or — failing this — to introduce, at the very least, a common system for the mutual recognition of asylum decisions between all the EU Member States. This would make a genuine Common European Asylum System possible: otherwise, it will not be possible to avoid so-called 'secondary movements' whereby people seeking international protection look for the countries offering the best conditions within the EU.

1.1.4 It is important to underline that the total population of the EU-28 is about 510 million people and that the EC proposals of Autumn 2015 to relocate approximately 160 000 people seeking international protection would amount to about 0,03 % of the total EU population: other non-EU states have taken in millions of people seeking international protection.

1.1.5 In any case, the EESC welcomes the improvements made to the system, such as the clarification of rights and obligations regarding access to the procedure, the replacement of the concept of vulnerability with the concept of special needs, as well as clear criteria for assessing it, the introduction of greater guarantees for minors, and the broadening of the concept of family.

1.1.6 The EESC is concerned about the limitation of fundamental rights, such as the restriction of free movement, the limitation of the right of minors to education, the application of a procedure to unaccompanied minors at the border, the possible lack of a case-by-case approach when analysing the safe country concepts, the limitation of guarantees for subsequent applications and accelerated procedures, the automatic review of protection statuses, and the punitive approach of the restrictions on reception conditions.

1.1.7 The EESC recommends the standardisation of protection statuses, elimination of the differences between refugee status and subsidiary protection status as regards the period of the residence permit, its renewal, and the limitation placed on social assistance for beneficiaries of subsidiary protection.

1.2 Recommendations on the proposal for the Qualification Regulation

1.2.1 The EESC recommends including the UNHCR criteria for assessing internal flight alternative, in other words, analysis of suitability and analysis of reasonableness, expressly excluding the application of Article 8 in the case of persecution by the state.

1.2.2 The burden of proof should be shared between the applicant and the determining authority, as stipulated by CJEU case-law, maintaining the determining authority's obligation to 'cooperate actively with the applicant'.

1.2.3 The EESC recommends introducing a proportionality assessment when assessing the grounds for exclusion from refugee status and the restrictive nature of applying these clauses, removing Article 12(6) of the Qualification Regulation in order to avoid the automatic application of excluding causes that do not take the particular background of the applicants into account.

1.2.4 A case-by-case analysis in procedures for reviewing international protection statuses should be guaranteed, taking the specific circumstances into account and granting any procedural guarantees in these procedures that cannot be applied automatically.

1.2.5 With regard to the review of refugee status, every new procedure will add an extra layer of administrative burden and discretion. Given the high number of refugees in one country, administrative services can easily become overburdened and might make hasty and possibly arbitrary decisions. It is thus necessary for the relevant authorities to be properly staffed and trained in order to carry out checks and to review refugee status.

1.2.6 It is necessary to distinguish between the cessation, exclusion, withdrawal, non-renewal and end of protection statuses, avoiding repetition and confusion regarding the factual circumstances giving rise to each case and including restrictive criteria for their application.

1.2.7 The restriction on the freedom of movement of persons granted international protection within the Member State should be eliminated, on the grounds that it is contrary to Article 26 of the Geneva Convention.

1.2.8 Article 44 of the Qualification Regulation amending the Directive on long-term residents to restart the 5-year period of residence if the person is found illegally outside the Member State that recognised him or her should be eliminated, on the grounds that this is contrary to the aim of the European Agenda on Migration of May 2015.

1.3 Recommendations on the proposal for the Common Procedure Regulation

1.3.1 The EESC recalls that setting rules in the form of regulations must not lead to a reduction in protection standards due to the introduction of restrictive eligibility criteria and the limitation of rights and procedural guarantees.

1.3.2 The EESC recommends eliminating the automatic application of the concepts of safe third country, first country of asylum and safe country of origin, and of time limit reductions, and recommends guaranteeing the automatic suspensive effect of appeals.

1.3.3 The guarantees of case-by-case assessment, based on the criteria of proportionality, necessity and exceptional circumstances, in cases of restriction of freedom or detention should be increased.

1.3.4 The guarantees in the context of administrative detention, setting clear detention time limits and restricting it to exceptional cases, should also be increased.

1.3.5 Eliminate the exclusion of the right to free legal assistance in the case of applications considered unfounded or subsequent applications containing no fresh evidence or arguments, on the grounds that this violates the right to an effective remedy as provided for under Article 13 of the ECHR.

1.3.6 Lay down the same procedural guarantees for accelerated procedures, border posts and subsequent applications as for the regular procedure.

1.3.7 Before starting the actual application the applicants should be offered a period to rest and recover.

1.4 Recommendations on the proposal for the Standards of Reception Directive

1.4.1 It is necessary to adopt a positive incentives approach in order to prevent secondary movements, rather than a punitive approach of excluding, reducing, withdrawing or replacing reception conditions, etc. This is particularly disproportionate in the case of applicants not requesting international protection in the first country of irregular entry or legal residence.

1.4.2 The same legal tool should be used to regulate reception conditions, procedures and eligibility criteria so as to avoid disparities in the direct application of interrelated provisions.

1.4.3 Undefined legal concepts such as 'dignified standard of living' or 'risk of absconding' should be restricted or eliminated given the serious consequences they entail and the discretion of Member States in setting the defining criteria.

1.4.4 Other family members such as siblings and other relatives should be included, in line with the Dublin Regulation proposal.

1.4.5 Labour market access should not be excluded for applicants from safe countries of origin as this would constitute discrimination on the basis of nationality.

1.4.6 It is necessary to eliminate conditions on the right of access to employment, social security and social assistance.

1.4.7 It is also necessary to ensure the absolute right of minors to education, in the same terms as the right to health.

2. Comments on the Qualification Regulation

2.1 The EESC supports further harmonisation of the standards for asylum procedures, recognition and protection at EU level. There are significant differences between the Member States as regards the procedures used, the recognition rates, the content of protection provided and the reception conditions for applicants and beneficiaries of international protection.

2.2 For various reasons the Member States have developed specific institutional asylum practices. This encourages secondary movements and compromises the equal treatment of the applicants on the territory of the Union. The differences between the Member States could have a significant impact on the protection of fundamental rights, including protecting human dignity, respect for private and family life, freedom of expression and information, right to education, freedom to choose an occupation and the right to access the labour market, freedom to conduct a business, right to asylum, non-discrimination, rights of the child, social security, and social assistance and health care, as defined in the Charter of Fundamental Rights of the European Union.

2.3 The EESC welcomes the development of the system to retrieve, organise and disseminate information regarding the situation in the countries of origin and transit under the auspices of the European Union Agency for Asylum. It represents the basis for a real harmonisation of decisions on granting international protection. It is, however, unclear to what extent the national authorities will take the information provided into consideration and indeed how to ensure that they do so. In order to avoid severely divergent decisions, the system should provide a simple and clear indication of countries considered to be unsafe.

2.4 With regard to Article 7 on actors of protection it is important to correctly evaluate the capacities of private actors and international organisations to provide protection. Due to scarce resources and legal uncertainty it is very difficult for both to ensure robust and long term protection, especially in situations of civil war or intense governmental repression.

2.5 The possible internal protection that an applicant can receive is a relevant factor in determining the granting of protection. The relevant authorities have to take into consideration the whole range of risks that internal displacement can pose to individual security. Safe territories can quickly become unsafe, for a variety of reasons — military defeat, foreign assistance and intervention, sabotage and terrorist attacks. Even though Article 8 is clear in defining what 'safe' means — including safe travel and availability of protection — it is up to the European national authorities to interpret the available data and facts.

2.6 The definition of acts of persecution in Article 9 is comprehensive, following Article 1(A) of the Convention Relating to the Status of Refugees (the Geneva Convention). This article, together with Article 10 regarding the reasons for persecution and Article 6 on actors of persecution or serious harm, should be interpreted so as to take account of acts of persecution committed by both state authorities and non-state actors. The practice of political repression and internal warfare shows that violent acts are carried out by various paramilitary and vigilante groups under the higher protection of state authorities who usually deny any involvement.

2.7 The EESC has long been an advocate of harmonising the content of protection granted to refugees and those who have subsidiary protection ⁽¹⁾. The content of protection has been another key driver for secondary movements within the Union. But crucially, the Committee advocated that the harmonisation should aim for the highest level of protection and not the lowest. The Commission proposal presents a number of positive steps in this direction.

2.8 Clarification regarding information provision, residence permits and travel documents is necessary. It is notable that access to the labour market has been clarified and the level of protection has been raised, for example in the field of working conditions, freedom of affiliation and access to employment-related education opportunities, in which the beneficiaries of international protection have the same rights as the Member State nationals. This is also the case with regard to recognition of qualifications, social security, social assistance and health care.

⁽¹⁾ Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted' COM(2009) 551 final/2 — 2009/0164 (COD) (OJ C 18, 19.1.2011, p. 80).

2.9 Access to integration measures — language courses, civic orientation and integration programmes and vocational training — are key elements of successful integration. Measures facilitating integration are very much welcomed and should be encouraged.

2.10 At the same time, turning participation in integration measures into a precondition to access other services like social assistance (see Article 34) could be problematic and should be formulated with care. Integration measures have to be very accessible and useful in order to facilitate participation. Beneficiaries of international protection could be excluded from integration measures and from services for which participation in integration measures is required e.g. language learning, education, and employment.

3. Comments on the proposal for the Common Procedure Regulation

3.1 The EESC welcomes the proposal and its intended objective to establish a truly common procedure for international protection which is efficient, fair and balanced. The choice of instrument — a regulation directly applicable in all Member States — is necessary in order to achieve a higher degree of harmonisation and greater uniformity in the outcome of asylum procedures across all Member States. The EESC considers the regulation to be a step in the right direction, limiting secondary movements between Member States and thus facilitating the exercise of the solidarity principle.

3.2 The procedures have to be clear and ensure predictability. Maintaining the 6-month time limit for an applicant to access the procedure and for concluding the examination of applications at administrative and judicial level is reasonable.

3.3 With regard to exceptions, the definition of unfounded and inadmissible claims must be clarified.

3.4 The EESC fully supports the provision of assistance by the European Union Agency for Asylum to Member States that receive a disproportionate number of simultaneous applications.

3.5 The EESC welcomes the establishment of procedural guarantees safeguarding the rights of the applicants. This is an area where the Committee's position has always been clear. All applicants reaching a Member State are in a state of vulnerability, almost all of them having travelled long distances and having experienced hardship and danger. There are linguistic, cultural and psychological barriers to be overcome in order to adapt and cooperate with the authorities. Even though the new proposed procedures are clearer, it is the Member States' authorities that will have to implement them. If the authorities have difficulties working with the new procedures, forms of assistance and support need to be identified.

3.6 Regarding the intention to harmonise the rules on safe countries, the EESC generally supports the progressive move towards full harmonisation by replacing national safe country lists with European lists or designations at Union level within 5 years of entry into force of the regulation ⁽²⁾.

3.7 In terms of the appeal procedure, the EC proposal establishes the right to an effective remedy, with explicit time limits and with automatic suspensive effect, except in cases of refusals in accelerated procedures, non-admission by first country of asylum and subsequent application, refusals due to explicit or implicit withdrawal, and decisions on an earlier action.

3.8 The period for which protection is granted has a direct impact on the prospects of integration. The period should be long enough to provide incentives for beneficiaries of international protection, authorities and employers.

⁽²⁾ The position of the EESC on the subject was formulated in the Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU (COM(2015) 452 final) (OJ C 71, 24.2.2016, p. 82).

4. Comments on the Standards of Reception Directive

4.1 The EESC has been an active promoter of the harmonisation of the reception conditions for applicants for international protection, not only to decrease their secondary movements but primarily to increase their chances of successful integration and full protection of fundamental rights.

4.2 The EESC welcomes the requirement that Member States must have contingency plans ready to ensure the adequate reception of applicants in cases when they are confronted with a disproportionate number of applicants.

4.3 The EESC fully supports the objective set by the Commission to increase applicants' self-reliance and possible integration prospects. This objective is in line with the position of the Committee which advocated quicker access to the labour market and also access to services and programmes to facilitate integration (e.g. with regard to language). Therefore the reduction of the time limit for access to the labour market from no later than 9 months to no later than 6 months from the lodging of the application is a step in the right direction.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation (EU) No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change’

[COM(2016) 479 final – 2016/0230(COD)]

and on the

‘Proposal for a regulation of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change’

[COM(2016) 482 final – 2016/0231(COD)]

(2017/C 075/17)

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

Co-rapporteur: **Mindaugas MACIULEVIČIUS**

Consultation	Council, 25 August 2016 European Parliament, 12 September 2016 European Commission, 20 July 2016
Legal basis	Article 192(1) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	24 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	210/0/2

1. Conclusions and recommendations

1.1. The EESC welcomes the timely proposals from the Commission to implement the EU’s commitment to reducing its greenhouse gases by 2030 in all sectors of the economy and society. The EESC, however, emphasises the need to simultaneously take into account the global long-term challenge of climate change mitigation. This requires a thorough evaluation of whether the EU’s current climate policy approach, with regard to efforts at global, EU and national levels, is appropriate in paving the way for a carbon-neutral world.

1.2. With regard to effort sharing, the EESC fully agrees with the view that differences between Member States have to be taken into account to ensure fairness and cost-effectiveness. To achieve genuine cost-effectiveness in a fair way, effort sharing calculations should, however, address both aspects at the same time across all Member States and set the targets in such a way that the relative costs are the same for each country. Due to the shortcomings of effort-sharing, the EESC feels it is important to introduce flexibility mechanisms and develop them further.

1.3. Integration of land use, land use change and forestry (LULUCF) into the 2030 framework brings a remarkable new element into EU climate policy. The EESC considers it necessary that the integration should take place in a way that enhances long-term carbon neutrality. Sustainable use and active management of bio-based natural resources, i.e. a sustainable bioeconomy — including sustainable forest management and climate-smart food production — is a key element

of this transition and should be carefully addressed in order to achieve environmentally, economically and socially sustainable growth.

1.4. The role of agriculture and forestry calls for a holistic approach from EU climate policy. Both the reduction of emissions and the sequestration of carbon need to be taken into account, as do the challenges of adaptation and food security. The Paris Agreement introduces a strong obligation to act in order to keep global warming 'well below 2 °C [...] and pursue efforts to limit the temperature increase to 1,5 °C', 'to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production'. It is therefore important to address the need for increased resilience in the agricultural sector while mitigating climate change.

1.5. The EESC calls on the Commission and the Member States to acknowledge the crucial role and potential of forests and sustainable forest management as a carbon sink and the associated social, environmental and economic benefits.

1.6. Carbon sequestration is not just a question of forest land area but first and foremost that of enhancing forest growth and vigorous photosynthesis by means of active forest management and the increased use of wood biomass for products and energy. Restricting the use of forest resources would in the long term result in diminishing sinks due to ageing, and thus slowly-growing forests. Similarly, on croplands and grasslands, the cycle of growth and harvest of the yield ensure that the removal of carbon dioxide remains as efficient as possible.

1.7. The EESC considers it important for the emission and removal of greenhouse gases to be evaluated scientifically, with transparency and common metrics. It calls on the Commission to develop the accounting rules of land and forest management in such a way that they reflect actual emissions and sequestration rates. In addition, the national forest reference levels need to be established by Member States in accordance with the projected sustainable use of forest resources. The EU should also develop a precise satellite-based tool for the global monitoring of forests. Furthermore, proper accounting methods should be developed for carbon sequestration by non-woody plants in agricultural soil. It is also important to avoid double accounting of biomass-related emissions of LULUCF in other sectors.

1.8. The EESC encourages individual Member States to provide ambitious national, bottom-up policies for the LULUCF sector, with the close involvement of civil society in the process at national, regional and local levels.

1.9. The EESC acknowledges that the success of the ambitious proposals requires substantial financial resources and encourages the Commission, in addition to the existing financing facilities, to set up a separate financing instrument, in conjunction with the EIB, to support the achievement of these goals. There is also a need for intensive research and innovation to develop and adopt new methods for climate change mitigation.

2. Introduction

2.1. On 20 July 2016 the European Commission submitted proposals for a regulation on greenhouse gas emission reductions by Member States from 2021 to 2030 (Effort Sharing 2030) and for a regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF) into the 2030 climate and energy framework. At the same time, the Commission launched a Communication on a European strategy for low-emission mobility. In this opinion, the EESC expresses its views on the proposed regulations, while the views on the Communication on transport are presented in another opinion (TEN/609).

2.2. The proposals are part of the implementation of the EU's commitment to reducing its greenhouse gas emissions by at least 40 % by 2030, compared to the 1990 level. As agreed by the EU, the 2030 target requires an emissions reduction of 43 % in the sectors under the EU Emissions Trading System (ETS) and of 30 % in other sectors (non-ETS), both compared to the 2005 levels. The revision of the ETS Directive is being addressed by the European Parliament and the Council. The EESC expressed its views on this revision in its opinion NAT/675.

2.3. The proposed regulations apply to non-ETS sectors and activities such as transport, buildings, agriculture and waste, as well as land use and forestry. The emissions reduction targets of the Member States are an extension to the current Effort Sharing Decision on the EU's climate targets for 2020, whereas land use and forestry are for the first time included in the EU energy and climate framework. So far, they have been considered in the context of the Kyoto protocol.

2.4. The Commission proposes differentiated national emission reduction targets with the aim of complying with the principles of fairness and cost-effectiveness called for by the European Council. The targets of individual Member States for 2030 vary from 0 % to 40 %. As for land use and forestry, the Commission proposes that emissions and removals, calculated according to the accounting rules, must be in balance in every Member State.

2.5. The Commission proposes to continue with a flexibility system which allows emission allocations to be transferred between Member States and over time. The Commission also proposes new flexibilities allowing the effort sharing sector to carry out certain trade-offs with the ETS and LULUCF sectors.

2.6. The proposed regulations also address the monitoring and reporting of greenhouse gases, including accounting rules for land use and forestry.

3. General comments

3.1. Overall, the EESC welcomes the timely proposals by the Commission to implement the EU's commitment of reducing its greenhouse gases by 2030 in all sectors of the economy and society. However, it emphasises the need to simultaneously take into account the global long-term challenge of climate change mitigation. This means that the policies and measures must be compatible with the long-term aim of achieving a carbon-neutral world.

3.2. In its recent opinion (NAT/690) the EESC called on the EU to aim at increasing its positive impact on the global climate ('carbon handprint') instead of just focusing on the reduction of its own emissions. Providing climate solutions for and implementing joint projects with third countries should therefore also be encouraged in the 2030 climate policy context, taking into account the fact that the Paris Agreement refers to a new international cooperation mechanism for combating climate change.

3.3. In the above-mentioned opinion the EESC also called for a more effective 'Climate Union' where climate aspects are closely integrated into the related single-market policies. The division of the joint emission reduction target into national sub-targets may move in a more fragmented and disintegrated direction. The EESC therefore calls on the Commission to also evaluate options and possibilities for a more coherent community approach in the non-ETS sector with regard to EU climate policy for the post-2030 period.

3.4. A sectoral approach, as opposed to the effort sharing between Member States, is another possible climate policy route. The communication on transport is based on this approach. The EESC considers it important to distinguish between single market-related issues and those that are national in nature. Generally speaking, a sectoral approach fits better with the single market, whereas a country-specific approach is relevant in issues such as the management of domestic natural resources. This holds true particularly with regard to forest policy.

3.5. Integration of land use and forestry into the 2030 framework brings a remarkable new element into the EU climate policy. The EESC considers it necessary for the integration to take place in a way that enhances long-term carbon neutrality and sustainable growth, instead of focusing on short- and mid-term actions only.

3.6. The need to reduce emissions and increase carbon storage acts as a driver for using biomass as a raw material for various kinds of bio-products and as a source of renewable energy, including the use of sustainable bioenergy in conjunction with transport decarbonisation. A sustainable bioeconomy, i.e. the sustainable use and management of bio-based natural resources, is thus a key element in the transition to carbon neutrality.

3.7. The forest sector can play a key role in reducing carbon dioxide emissions, increasing renewable energy and promoting sustainable consumption. The EU's forest resources are growing, thanks to long-term investments in forest management with the aim of increasing sustainable levels for harvesting in the future. The increasing use of biomass will also require active forest management in the future.

3.8. The EESC wants to stress that the EU climate policy must not set limits for the use of forests, provided that harvesting does not exceed the growth of forest resources and sustainable forest management practices are followed. Short-term restriction of forest use would in the long term result in diminishing sinks.

3.9. Climate change is also closely linked to food security, particularly at global level. It is therefore vital to be able to respond simultaneously to the challenges of both food security and climate change mitigation. Land availability for cultivation and the pressures of urbanisation should prompt the sustainable increase of productivity in order for Europe to contribute its share to addressing the global challenge of food security.

3.10. As for the net emissions of the agricultural sector, the EESC recalls that there is also a similarly ambitious proposal on National Emissions Ceilings (NEC) and calls for consistency and the avoidance of overlapping burden in the development and implementation of the different pieces of legislation.

4. Specific comments on the Effort Sharing proposal

4.1. The Commission has heeded the European Council's call to take into account the principles of fairness and cost-effectiveness in its proposal. The EESC fully agrees with the view that the differences between Member States have to be taken into account to ensure both fairness and cost-effectiveness. This relates to differences in the specific features and starting points of the countries, as well as the economic and social potential of reducing emissions.

4.2. The EESC, however, draws attention to the fact that the proposed approach does not lead to the most effective outcome at EU level, as fairness and cost-effectiveness are considered separately from each other. To achieve genuine cost-effectiveness in a fair way, calculations should cover both aspects at the same time and across all Member States.

4.3. Ideally, the most cost-effective solution would be found by calculating the cost curves of the emission reductions in each country and setting the targets at the point where the marginal costs in relation to GDP are the same. This would also eliminate the possible problem of over-allocation. Another option would be to set the same relative target for each country and then use flexibility mechanisms to find the best solution.

4.4. As for the outcome of effort sharing, the EESC notes that it is difficult to verify. The EESC therefore stresses the importance of transparency in presenting the data and assumptions of the calculations as well as the methodology used.

4.5. In order to increase predictability, the EESC considers it important to take into account and prepare for the possible impacts of 'Brexit' on effort sharing. On the other hand, Norway and Iceland have expressed their intention to participate in the joint action by the EU, which may also have an impact on the implementation of effort sharing.

4.6. Due to inevitable shortcomings in effort sharing, it is important to introduce flexibility mechanisms and rules that make it possible to achieve maximum benefits in efficiency. New kinds of cross-sectoral flexibility should also be examined. In addition, there needs to be an efficient, transparent system to monitor the outcome of the flexibilities.

4.7. The flexibility provided by the possibility of trading annual emission allocations between Member States and implementing measures in another state contributes to both increased cost-effectiveness and fairness. The option of transferring emission allocations over time is also necessary and should be less restricted, because in practice emission reduction measures do not follow a linear trajectory from year to year.

4.8. The Commission's proposal on the option of using emission allowances from the ETS sector to offset the emissions of other sectors is welcome because it also aims at optimising emission reductions. At the same time one has to recognise that cancelling emission allowances in one country also has an impact on other countries, due to the EU-wide emissions trading system.

4.9. The EESC welcomes the possibility of using carbon removals and emission reductions in the LULUCF sector to offset emissions in other sectors. The possible inclusion of forest management in flexibility mechanisms has to be designed in a way that incentivises sustainable forest management and forest growth and does not undermine the use of forest resources as a raw material of the bioeconomy.

5. Specific comments on the LULUCF proposal

5.1. The role of agriculture and forestry calls for a holistic approach from EU climate policy. In addition to climate change mitigation, agriculture and forestry also face the challenge of adapting to climate change, being the sectors hardest hit by adverse climatic events. For that reason, a mitigation path with the least negative impact on production has to be encouraged. As mentioned in the Commission's proposal, it is important to consider the EU's position on the global stage and take into account the global stocktake of the Paris Agreement, especially with regard to environmental integrity and the possible negative effects of carbon leakage.

5.2. According to the Paris Agreement, human-induced greenhouse gas emissions by sources and removals by sinks such as forests should be in balance by the second half of the century. It is therefore crucial to keep forests as sinks and to avoid the saturation of carbon in ageing forests.

5.3. Sustainable forest management, together with the use of wood as a raw material for products and the substitution of fossil fuels with bioenergy, is an effective means of controlling carbon balance. To avoid undermining environmental integrity, fossil emissions from other sectors should not be offset by forest sinks in a way that would reduce wood availability for the purposes of the bioeconomy.

5.4. Management of forest sinks is not only a question of forest land area but first and foremost of enhanced forest growth by means of active forest management, and the increased use of wood-products. The EESC therefore deems it significant that harvested wood products (HWP) are included in the LULUCF, and the Member States should make full use of the potential provided by HWPs for carbon storage and the credits created by that. Furthermore, it should be possible to allow emissions caused by deforestation to be offset by increased forest resources achieved by sustainable forest management.

5.5. In order to make use of the significant potential of sustainable forest management ⁽¹⁾ in climate change mitigation, the EESC calls on the Commission to focus intensive efforts on developing the accounting rules of forest management. The rules have to reflect the actual forest growth and sequestration rates so as to avoid the problem with the current rules, which is that in certain cases actual sinks are defined as emission sources.

5.6. The proposed accounting rules on the forest reference levels are more complicated than before and do not sufficiently encourage the enhancement of forest growth or bioeconomy. The EESC proposes that — instead of establishing too-detailed criteria — the national forest reference levels should be established by Member States in accordance with the projected use of forest resources, while ensuring that annual harvesting does not exceed annual growth in the long term.

5.7. The EESC welcomes the Commission's note that in order to avoid double accounting of emissions, the use of biomass in the energy sector has to be considered carbon-neutral, as stated in the IPCC Guidelines. Moreover, any other double accounting of emissions has to be avoided.

5.8. The EESC calls on the Commission to strive for streamlined global accounting rules for the LULUCF. To encourage other countries to engage in the process, the rules should be as simple as possible. At international level, the EU should also contribute its own knowledge with regard to forest resource inventories and monitoring methods, and in particular develop a precise EU satellite system with the capacity to provide actual global data.

5.9. As with forest management, active cropland and grassland management also contributes to combating climate change, while contributing to global food security. The improvement of cropland and grassland management, including soil productivity, harvest and replanting, enhances carbon sequestration and should thus be credited in a proper way. Limiting biomass production would in the long term result in less and less removal of greenhouse gases from the atmosphere due to reduced photosynthesis. The speciality of organic soils should also be taken into account and possibilities offered for continuing to farm on them.

⁽¹⁾ Nabuurs et al. 2015. A new role for forests and the forest sector in the EU post-2020 climate targets.

5.10. In order to make full use of the significant potential of cropland and grassland management to increase soil carbon sink and indicate possible improvements in their performance, the EESC calls for research into and the development of accounting rules for biomass associated with annual and perennial non-woody plants. The potential of a dynamic soil management approach that focuses on optimising its functions — taking local conditions into consideration — would benefit not only the climate and the environment but also contribute to the economic and social sustainability of the farming sector — especially small family farms.

5.11. All in all, the success in Paris was achieved with a bottom-up approach of setting national targets, based on the strengths and opportunities provided by individual states. The EESC also acknowledges the differences of the Member States in the LULUCF sector. The policies should thus be tailored at national level according to the subsidiarity principle and LULUCF should be kept as a separate pillar of climate policy.

5.12. The EESC would encourage individual Member States to put in place ambitious policies for climate change mitigation in the LULUCF sector, while creating a long-term vision for sustainable land use and forestry, and particularly involving civil society and social partners in the process at national, regional and local levels.

5.13. To enable ambitious policies to be put into practice, substantial financial resources are needed. To this end, the EESC calls on the Commission, in addition to the existing financing facilities, to set up a separate financing instrument, in conjunction with the EIB, to support achievement of these goals. Moreover, there is a clear need for increased investment in research and development aimed at new methods of climate change mitigation.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council on establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, and repealing Council Regulation (EC) No 676/2007 and Council Regulation (EC) No 1342/2008

(COM(2016) 493 final — 2016/0238 (COD))

(2017/C 075/18)

Rapporteur: **Thomas McDONOGH**

Consultation	Parliament, 12 September 2016 Council, 26 September 2016
Legal basis	Articles 43(2) and 304 of the Treaty on the Functioning of the European Union
Bureau decision	20 September 2016
Section responsible	Section for Agriculture, Rural Development and the Environment
Adopted in section	24 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	211/1/3

1. General and specific comments and recommendations

1.1. The common fisheries policy was introduced in the 1960s and 1970s and needs constant revision. The Committee welcomes this process of updating the policy to keep pace with technological changes, with a view to improving conservation and protecting fish stocks. The Committee welcomes the moves proposed by the Commission, many of which are suggested in the 2016 WGNSSK report ⁽¹⁾. This will help bring European fisheries law up to date and protect a very valuable industry.

1.2. The fisheries of the North Sea and adjacent areas are highly complex, involving vessels from at least seven coastal Member States, as well as Norway, using a wide variety of different fishing gears to target a wide range of different fish and shellfish species. A key issue is that many of the most important demersal stocks (i.e. those that live on or near the bottom of the sea) are caught in mixed fisheries. In practice, this means that each time a vessel retrieves its fishing gear, its catch will consist of a mix of different species. The composition of that mixture will change depending on the type of fishing gear in use, and on when and where it is used.

1.3. For vessels catching fish stocks subject to total allowable catches (TACs), it means that they should stop fishing once their quota for that stock is exhausted. Prior to the adoption of the Basic Regulation ⁽²⁾, vessels did not have to stop fishing once their quota for one of these species was exhausted. Instead, they were able to continue fishing for other target species and, as a result, they continued to catch the species for which quotas were already exhausted, even though they could not legally land these catches. These catches in excess of the quota had to be discarded. Once the quota for that stock was exhausted, it would block the opportunities to continue fishing for other stocks. It is, therefore, desirable to account for the fact that some stocks are caught together in mixed fisheries when setting TACs for these stocks. Such an approach should have advantages for both stock conservation and for exploitation of the stocks. This proposal takes this approach.

⁽¹⁾ Report of the ICES (International Council for the Exploration of the Sea), Working Group on the Assessment of Demersal Stocks in the North Sea and Skagerrak, convened in Hamburg, Germany, from 26 April to 5 May 2016.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

1.4. The Basic Regulation aims at solving the problems of overfishing and discarding fish more effectively than past legislation. Hence, appropriate measures should be taken in order to avoid negative economic and social consequences for the fishing industry. The first step towards such adaptive management would be to incorporate all relevant stocks into a single management plan. This would include target fishing mortalities expressed in ranges for each of the stocks, where available, which would be the basis for setting annual TACs for those stocks.

2. Other comments and recommendations

2.1. An independent commission should be set up to review national quotas. However, the regeneration of fish stocks not only depends on fishing mortality but also on other factors such as climate change. Any moves towards sustainable fisheries will require the adaptation of fishing vessels and gears (which is expensive), sound scientific data and continuous measures to train and raise awareness among fishermen. The social aspect of fishing also needs consideration since small-scale fishermen are being driven out of business. It is a priority to maintain existing jobs in the communities in many EU coastal areas that are dependent on fisheries.

2.2. More research needs to be carried out into the effects of fish farming on wild stocks. Wild salmon is in danger of extinction — mainly because of overfishing and poor regulation, but the effect of fish farms on the wild salmon is an unknown quantity. With proper marketing, wild salmon should achieve a premium price over farmed salmon. Sport fishing makes a major contribution to the economy in more remote areas: it is estimated that each wild salmon caught contributes EUR 1 200 on average to the local economy by way of salaries paid to gillies, accommodation, transport, etc.

2.3. Measures need to be taken to reverse the decline in eel fishery. The problem of juvenile fish catch should be dealt with by increasing the minimum net mesh size. There should also be restrictions on mono-filament nets.

2.4. Penalties should be increased for violations of the fishing laws. Strong measures should be taken against the employment of illegal immigrants on fishing boats, many of whom are not even paid and are virtual prisoners since their passports are seized (this has been known to happen to people from Central America). Living and working conditions at sea have to adhere to the highest EU standards. This also applies to non-EU workers.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the Aviation package II,

including a

‘Proposal for a regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council’

(COM(2015) 613 final — 2015/0277 (COD))

and a

‘Report from the Commission to the European Parliament and the Council — The European Aviation Safety Programme’

(COM(2015) 599 final)

(2017/C 075/19)

Rapporteur: **Raymond HENCKS**

Co-rapporteur: **Stefan BACK**

Consultation	Council of the European Union, 19.1.2016
Legal basis	Article 100(2) of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	15.11.2016
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	184/01/02

1. Conclusions and recommendations

1.1 The EESC is favourable to the new approach based on risk assessment and performance, provided that prescriptive rules remain in place wherever required to ensure safety. The EESC considers that successful implementation of this change in working methods and culture requires time and adequate resources. The EESC also underscores that this transition must take place with the close involvement with staff and stakeholders.

1.2 The EESC agrees that EASA should share greater responsibility for security, in cooperation and in agreement with the Member States, including with regard to the specific rules on emergencies, on condition that adequate resources are granted to enable the EASA to successfully carry out its tasks in this field. The EESC further believes that Regulation (EC) No 300/2008 should be revised in view of the developments since 2008.

1.3 The EESC draws attention to the rapidly changing context in which civil aviation operates, due both to rapid technical development, including digitalisation, and to the development of new business models and new models of employment and service provision. The EESC attaches great importance to the regular evaluation of the new Regulation every 5 years provided for in the proposal. It is important that the potential safety and security aspects of such developments are exhaustively evaluated in the impact assessment and that appropriate measures are planned and undertaken in time.

1.4 The EESC welcomes the inclusion of ground handling in the scope of this Regulation and suggests considering a certification requirement on ground handling providers and staff with safety-critical roles.

1.5 The EESC welcomes the development of certification standards for cabin crew but regrets that the Commission does not propose a licensing system for cabin crew.

1.6 The EESC endorses the inclusion of unmanned aircraft in the scope of the proposal and underlines the importance of setting high standards.

1.7 The EESC would warn against unnecessary complexity and the duplication of certification or control requirements regarding aerodrome equipment, except where clearly warranted for safety reasons.

1.8 The EESC takes favourable note of the tasks of oversight, cooperation and assistance in relation to national authorities that are provided for in the proposal and hopes that these will lead to continued high, harmonised and efficient standards as regards safety, improved exchange of information and benchmarking, which will ensure better resource efficiency. In this context, the EESC takes note of the European Aviation Safety Plan and the European Aviation Safety Programme and the possibility they will provide for developing and implementing higher and harmonised safety standards.

1.9 The EESC supports the proposed mechanism for the voluntary transfer of functions from national authorities to EASA, including the specific rules on emergencies.

1.10 The EESC takes the view that the possibility provided for European operators operating in several EU countries to opt for EASA as their competent authority must require the notification of the competent national authority or authorities. The possibility for the above mentioned operators to opt for EASA as competent authority cannot be applied for measures falling under Articles 59 and 60.

1.11 The EESC notes the importance of exchanging information and emphasises that information obtained for safety improvement purposes should not be used in the judicial system except in exceptional circumstances, such as wilful misconduct. The just culture must be safeguarded and EESC repeats its proposal that a Just Culture Charter should be developed and implemented.

1.12 The EESC also takes note of the proposal to introduce a provision on charges for Single Sky Services as a means of financing EASA activities despite the fact that the substantive rules on these charges will be inserted in provisions that are not yet in place. It is furthermore not clear how the planned charges are to relate to the route-charging system currently managed by Eurocontrol on behalf of the States Parties to a multilateral agreement. Bearing this in mind, the EESC considers that it would be premature to legislate on the use of a charge that does not yet exist and where several options are possible as to its configuration. The EESC therefore suggests that this proposal be rejected.

1.13 Considering that the EASA is to establish rules on certification and safety criteria that may also be of interest to the general public, the EESC suggests that texts of this nature be translated into all EU official languages. For the sake of transparency, the EASA website should also be available in languages other than English. In this context, the EESC would also draw attention to the EU Charter of Fundamental Rights, in particular Article 21 thereof.

1.14 With regard to the proposal to alleviate formalities on the wet lease of aircraft, the EESC points out that the proposal primarily deals with safety, whereas issues concerning wet lease relate to commercial operations, market access and competition. They may also have a significant socioeconomic dimension. The EESC therefore advises against amending the substantive provisions on wet lease at this stage and considers that this issue should be addressed when Regulation (EC) No 1008/2008 is reviewed.

1.15 With respect to the ongoing evaluation of Regulation (EU) No 996/2010, the EESC refers to importance of the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA) network and considers it essential that adequate resources are provided for this important activity. The EESC also refers to its statement on Just Culture in 1.11 above.

2. Introduction

2.1 The proposal for a safety regulation ⁽¹⁾ (the proposal) is to replace the 2008 regulation ⁽²⁾. The proposal maintains and/or updates some of the provisions of the 2008 regulation and introduces new measures. It is based on the standards of the International Civil Aviation Organisation (ICAO) and on public consultations among the Member States and stakeholders, including the social partners. It is based on a Commission report on the European Aviation Safety Programme ⁽³⁾ and on a number of studies. It is a step towards implementation of the communication *An aviation strategy for Europe* ⁽⁴⁾.

2.2 The proposal introduces an approach to safety rules based on anticipation, risk assessment and performance, to improve resource efficiency and better target oversight work at all levels. Its aim is to close safety gaps and take greater account of the interlinkage between aviation safety and other areas, such as aviation security and environmental protection.

2.3 The proposal aims to ensure a high degree of enforcement and oversight throughout the EU by means of close cooperation between authorities at European and national levels, including exchanges of information and effective control and monitoring. It updates the 2008 regulation to cover technical developments, such as unmanned aircraft.

2.4 The Commission is undertaking an evaluation of Regulation (EU) No 996/2010 on the investigation and prevention of accidents in civil aviation (the regulation) and has sought the views of the EESC (Commission Staff Working Document on the implementation of the Regulation (EU) No 996/2010). In 2010 the EESC issued an opinion on the proposal for this regulation ⁽⁵⁾.

3. General comments

3.1 The EESC endorses the proposal's aims to strengthen the rules on safety and security in civil aviation, and to clarify the role of the European Aviation Safety Agency (EASA) in security. The EESC also agrees with the proposal for the EASA to provide technical assistance to the Commission in the implementation of safety legislation and for it to be empowered to take related measures, with the agreement of the Commission and after consultation of the Member States.

3.2 The EESC agrees that EASA should share more responsibility for security, in cooperation and in agreement with the Member States, including the specific rules on emergencies, on condition that adequate resources are provided to enable the EASA to successfully carry out its tasks in this field. The EESC also holds that *Regulation (EC) No 300/2008 establishing common rules in the field of civil aviation security* has been superseded by developments since 2008 and should be put back on the drawing board.

3.3 The proposal seeks to prepare the EU's aviation safety regulatory framework for the challenges of the next 10 to 15 years. The EESC believes that projections over such a long period will be overtaken by technological development and the constantly changing safety risks, such as, the emergence of unmanned aircraft, new forms of cybercrime, the risk of landings being disrupted by lasers, etc. Therefore, the EESC considers that civil aviation safety rules should be reviewed regularly and frequently. The EESC consequently supports the proposal for an evaluation of the new regulation every 5 years.

3.4 The EESC reaffirms ⁽⁶⁾ that safety is the cornerstone of a sustainable aviation strategy and that there is no room for complacency on this subject. Therefore, the proposal's approach should be assessed against these requirements, particularly in the light of the Commission's aim ⁽⁷⁾ of identifying and addressing safety risks more quickly and more effectively by shifting to a risk- and performance-based mind-set, while maintaining at least the same level of overall safety.

⁽¹⁾ COM(2015) 613 final.

⁽²⁾ OJ L 79, 19.3.2008, p. 1.

⁽³⁾ COM(2015) 599 final.

⁽⁴⁾ COM(2015) 598 final; OJ C 389, 21.10.2016, p. 86.

⁽⁵⁾ OJ C 21, 21.1.2011, p. 62.

⁽⁶⁾ OJ C 13, 15.1.2016, p. 169.

⁽⁷⁾ COM(2015) 598 final.

3.5 The method proposed is *a more proportionate and flexible approach to safety regulation*. The aim is to identify and reduce safety risks more quickly and more effectively through an approach based on risk assessment and performance to ensure a higher level of overall safety. The EESC welcomes this approach, but points out that some prescriptive rules have to remain in place to guarantee a level-playing field. In addition, such a significant transition requires adequate resources and a transition process that is transparent to all stakeholders, including staff, and which offers the time needed for the change of culture necessary to fully implement the new approach.

3.6 A study commissioned by the Commission on the availability, efficiency of use and evolution of the human resources of aviation authorities, as well as the financing of the European aviation safety system (the support study on resources) found that the resource-to-workload balance has deteriorated over the last 10 years and identified shortcomings as regards the qualifications of staff. The study outlines a series of options to solve this dilemma. The EESC stresses the need to find a solution within the framework of social dialogue.

3.7 A second study, on performance schemes and the performance-based approach, explored the possibility of incorporating performance elements into aviation safety management (the support study on performance). It concluded that this is feasible, but cautioned against a rapid introduction for technical reasons. The study found it impossible to quantify the benefits of a performance-based approach prior to its implementation. In the EESC's view, the conclusions of this study highlight the importance of implementing the new approach prudently and consistently.

3.8 In this context the EESC draws attention to the question of societal and social development, including new forms of employment and new forms of business models often linked to the digital economy also in the aviation market and the safety implications of this development. The communication on an Aviation Strategy for Europe⁽⁸⁾ and several EESC opinions⁽⁹⁾ consider that due consideration should be given to these questions. The EESC considers that they must also be taken into account when implementing the Proposal, including when assessing the impact of implementation measures.

3.9 The EASA is to assess the performance of bodies in the context of the European Plan for Aviation Safety (EPAS) but it has not yet set safety performance targets for the bodies under its responsibility. This again highlights the importance of swiftly and effectively resolving the resource problems referred to in point 3.6 above.

3.10 The rules, activities and procedures included in the European Aviation Safety Programme (EASP) should be monitored, in order to assess their relevance and effectiveness. Monitoring should be based on indicators such as regulatory compliance, the frequency of certain types of events affecting safety, the number of accidents and fatalities and the maturity of safety management systems. Such indicators are used by States to determine the 'acceptable level of safety performance' in their country, in accordance with ICAO requirements. The proposal emphasises cooperation between the EASA and national authorities, including the role of the EASA as manager of the new repository of information referred to in Articles 61 to 63. The EESC stresses the importance of this move to improve the oversight and enforcement system.

4. Specific comments

4.1 Environmental Protection

The EESC approves the addition of a new provision on environmental issues, including the environmental review to be published by the EASA every 3 years.

4.2 Recognition of third-country certificates

The EESC underlines the importance of reciprocal recognition agreements with important partner countries, in order to support the EU avionics industry and international trade in this sector.

⁽⁸⁾ COM(2015) 598 final, Section 2.3.

⁽⁹⁾ OJ C 13, 15.1.2016, p. 169, point 3.1.3; OJ C 13, 15.1.2016, p. 110, point 2.7 and OJ C 389, 21.10.2016, p. 86, point 1.3.

4.3 *Ground handling*

4.3.1 The EESC welcomes the fact that ground handling, as an important part of the civil aviation safety chain, has been included in the scope of this regulation.

4.3.2 However, the EESC would suggest considering a certification requirement on ground handling providers as well as for ground handling staff with safety critical roles. The essential requirements included in Annex VII to the proposal should be further developed and detailed, mainly regarding training standards and qualifications.

4.3.3 Further issues for consideration include:

- the number of staff and different providers around the aircraft in relation to turn-around times,
- health risks stemming from exposure to air pollution on the tarmac.

4.4 *Aerodrome equipment*

4.4.1 Regarding the certification requirement for aerodrome equipment set out in Article 31 of the regulation, the EESC takes note that aerodrome equipment is typically certified under schemes for electrical equipment and other systems. A further certification scheme could mean double regulation for no or insignificant benefits. The EESC therefore suggests replacing the proposed Article 31 by a text saying that the EASA will respond appropriately when safety data demonstrate that equipment used or intended to be used at aerodromes subject to the new regulation poses a safety risk.

4.5 *Cabin crew*

The EESC welcomes the new essential requirements in Annex IV and the consolidation of cabin crew provisions in Article 21. It regrets the proposal's uses of the term 'attestation' and not 'license' despite the fact that the requirements in Annex IV (4) regarding cabin crew are equivalent to those warranting a licence or a certificate. To ensure consistency, cabin crew should therefore be granted a licence issued by a National Aviation Authority or by the EASA.

4.6 *Safeguard and flexibility provisions, Agency measures*

4.6.1 The EESC draws attention to the extension of emergency measures and flexibility provisions in Articles 59 and 60 of the Proposal compared to the current provisions of Articles 14 and 22 of Regulation (EC) No 216/2008, especially regarding flight-time limitations and other measures affecting the working conditions of staff.

4.6.2 The EESC is of the opinion that the period of 2 months without notifying the EASA in cases of safeguard-related measures (Article 59) or flexibility provisions (Article 60) must not be extended. Along the same lines, the EESC is opposed to the extension to 8 months in Article 65(4) Agency measures.

4.6.3 The EESC considers that there should be an obligation to seek the agreement of the staff concerned prior to a decision on urgency and flexibility measures that affects their working conditions. Where a decision has been taken without such an agreement, the EASA should immediately start the assessment procedure provided for in Articles 59(2) and 60(2).

4.7 *Cooperation between the competent authorities and the EASA, transfer of responsibilities*

4.7.1 The EESC welcomes the proposal to reinforce cooperation between the competent authorities of the Member States, the Commission and the EASA regarding certification, oversight and enforcement. It supports measures such as the establishment of a pool of inspectors and the emergency transfer of responsibilities to the EASA provided it does not adversely affect the employment terms and conditions of the workers involved. Both the criteria for emergency transfers and the requirements for returning oversight to the Member State must be clearly documented.

4.7.2 The EESC underscores the voluntary nature of the transfer of responsibilities to the EASA by a Member State under Article 53, except for the emergency transfer under Article 55, to resolve urgent safety shortcomings. Article 53.2, last paragraph, ensures that transfers take place with due regard to the national law and the agreement of the Member State concerned. The EESC considers that procedural and other safeguards ensure that a transfer works adequately and with due regard to legal security. The EESC therefore supports the proposed transfer mechanism.

4.7.3 The ability of Member States to transfer oversight to another Member State must remain voluntary providing the possibility for a State to regain the delegated authority.

4.7.4 The EESC takes note of the introduction of the possibility for multinational operators to select the EASA as their competent authority. In line with its views on the voluntary transfer of responsibilities the EESC can approve this proposal, subject to the consent of the national authority or authorities concerned and provided that that the measure does not adversely affect the employment terms and conditions of the staff involved.

4.8 Information gathering, exchange and analysis

4.8.1 As with the proposals for increased cooperation between the EASA and National Aviation Authorities, the EESC supports the reinforced provisions on information gathering, exchange and analysis. However, it requests further action to ensure the protection of personal data such as including this item in the IT audit system or improving the level of anonymity of data. In order to increase transparency, the de-identified data should be made available to all stakeholders.

4.8.2 The EESC also welcomes the establishment of a repository containing certificates, accreditations, measures, Commission decisions, Member State decisions, transfers of responsibilities, notifications, requests and other information.

4.9 Aviation Safety Management

4.9.1 While the EESC supports the inclusion of the reference to EASP, as well as National Aviation Safety Programmes, it draws attention to the challenge of making measures and material understandable for frontline workers. Therefore, it is essential that the EASP and national plans are based on a bottom-up approach wherever possible. Otherwise, the texts may not be helpful in delivering the desired change.

4.10 Unmanned aircraft (drones)

4.10.1 The EESC endorses the inclusion of unmanned aircraft in the scope of the proposal but reiterates its call for prudence in implementing the performance-based approach.

4.10.2 Therefore, comprehensive regulations have to be developed to ensure proper safety. The EESC considers it a challenge to ensure the compatibility of these new aviation activities involving drones with general air traffic; regulation on this topic is essential. Air Traffic Management is already a complex domain, with air traffic controllers bearing considerable responsibilities and the EESC calls for these workers not to be given unjustified responsibilities in order to adapt to a situation in which unmanned aircraft are flown. A coherent approach to licensing for the operation and possession of drones must be put in place including as regards registration. An obligation to obtain a licence — depending on the characteristics of the drone — would create awareness, would require knowledge of the applicable regulations and restrictions and would help to develop the necessary skills.

4.11 Cyber-threats

4.11.1 The EESC is particularly concerned about cybersecurity. Despite digitalisation, the human factor will remain key for data verification and protection against unlawful interference. While the availability of relevant data on board improves safety, the EESC points out that flight crews must remain in control of the airplane. Likewise, a robust system of protection against cyber-threats must be developed for drones.

4.12 *Shift to a performance-based approach*

4.12.1 One of the main advantages of the compliance-based system is the guarantee of equal treatment among operators. The EESC considers that the transition to a system based on risk assessment and performance must facilitate adjustments to a new culture and must uphold confidence in the safety system and its ability to ensure continuous improvement of safety levels in a performance-based system. This requires adjustment and adaptation at all levels. Developing the general comments in points 3.4 and 3.5 above, the EESC considers that the following elements are essential for a successful transition:

- sufficient resources must be available to ensure adequate safety levels at all times,
- the transition must be implemented in such a way that staff working conditions can be planned in advance. There must be transparency on planned changes,
- implementation of the new system must be accompanied by ongoing dialogue with stakeholders, including social dialogue,
- the pace of implementation must allow for a safe transition to the new system, taking account of the need to ensure a change of culture.

4.12.2 The EESC considers that a gradual transition to a new system and a new culture will take time. For the moment, it is doubtful as to whether safety will ever be completely covered by performance-based regulation.

4.13 *Occurrence reporting and Just Culture*

4.13.1 As in its previous opinions⁽¹⁰⁾, the EESC maintains that Just Culture must be applied in the whole aviation industry. The EESC doubts whether the proposal or any other existing EU legislation alone is enough to ensure compliance with just culture. Much work needs to be done in the Member States to promote just culture and to maintain a clear and predictable line between safety-related reporting and the judicial system. The EESC therefore reiterates its proposal for a charter or code of conduct to support good practice.

4.14 *Fines and penalties*

4.14.1 The EESC believes that the current system of fines and periodic penalty payments has been proven ineffective. The wording of Article 72(1) stating that '*The Commission may [...] impose on a legal or natural person [...] a fine*' should be changed to '*The Commission shall [...]...*'. It should be recalled that Article 72(3) still grants a margin of discretion. When considering whether or not to levy a penalty, the Commission must liaise with the relevant national authorities to ensure an approach consistent with national law enforcement.

4.15 *EASA funding*

The EESC considers that the proposal to include charges paid in accordance with provisions to come in the Regulation on the implementation of the Single European Sky is premature, and too unclear. It is, for instance, not clear whether a separate Single Sky charging system will be created or if the aim is to modify the current Route Charging system, currently handled by Eurocontrol (Multilateral Agreement Relating to Route Charges — Non-official edition — October 2006, available at the Eurocontrol website). Nor is it clear if the planned charges will be for Single Sky services only, or be used toward financing the Agency's general budget. For these reasons, The EESC considers that this proposal is premature and should be rejected.

4.16 *Working methods and stakeholder involvement*

4.16.1 Stakeholder involvement is and must remain an essential feature of the EASA's work. Therefore, we suggest that the wording '*whenever necessary*' be removed from Article 104(1)(b) to avoid arbitrary decisions on whether or not stakeholders will be involved in the activities of the Agency.

⁽¹⁰⁾ OJ C 21, 21.1.2011, p. 62 and OJ C 198, 10.7.2013, p. 73.

4.17 *Language arrangements*

Despite the fact that English is largely spoken in the aviation community, there are still some geographical and activity areas where national languages prevail. The EESC believes that in line with the prohibition of discrimination for language reasons set out in Article 21 of the Charter of Fundamental Rights, at least Certification Specifications and Acceptable Means of Compliance should be translated and published in all official EU languages. In addition, the EASA's website should be available in EU languages other than English, in order to increase transparency and public awareness.

4.18 *Internal structure*

The proposed wording of Article 90 will give significantly more power to the Commission at the expense of the European Parliament. The EESC therefore insists that one representative of the Commission and one representative of the European Parliament be given a place on the Management Board.

4.19 *Leasing*

The EESC strongly opposes the proposal to amend the provisions of Regulation (EC) No 1008/2008 on leasing. Since the assessment of this regulation is scheduled to take place in 2017-2018, it should be dealt with separately.

5. Evaluation of Regulation (EU) No 996/2010 on the investigation and prevention of accident and incidents in civil aviation

As already referred to in point 4.13 above, the EESC reiterates the need to safeguard the just culture and its suggestion of a charter to that effect. The EESC supports a soft-law approach and supports the successful cooperation within ECANSIA as a forum for pooling resources and knowledge and as an arena to instigate studies and issue safety recommendations and set benchmarks. To achieve this, it is vitally important that adequate resources are available.

In the opinion of EESC, future work in the field governed by this regulation should focus on proper implementation rather than on changing the legal framework.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Online platforms and the digital single market — Opportunities and challenges for Europe

(COM(2016) 288 final)

(2017/C 075/20)

Rapporteur: **Thomas McDONOGH**

Consultation	European Commission, 25 May 2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	15 November 2016
Adopted at plenary	14 December 2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	175/0/3

1. Conclusions and recommendations

1.1. The Committee welcomes the action plan presented by the Commission, which includes a review of the telecom and e-privacy directives with regard to the position of OTT online communications services, a mapping exercise relating to platforms' voluntary measures, which may lead to a guidance document, a fact-finding exercise on B2B practices, the funding of open data projects, and eventually a strategy to facilitate and support the emergence of competitive EU-based platforms.

1.2. The EESC underlines that many online platforms are important elements of the collaborative economy and reaffirms its findings on the collaborative economy, especially on consumer protection, workers and self-employed people.

1.3. However, the EESC is concerned that the speed at which developments in the digital markets occur cannot be matched by the pace at which EU regulations and strategies are developed, to say nothing of their implementation at Member State level. The EESC would like to see how the coordination between the different parties in the Commission and the Member States could be enhanced and what kind of mechanisms would be helpful.

1.4. The Committee stresses the need to tackle the risk of fragmentation and the necessity of a coherent EU approach. Otherwise different national rules will create uncertainty, make scaling-up more difficult for start-ups and potentially limit the availability of digital services. This is all the more pressing in light of the fact that some Member States are already in the process of, or considering the introduction of specific measures to counter unfair trading practices, risking fragmentation of the Digital Single Market.

1.5. The communication does not contain specific proposals, and it sets out few tidy solutions. While some solutions are outlined, answers to the truly major questions on whether platforms harm their suppliers in some markets are deferred.

1.6. The diffusion of online platforms has produced huge benefits to suppliers, consumers, and to the economy and lifestyles in general. Nevertheless issues do and will occur and because of this the EESC recommends defining the most critical damage to businesses and consumers more precisely, and then efficiently and accurately addressing the extent to which these concerns are common to all online platforms, are sector-specific, or are specific to individual firms. The EESC also calls for cross-sectoral cooperation and monitoring of online platforms' development in order to address issues that occur over time.

1.7. The Committee welcomes the fact that the Commission intends to explore measures to facilitate switching and portability of data among different online platform and cloud computing services, both for business and private users.

1.8. The EESC calls for programmes to raise awareness and provide greater digital literacy for all citizens of all ages, among whom the youngest and the oldest are the most vulnerable. The EESC would welcome the introduction of systematic education on this as a European standard.

1.9. The EESC calls on the Commission to study the need for platforms to display user-friendly summaries, to make clear when personalised pricing is taking place and the basis on which they rank results, and also to enable unconditional and administratively easy exercise of the right to be forgotten.

1.10. The EESC welcomes the Commission's indication that it is working with online platforms on a code of conduct designed to combat online hate speech and content harming minors. However, the Committee thinks that some kind of sanctions also need to be introduced for those negligent in removing such content when they are aware of it.

1.11. The Committee is disappointed that the Commission has once again overlooked the social dimension of online platforms. The EESC stresses that platforms' social responsibility towards their workers, both those regularly employed and employees working in new forms of employment, needs to be more precisely defined. Special attention should be paid to the latter, and fair working conditions, adequate social protection, occupational health and safety, training, collective bargaining and union rights⁽¹⁾ should be provided to all platforms' workers, recognising the challenges brought forth by online platforms in the collaborative economy.

1.12. Contrary to the Commission's assessment that the existing legal framework is largely sufficient, the Committee calls for an EU framework on crowd working to prevent the undermining or circumventing of minimum pay rates, working time regulations and social security regulations.

1.13. The EESC urges the Commission to study the fiscal aspects related to the activity of online platforms, counteracting practices that run counter to a level playing field.

2. Gist of the Commission communication

2.1. Through its recent communication and staff working paper, and its digital single market strategy more generally, the Commission is seeking to encourage innovation by, and effective competition between, online platforms while also protecting consumers' rights and privacy.

2.2. The communication outlines the key issues identified in its assessment of online platforms and sets out its approach to online platforms in the future.

2.3. The communication does not propose an overarching set of new EU regulations on platforms.

2.4. The Commission proposes only introducing regulatory measures that address clearly identified problems relating to a specific category or activity of online platforms, as opposed to pre-emptive rules that might stifle innovation.

2.5. The Commission recognises that online platforms take various forms and are different in size, and are constantly evolving, meaning that there is no consensus on a single definition of online platforms.

2.6. In the Commission's view, adopting a 'one-size-fits-all' approach to platform regulation would not be an appropriate way to meet the different challenges posed by the various types of online platform.

2.7. The Commission recognises that the existing legal framework is largely sufficient to regulate platforms, although this legal framework does not neatly come under the jurisdiction of a single regulator.

⁽¹⁾ OJ C 71, 24.2.2016, p. 65.

2.8. The communication provides a roadmap and principles for future intervention:

- **a level playing field for comparable digital services,**
- **responsible behaviour of online platforms to protect core values,**
- **transparency and fairness to maintain user trust and safeguard innovation,**
- **open and non-discriminatory markets in a data-driven economy.**

2.9. The Commission will seek to level the regulatory playing field in the **telecoms** sector through, potentially, deregulation and specific rules for over-the-top communication service providers.

2.10. The Commission will consider extending the **e-privacy directive** to online communication services.

2.11. The Commission proposes, under a new **audiovisual media services (AVMS) directive**, that video-sharing platforms should have new obligations to tackle harmful content.

2.12. The Commission will assess the **liability** regime of online intermediaries including:

- the need for guidance on liability when putting in place voluntary measures to tackle illegal content online, and
- the need for formal notice-and-action procedures.

2.13. The Commission will further encourage (and regularly review the effectiveness of) coordinated EU-wide **self-regulatory** efforts by online platforms in terms of tackling illegal content online.

2.14. Online platforms will be encouraged to combat fake and misleading reviews.

2.15. The Commission will issue principles and guidance on e-ID interoperability in 2017.

2.16. New **copyright** proposals, recently adopted by the Commission, aim to achieve a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content.

2.17. The **regulation on consumer protection cooperation** is presented together with this communication, to facilitate more efficient enforcement of EU consumer law in cross-border situations.

2.18. The Commission has reviewed the guidance on the **unfair commercial practices directive** to be adopted together with this communication. It will further assess any additional need to update existing consumer protection rules in relation to platforms as part of the regulatory fitness check of EU consumer and marketing law in 2017.

2.19. The Commission intends to carry out a targeted fact-finding exercise into the **business-to-business** practices that occur within the online platforms environment in order to 'determine whether additional EU action is needed' by spring 2017.

2.20. The Commission plans to examine the potential barriers to a single EU data market that may arise from legal uncertainties regarding the ownership and usability of, or access to, data and — as part of the **free flow of data initiative** scheduled for the end of 2016 — to explore measures to facilitate switching and portability of data.

3. General comments

3.1. If Europe is to break the 1,5 % annual GDP growth barrier over the next decade, a vibrant digital economy will be critical (see Report of the World Economic Forum's Global Agenda Council on Europe).

3.2. Online platform businesses have become some of the most valuable and influential in the world and their role in the global economy will continue to grow.

3.3. The EU represents only 4 % of the total market capitalisation of online platforms ⁽²⁾.

3.4. The 50 or so major EU e-commerce operators are subject to 28 different national regulatory frameworks, whereas the six biggest operators in the American market and the three giants of the Chinese market are governed by a single regulatory framework ⁽³⁾.

3.5. Issues relating to online platforms have created pressure to act at Member State level and have increased fragmentation.

3.6. Harmonisation of contract law and consumer protection is critically important to the sustainable development and scaling-up of online platforms.

3.7. The EESC urges a sharp focus on the legislative and non-legislative initiatives to be tabled by the end of 2016 to create a fully integrated digital single market (DSM). The years 2016 and 2017 will determine whether Europe creates a digital roadmap to support competitiveness and growth, or slips into digital mediocrity.

3.8. The communication identifies a number of areas where the Commission is aware a problem exists but lacks evidence to decide what action — if any — is needed. Chief among these are B2B issues. It proposes 6 months of further study before making a decision in the spring of 2017.

3.9. The Committee awaits another important debate when the Commission presents the conclusions of its research into this area early next year.

3.10. Excessive or inflexible regulation would undermine the positive contribution of online platforms to the EU digital economy and changes in regulation should not be made at the expense of consumers and workers protection.

3.11. A level playing field for comparable digital services in a digital single market must not have a negative impact on tax revenues and must not facilitate a further erosion of the corporate tax base by allowing companies to pay tax in one jurisdiction, even when value is created in another. Tax on profits must be paid where the corresponding economic activity takes place.

4. Specific comments

4.1. The Commission describes platforms as being generally known as two-sided or multi-sided markets where users are brought together by a platform operator to facilitate an interaction.

4.2. However, the Commission's own list, covering social media and search engines to payment systems and advertising platforms, excludes traditional platform businesses that now operate online, yet includes some digital platforms that are not multi-sided.

⁽²⁾ COM(2016) 288 final.

⁽³⁾ See footnote 1.

4.3. In addition, the Commission's own list excludes the growing number of platforms where labour is provided. Hence it fails to address the specific problems of these platforms, especially regarding fair work and adequate social protection. In order to ensure that workers' rights and labour standards are not circumvented, and that those standards are guaranteed, the EESC calls for legislative action on employment rights and protection for online/platform workers, particularly those working in new forms of employment⁽⁴⁾. It should define workers engaged in work on online platforms as workers, presume their employment relationship, guarantee their right to equal treatment compared to regular employment and ensure effective enforcement of these provisions (for example, AppJobber, Applause, Clickworker, content.de, Crowd Guru, Designenlassen.de, Freelancer, greatcontent, Jovoto, Local Motors, Microworkers, MyLittleJob, Streetspotr, Testbirds, testIO, Textbroker, Twago, Upwork, 99designs).

4.4. There is strong first-mover advantage and platforms that are successful in exploiting network effects can become difficult to compete with as well as an unavoidable trading partner for businesses.

4.5. The online dispute resolution platform could be used for alternative dispute resolution for business-to-business disputes but first effective implementation of the online dispute mechanism for business-to-consumer disputes should be ensured.

4.6. Fear of commercial retaliation by the online platforms on which they depend may prevent complainants from approaching competition authorities. The EESC recommends new measures to protect complainants in these markets.

4.7. Those behind websites and ISPs which give them access often operate outside Europe or conceal their identity. Originally developed to target internet service providers hosting websites with pirated content, injunctions against ISPs to block infringing content can be a valuable tool for rights holders and website blocking orders can and have been applied in the fight to protect brands and customers from the sale of counterfeit goods online.

4.8. The strength of the US venture capital market relative to the EU is another incentive for emerging companies to move to the US.

4.9. The acquisition of companies with low turnover is not covered under the current notification requirements, even in cases where the acquired company holds commercially valuable data or has considerable market potential. The existing merger control regime could be modified by complementing thresholds based on turnover by means of additional notification requirements based on transactional volume.

4.10. Competition authorities could make greater use of interim measures and time limits to speed up enforcement activities in fast-moving markets.

4.11. Online platforms often request various information from their users which is not directly relevant to the platforms' content, and require them to accept terms and conditions they would not accept under normal circumstances but must in order to be able to use the platform service.

4.12. Personal data is the currency of today's digital market but many consumers seem to be unaware that they trade their personal data in exchange for access to many of the so-called free services and that their data may be sold or shared with third parties. In addition, irrespective of all existing and planned consumer protection measures, using the internet and attaining privacy is, in a technical sense, a contradiction, as there is always the possibility of highly skilled specialists gaining access to practically any data. It is therefore necessary to make all citizens of all ages — among whom the youngest and the oldest are the most vulnerable — also aware of such threats.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁴⁾ OJ C 303, 19.8.2016, p. 54.

Opinion of the European Economic and Social Committee on the ‘Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strengthening Europe’s Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry’

(COM(2016) 410 final)

(2017/C 075/21)

Rapporteur: **Thomas McDONOGH**

Consultation	European Commission, 18.8.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	15.11.2016
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote	148/0/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1 The Committee welcomes the communication from the Commission on Strengthening Europe’s cyber resilience system and fostering a competitive and innovative cybersecurity industry. The Committee shares the concern of the Commission about the continuing vulnerability of Europe to cyberattacks, noting that at least 80 % of European companies have experienced at least one cybersecurity incident over the last year and the number of security incidents across all industries worldwide rose by 38 % in 2015 (The Global State of Information Security Survey 2016, PWC). We agree with the Commission that a range of measures are needed to strengthen Europe’s cyber resilience system and to foster a competitive and innovative cybersecurity industry in Europe.

1.2 The Committee especially welcomes this proposal in the context of the recently adopted Network and Information Security Directive (NIS Directive) ⁽¹⁾, which sets out to harmonise the approach to cybersecurity within the European Union, and the broader Cybersecurity Strategy ⁽²⁾, which outlines the current vision on how best to prevent and respond to cyber disruptions and attacks, to further European values of freedom and democracy, and to ensure that the digital economy can grow safely.

1.3 The EESC agrees that comprehensive measures are required to further protect Europe’s vital digital infrastructure and services from security threats and we are pleased to see that the measures now proposed will go a long way towards implementing many of the Committee’s recommendations in numerous previous opinions ⁽³⁾ on enhancing cybersecurity across the Union.

⁽¹⁾ OJ L 194, 19.7.2016, p. 1.

⁽²⁾ JOIN(2013) 1.

⁽³⁾ OJ C 97, 28.4.2007, p. 21;
OJ C 175, 28.7.2009, p. 92;
OJ C 255, 22.9.2010, p. 98;
OJ C 54, 19.2.2011, p. 58;
OJ C 107, 6.4.2011, p. 58;
OJ C 229, 31.7.2012, p. 90;
OJ C 218, 23.7.2011, p. 130;
OJ C 24, 28.1.2012, p. 40;
OJ C 229, 31.7.2012, p. 1;
OJ C 351, 15.11.2012, p. 73;
OJ C 76, 14.3.2013, p. 59;
OJ C 271, 19.9.2013, p. 127;
OJ C 271, 19.9.2013, p. 133;
OJ C 451, 16.12.2014, p. 31.

1.4 The EESC is pleased that the Commission has signed the contractual Public Private Partnership (cPPP) on cybersecurity that is expected to unlock EUR 1,8 bn investment in the EU cybersecurity industry to foster cooperation at early stages of the research and innovation process and to build cybersecurity solutions for various sectors, such as energy, health, transport and finance. We are particularly keen to see this cPPP used to support the development of early-stage cybersecurity companies across the Union.

1.5 The Committee welcomes the Commission's intention to evaluate the need to modify or extend the mandate of the European Network and Information Security Agency (ENISA) by the end of 2017 and we look forward to being consulted on this by the Commission. The EESC believes that any extension of ENISA's mandate should include a greater operational role for the agency to more effectively increase cyberattack threat awareness and response across the Union, as well as more direct responsibility for cybersecurity education and awareness programmes especially targeted at citizens and small and medium-sized enterprises (SMEs).

1.6 In order to provide the strength of leadership and integration required at EU-level to deal with the complexities of implementing an effective Europe-wide cybersecurity policy, the Committee asks the Commission to evaluate the possibility of changing the status of ENISA into an EU-level authority for cybersecurity, analogous to the central authority in the aviation industry, the European Aviation Safety Agency (EASA). If this change of mandate for ENISA is not feasible, then the EESC advocates the creation of such an authority from scratch.

1.7 The EESC calls on the Commission to consider creating a national cybersecurity development model and rating system, analogous to the Capability Maturity Model (CMM) in the IT industry, to objectively measure the status of cybersecurity resilience of each Member State.

1.8 The Committee notes that the Commission will consider the need to update the 2013 EU Cybersecurity Strategy in the near future and we look forward to being consulted on the Commission's thoughts in due course.

1.9 Considering the importance of cybersecurity and the ever-growing threat of cybercrime, the EESC calls for the allocation of adequate funding and resources to the European Cybercrime Centre at Europol and the European Defence Agency.

1.10 Given the considerable importance of protecting the personal information of citizens that is stored by public administration institutions and agencies, the Committee calls for special training on information governance, data protection and cybersecurity for employees in public administration jobs.

1.11 Taking a comprehensive view of protecting the EU from cybercrime and cyberattacks, as well as growing a strong cybersecurity industry in Europe, the EESC considers that EU cybersecurity strategy and policy needs to deliver in particular on the following points: strong EU leadership; cybersecurity policies that enhance security while preserving privacy and other fundamental rights; awareness-raising among citizens and encouraging proactive protection approaches; comprehensive Member State governance; informed and responsible business action; deep partnership between governments, the private sector and citizens; adequate investment levels; good technical standards and sufficient R & D & I investments; and international engagement.

2. Gist of the Commission Communication

2.1 The Communication presents measures aiming to strengthen Europe's cyber resilience system and to foster a competitive and innovative cybersecurity industry in Europe, as announced in the EU Cybersecurity Strategy and in the Digital Single Market strategy.

2.2 To achieve this, the measures proposed by the Commission leverage the provisions in the NIS Directive to strengthen cybersecurity cooperation, information sharing, training and security organisation across the Union. The Commission will also complete an evaluation of ENISA by the end of 2017 and will consider the need to modify or extend the mandate of ENISA.

2.2.1 The Commission will work in close cooperation with Member States, ENISA, EEAS and other relevant EU bodies to establish a cybersecurity training platform.

2.2.2 There are a number of measures proposed to address inter-sectoral interdependencies and to enhance key public network infrastructure resilience, including the development of European Sectoral Information Sharing and Analysis Centres and their collaboration with CSIRTs. The Commission is also proposing that national authorities be allowed to request CSIRTs to conduct regular checks of key network infrastructures.

2.3 The measures proposed by the Commission will also address the need to increase support for the growth and development of a strong European cybersecurity industry with training, investment, single market requirements and the creation a new public-private partnership on cybersecurity that is expected to trigger EUR 1,8 billion of investment by 2020.

2.3.1 It is also proposed that a European ICT security certification framework proposal be developed, to be presented by the end of 2017, and to assess the feasibility and impact of a European lightweight cybersecurity labelling framework.

2.3.2 In order to scale-up cybersecurity investment in Europe and support SMEs the Commission will raise awareness about existing funding mechanisms among the cybersecurity community; step up the use of EU tools and instruments to support innovative SMEs in exploring synergies between civilian and defence cybersecurity markets (for example, the Enterprise Europe Network and the European Network of Defence-related Regions will provide new opportunities for regions to explore cross-border cooperation in the area of dual use, including cybersecurity, and for SMEs to engage in matchmaking activities); explore the feasibility of easing access to investment through a dedicated Cybersecurity Investment Platform or other tools; and develop a Cybersecurity Smart Specialisation Platform to help Member States and regions interested in investing in the cybersecurity sector (RIS3).

2.3.3 Furthermore, to stimulate and nurture the European cybersecurity industry through innovation the Commission will sign with industry a contractual Public Private Partnership (cPPP) on cybersecurity; launch Horizon 2020 calls for proposals related to the cybersecurity cPPP; and ensure coordination of the cybersecurity cPPP with relevant sectoral strategies, Horizon 2020 instruments and sectoral PPPs.

3. General comments

3.1 The digital economy generates over one fifth of GDP growth in the EU and most Europeans buy online each year. We depend on the internet and connected digital technology to support our vital energy, health, government and financial services. However, the critical digital infrastructure and services that play such an essential role in our economic and social lives are vulnerable to a growing risk of cybercrime and cyberattacks that threaten our prosperity and quality of life.

3.2 Much personal information on all citizens is now held electronically by governments and public institutions and agencies. Thus, good information governance, cybersecurity and data protection is of major importance to citizens across the Union, who need to be assured that their personal information and privacy is protected in accordance with EU directives and regulations. This is particularly the case with data concerning one's health, financial, legal and other matters that could be used to steal an identity or inappropriately disclosed to third parties. It is vitally important that all staff working in the public sector are well trained in information governance, cybersecurity and data protection.

3.3 The teaching of personal cybersecurity to citizens, including data security, should be a fundamental part of all digital literacy curricula. An education programme driven by the EU can support the efforts of less active Member States and also ensure that the strategy is properly understood, thus reducing privacy fears and increasing trust in the digital economy. Such a programme could be implemented with the involvement of consumer associations and civil society organisations across the Union, including education institutions serving the needs of older citizens.

3.4 Every Member State should empower its existing industrial development organisations to inform, educate and support the SME sector on issues regarding cyber security. The large firms can easily acquire the knowledge they need but SMEs need support.

3.5 It would be very useful to have an objective measure of the level of cybersecurity resilience of each Member State so that comparisons could be used to address weaknesses and drive improvements. Perhaps a national cybersecurity development model and rating system could be created, analogous to the Capability Maturity Model (CMM) in the IT industry, to measure the status of national cybersecurity protection and resilience.

3.6 A comprehensive cybersecurity strategy should include the following actions:

- strong EU leadership that puts in place the policies, laws and institutions to support high levels of cybersecurity across the Union,
- cybersecurity policies that enhance individual and collective security while preserving citizen rights to privacy and other fundamental values and freedoms,
- high awareness among all citizens of the risks of using the internet, and the encouragement of a proactive approach to protecting their digital devices, identities, privacy and online transactions,
- comprehensive governance by all Member States to ensure that critical information infrastructures are secure and resilient,
- informed and responsible action by all businesses to ensure that their ICT systems are secure and resilient, to protect their operations and the interests of their customers,
- a proactive approach by ISPs to the protection of their customers from cyberattacks,
- a deep partnership approach to cybersecurity across the EU between governments, the private sector and citizens, at strategic and operational levels,
- a design-led approach to build-in cybersecurity when developing internet technologies and services,
- adequate levels of investment in cybersecurity knowledge and skills development to grow a strong cybersecurity workforce,
- good technical cybersecurity standards and sufficient investment in R & D & I to support the development of a strong cybersecurity industry and world-class solutions,
- active international engagement with non-EU states to develop a coordinated global policy and response to cybersecurity threats.

4. Specific comments

4.1 Building on the cybersecurity governance framework outlined in the NIS Directive and the further measures now included in this Communication, the EU should consider addressing the fragmented approach to improving cybersecurity across the Union by creating a strong centralised cybersecurity authority, analogous to the European Aviation Safety Agency (EASA) or the Federal Chief Information Security Officer recently created in the USA (Cybersecurity National Action Plan, White House 9 February 2016), with responsibility for overseeing the implementation of cybersecurity policy at EU-level and integrating the efforts of the various agencies working in this domain.

4.2 The Committee is impressed by the competency that ENISA has developed over the years and we believe that it could contribute even more to Europe's cybersecurity resilience and security. The operational mandate of ENISA should be strengthened to more effectively increase cyberattack threat awareness and response across the Union. A review of the mandate is timely, given how the cybersecurity environment has changed since ENISA was established. Building on the NIS Directive, perhaps the operational role of ENISA could be expanded to increase the value it can deliver to the EU, Member States, citizens and companies, by leveraging its competencies and synergies with the work of other EU and MS institutions, agencies and bodies, like CERT-EU, the European Cybercrime Centre and the European Defence Agency. ENISA should also be given more direct responsibility for cybersecurity education and awareness programmes specifically targeted at citizens and SMEs.

4.3 When the European Cybercrime Centre (EC3) was created in 2013, it only had an operational budget of EUR 7 million, less than 10 % of the total Europol budget (European Commission Memo/13/6 of 9 January 2012). In 2014, the Director of EC3 said that cutbacks had severely limited the resources allocated to his unit and that they were struggling to keep up with the rapidly evolving cybercrime threats (Security Magazine, 1 November 2014). The EESC believes that the resources allocated to Europol to fight cybercrime need to be significantly increased to keep-up with the evolving threat. The 2016 Europol budget is still only EUR 100 million ⁽⁴⁾.

4.4 The Committee welcomes the provisions in the NIS Directive and the actions proposed in the communication aimed at improving cybersecurity cooperation between MS. For the security of all citizens and to achieve strong cyber resilience across the EU, where critical infrastructure information systems are often interconnected, it is important that the cooperation measures address the growing divide between the countries with the most advanced cybersecurity competencies and those other MS with less developed competencies.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁴⁾ OJ C 113, 30.3.2016, p. 144.

Opinion of the European Economic and Social Committee on ‘Enhancement of EU-Turkey bilateral trade relations and modernisation of the Customs Union’

(2017/C 075/22)

Rapporteur: **Dimitris DIMITRIADIS**

Consultation	European Commission, Annual letter 2016, 20.4.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for External Relations
Adopted in section	16.11.2016
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	252/4/7

1. Conclusions and recommendations

1.1 The EESC believes that ongoing developments have rendered the current Customs Union (CU) agreement obsolete and that the parties to the agreement will have to start serious negotiations on strengthening their economic ties by establishing a new type of trade agreement that reflects current needs.

1.2 The EESC still considers that Turkey remains a very important partner and that the political will exists to increase levels of cooperation, but only provided that compliance with the fundamental European values and the principles of democracy, the rule of law and human rights is ensured.

1.3 The EESC believes that the procedure regarding the CU can be carried out by means of either a review of Decision No 1/95, a new decision of the Association Council, or ultimately a new protocol to the Accession Agreement.

1.4 The EESC condemns the coup attempt of 15 July, but is also very concerned by the response of the Turkish government and subsequent political developments in Turkey, which go far beyond the prosecution of those behind the coup, do not reflect measures consistent with the rule of law and are contrary to democratic principles.

1.5 The EESC calls on Turkey as an EU accession candidate to protect and uphold universal human rights and to comply with democratic principles and abide by the rule of law. The EESC deplores the attempt to overturn the democratically elected government of Turkey, but also voices its disquiet at the response of the Turkish authorities and expressly calls for human rights to be fully upheld and applied without discrimination, especially freedom of expression and the particular way in which it is manifested in the freedom of the press, and for the rule of law to be completely restored.

1.6 In the EESC's view, Turkey must effectively demonstrate that it remains attached to the status of an accession state, which by law and under the Treaties it still holds, by continuing negotiations with the EU as well as by strict compliance with the EU *acquis* and all the requirements as agreed to date.

1.7 The new conditions in world trade that have been developing over recent years have prompted the EU to launch a new round of global trade agreements focusing on improved provisions in a wide range of areas with the aim of promoting modern forms of trade as well as applying EU principles and the EU *acquis*. The *Trade for All* Communication from the Commission must constitute the basis for EU-Turkey negotiations. The recent adjustments and best practices implemented in various trade agreements have transformed models for sustainability, transparency and the involvement of the social partners and civil society in international trade agreements.

1.8 The EESC considers that both *ex-ante* and *ex-post* impact and feasibility assessments of the negotiations must be carried out in advance in order to identify the effects on the environment, the economy and society. The social partners and civil society organisations must be involved in these procedures. The EESC moreover considers that the Commission should continue to monitor closely the ongoing social and economy situation in Turkey at every step of the negotiations.

1.9 It should be borne in mind that over the 20 years since the CU came into effect, the EU *acquis* has widened to include areas that were not regulated previously.

1.10 The EESC considers that a new, modern CU agreement is needed and rejects the idea of maintaining the status quo or converting it into an RTA as unrealistic. It believes that the new agreement should contain new chapters that reflect the additions to EU law and practice, since these continue to expand and be revised, together with updated provisions addressing the areas that have proven to be problematic in the implementation of the CU with Turkey and the preliminary requirements.

1.11 The EESC also thinks that the new negotiations ought to focus especially on the immediate implementation of the necessary radical reforms of Turkish legislation.

1.12 The EESC proposes that the following areas be included in the regulatory framework of the new agreement:

- agriculture (with all the requirements set out further below in the opinion),
- services,
- public procurement,
- unprocessed products and raw materials,
- consumer protection,
- environmental protection and sustainable development,
- equivalence of regulatory regimes for veterinary, sanitary and phytosanitary (SPS) measures and of food safety policy,
- effective protection of labour rights and decent jobs,
- protection of health and safety in the workplace,
- facilitation of e-commerce and introduction of a digital agenda that establishes free movement of digital data,
- energy policy and energy security,
- promotion of innovation and protection of intellectual property,
- combating corruption and money laundering,
- improved incentives for SMEs,
- simplified administrative procedures and reduced administrative costs,
- investment and updating of investment legislation with the aim of protecting investors, and concurrent introduction of an impartial dispute settlement procedure,
- improvement of the procedure for transposing and incorporating European legislation into the Turkish legal system,
- more robust provisions to ensure that the content of the revised agreement and the implementing provisions complies with the EU *acquis*.

1.13 The EESC considers that, as regards the asymmetry that affecting Turkey's trade relations with third countries with which the EU is concluding a new type of trade agreement, the relevant clause cannot be improved beyond providing political incentives for the EU's partner countries, with the further option for the Commission to provide effective intermediation services.

1.14 The EESC believes that any type of trade agreement between the EU and Turkey will have to include effective consultation and inclusion of the social partners (employers and employees) and of civil society organisations at both the negotiating and implementation stages.

2. EU-Turkey trade relations

2.1 In 1959 Turkey applied to become an associate member of what was then the European Economic Community (EEC) and is now the European Union (EU). The Association Agreement⁽¹⁾ was signed in 1963 and at the same time provided for the creation of a CU between the EEC and Turkey.

2.2 As a result, in 1970 an Additional Protocol was drafted abolishing tariffs and quotas for goods, taking further steps towards the CU, the full development of which was completed in 1995⁽²⁾ and required the abolition of trade barriers. A **Free Trade Agreement (FTA)** was signed⁽³⁾ the same year, covering coal and steel with the then ECSC.

2.3 Turkey was also requested to adopt the EU's Common External Tariffs (CETs)⁽⁴⁾ on third-country imports and adopt all pre-existing and future preferential agreements.

2.4 The CU was a ground-breaking and original idea for its time and offered a major opportunity to deepen bilateral relations, as it was one of the first agreements to contain harmonisation of legislation with a non-Member State.

2.5 In 1997 the EU instituted a parallel process based on Articles 2 and 49 of the Treaty on European Union, following Turkey's application for association in 1987.

2.6 Accession negotiations started in 2005 and include 34 chapters of the EU *acquis* and one miscellaneous chapter, making 35 in total.

2.7 Heeding the calls of the relevant stakeholders, the EESC takes a positive view of the coal and steel FTA, which should remain as it stands, but highlights the need to reform the CU in order to bring about the modernisation of trade relations.

3. Political situation in Turkey since 15 July

3.1 The situation in Turkey following the attempted coup of 15 July — which the EESC expressly condemns — is a cause for great concern. The authorities' treatment of suspected participants in the coup, as well as of opposition and civil society figures uninvolved in the coup and of press and media outlets that do not support the government, is incompatible with European standards and is weighing heavily on the EU-Turkey negotiations.

⁽¹⁾ Agreement establishing an Association between the European Economic Community and Turkey and the Additional Protocol of 12 September 1963 (OJ 217, 29.12.1964): http://ec.europa.eu/enlargement/pdf/turkey/association_agreement_1964_en.pdf

⁽²⁾ Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC).

⁽³⁾ 96/528/ECSC: Commission Decision of 29 February 1996 on the conclusion of an Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the Treaty establishing the European Coal and Steel Community (OJ L 227, 7.9.1996): <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31996D0528&from=EN>

⁽⁴⁾ Combined Nomenclature, Common Customs Tariff and Integrated Tariff of the European Union (TARIC), Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987) <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:11003&from=EN>

3.2 Since the events of 15 July, Ankara's official position has shifted, with the Turkish negotiators demanding direct commitments from the EU, which has on several points **demonstrated indecisiveness and a lack of political will and political purpose to date**, matched by Turkey's failure to display the good will needed to implement the adopted texts (e.g. regarding the protocol to the Ankara Agreement, etc.), which is further hampering the creation of the necessary climate of understanding.

3.3 The EESC is monitoring and continues to follow with great care and concern the events unfolding in the wake of the attempted coup, and sees the launch of negotiations on the CU to enhance trade relations as an opportunity to begin normalising EU-Turkey relations as well as to turn the embattled Turkish economy around.

3.4 It is therefore in Turkey's interests at this difficult juncture to make a long-term commitment to a programme of reforms that includes radical change in both the economic and political spheres.

4. Turkey's economy

4.1 As of 2015 Turkey achieved a staggering USD 1,576 trillion (2015 estimate) of Gross Domestic Product in purchasing power parity (GDP in PPP), putting it 18th in the global economic ranking. In growth estimates, the country dropped to a still satisfactory 3,8 % in 2015, holding 102nd place globally. The country's public debt fell to a moderate 33,1 % of GDP, while inflation rates are still high, at approximately 7,7 % as of 2015 ⁽⁵⁾.

4.2 Turkey's economy has been transformed over the past few years from being traditionally agricultural to a services- and tourism-driven economy with an export-oriented manufacturing sector. This is attributable in part to the CU, which created important opportunities that were instantly exploited with the adoption of a new legal framework and implementation of EU standards.

4.3 From 2012, however, the pace of growth has slowed owing to the fall in direct foreign investment, as well as political and economic developments, which in many cases have acted as a brake on economic growth and a source of uncertainty. In the 2013-2016 period confidence has been eroded by political unrest, geopolitical shifts, corruption allegations, and tensions with neighbouring states as the country has sought a more pivotal political role in the region. This has adversely affected the economy and overshadowed the unprecedented progress of the Turkish economy, since it has, as a result of the current account deficit, been prone to currency and market fluctuations, all of which has discouraged and weakened investment inflows. After the coup attempt the economy suffered a fresh blow, with a further slowdown and dramatic fall in tourism.

4.4 The worrying political developments and their direct consequences have caused significant harm to the economy in terms of both market confidence in stability and of the robustness of the economic and investment environment in Turkey ⁽⁶⁾, while there is doubt about the capacity of the Turkish government to put the economy on a path to growth again, and its credibility and the value of the Turkish lira have suffered considerably ⁽⁷⁾.

5. Impact of the CU on the Turkish economy, shortcomings in the regulatory framework and implementation issues

5.1 Overall the predictions for the CU proved rather pessimistic, and have thus been confounded by the reality: it had been forecast that Turkey's GDP would not grow by more than 1-1,5 %, which although considered substantial does not compare with the actual increase.

⁽⁵⁾ Statistics courtesy of the CIA Factbook and the World Bank Country Reports, combined with statistical data retrieved from the Central Bank of the Republic of Turkey.

⁽⁶⁾ <http://www.bloomberg.com/news/articles/2016-09-26/lira-drops-most-among-emerging-peers-after-turkey-cut-to-junk>
<http://www.bloomberg.com/news/articles/2016-07-21/turkish-assets-extend-selloff-after-s-p-cut-state-of-emergency>
<https://www.ft.com/content/779ef1f6-5b22-11e6-9f70-badea1b336d4>

⁽⁷⁾ <https://www.ft.com/content/5bbbcce4-83b2-11e6-a29c-6e7d9515ad15>
<http://www.forbes.com/forbes/welcome/?toURL=http://www.forbes.com/sites/dominicdudley/2016/07/18/turkeys-economy-could-slump-in-aftermath-of-failed-coup/&refURL=https://www.google.gr/&referrer=https://www.google.gr/>

5.2 The EU is Turkey's number one import and export partner, while Turkey ranks seventh in the EU's import and fifth in its export markets. Turkey's exports to the EU are mostly machinery and transport equipment, followed by manufactured goods. EU exports to Turkey are dominated by machinery and transport equipment, chemical products and manufactured goods.

5.3 Trade with the EU increased by 22 % between 1995 and 2014. It has also been suggested that the CU has caused trade diversion⁽⁸⁾, but this is insignificant when considered in terms of the total percentage of trade⁽⁹⁾.

5.4 At all events, this reined in the application of tariffs by Turkey on industrial products and made it unnecessary to introduce rules of origin for bilateral trade.

5.5 Some of the main inherent disadvantages of the CU may be summarised as:

- the excessive and unnecessary use of Trade Defence Instruments such as compensatory, anti-dumping, safeguard and supervisory measures that are affecting bilateral trade⁽¹⁰⁾,
- the absence of an effective compliance mechanism and dispute settlement procedure, without which it is impossible to effectively remedy the selective implementation of the CU in certain cases, and the adoption of indirect discriminatory measures to the detriment of EU products. The prevailing dispute settlement procedure is limited to specific disputes (specifically, jurisdiction is valid only for the period protectionist measures are in effect)⁽¹¹⁾ that can be examined by the Association Council, which is a primarily political body that takes decisions on the basis of consensus,
- the limited scope of the CU, which covers only industrial products, including components and processed agricultural products made in the EU or Turkey, as well as goods wholly or partly made from products originating from third countries provided they circulate freely within the EU or within Turkey. Specifically, agricultural products represent 10 % and services 60 % of Turkey's GDP, but both fall outside the scope of application of the CU,
- the process of harmonisation with EU law is also problematic, as is the effectiveness of the method for providing information about this process; consequently the business community faces a legislative see-saw during the process of importing or exporting the same products, so that neither they themselves, through their official representative bodies (chambers of commerce, employers' organisations, etc.), nor the relevant authorities (customs offices, export agencies, market surveillance bodies) can keep up-to-date⁽¹²⁾.

5.6 Apart from the problematic domains in the regulatory fabric of the CU, questions are posed by its inadequate implementation or by the unilateral decisions taken by the Turkish side on issues of customs or tariff practices **that are in clear breach of the agreed terms**. Questions are also posed by Turkey's refusal to allow the practice of free trade with the Republic of Cyprus, an EU Member State, in blatant violation of Community law and EU-Turkey trade agreements.

⁽⁸⁾ C.S.P. Magee, 'Trade creation, trade diversion, and the general equilibrium effects of regional trade agreements: a study of the European Community-Turkey customs union', *Review of World Economics*, May 2016, Volume 152, Issue 2, pp. 383-399.

⁽⁹⁾ 'Evaluation of the EU-Turkey Customs Union', Report No 85830-TR, 28 March 2014, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2014/20140403-evaluation-of-the-eu-turkey-customs-union.pdf

⁽¹⁰⁾ As of 2013, 13 Trade Defence Instruments against EU goods were in place in Turkey. More information can be found at: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-exports-from-the-eu/> (accessed on 30.5.2016).

⁽¹¹⁾ In contrast to the dispute settlement mechanism under the Ankara Agreement, which covers a broader range of disputes but requires unanimity among both parties for a settlement to be activated.

⁽¹²⁾ See footnote 9.

5.7 Turkey's current alignment with EU internal market law has advanced in certain areas, such as the free movement of goods, competition policy and State aid, energy, economic and monetary policy, and enterprise and industrial policy, but the European Commission has highlighted the fact that Turkey consistently turns a blind eye to key aspects of the agreement by adopting protectionist measures across the board, contrary to what is provided for under the Customs Union.

5.8 However Turkey is not properly implementing law in relation to State aid and setting up of monitoring schemes, and it seems reluctant to fully enable free movement of goods by lifting concealed restrictions; lastly, it has omitted to adopt and effectively implement enforcement measures against intellectual property rights violations.

5.9 Assessing the overall benefits of the CU, we could pinpoint as its greatest contribution the fact that it has been used as a means of economic reform that has promoted the integration of Turkey into global markets, that it has helped restore Turkey's credibility and, finally, that it has bolstered the measures taken to contain inflation and stabilise the value of the Turkish lira.

5.10 The modernisation of Turkish trade has also proceeded apace and competition has been boosted between Turkish producers and sellers, who have gained access via the EU market to a more fertile and challenging global trade environment.

6. Comparison between the Customs Union and more recent FTAs

6.1 The years to come will signal a new economic era inaugurated by the construction and implementation of a series of regulatory initiatives at international level that will affect EU-Turkey economic relations and will necessitate an updating of the CU. At the same time the EU has focused on boosting external economic relations with third countries with a view to improving living standards and increasing prosperity. The **Transatlantic Trade and Investment Partnership (TTIP)**, the **EU-Canada Comprehensive Economic and Trade Agreement (CETA)** and the **Trade in Services Agreement (TiSA)**, as well as the negotiations on the **trade agreement with Japan**, are the most prominent initiatives being pursued at the moment ⁽¹³⁾.

6.2 As a result of the new conditions, the obsolete CU has already put the Turkish economy at a disadvantage due to its in-built asymmetry ⁽¹⁴⁾: the CU allows Turkey to negotiate trade agreements with third countries only once the EU has completed and signed new FTAs with them, not giving Turkey any scope to intervene at any stage during the negotiations. On the other hand, the 'Turkey clause' is a policy guideline and does not oblige third countries to accept conducting negotiations, let alone sign an agreement. Even if agreement is reached, this time-lag puts Turkish businesses at a competitive disadvantage.

6.3 Moreover, Turkey was obliged to adopt the Common External Tariff (CET), requiring it to adjust to the changes — mostly reductions — introduced by the EU due to the conclusions of FTAs, without Turkish products benefiting from this privilege on other markets in the absence of an agreement. This has led to the gradual liberalisation of Turkey's tariff regime.

6.4 The aforementioned shortcomings in the architecture of the CU have today become more apparent, more than 20 years after it was concluded.

6.5 In 2014, of the EU's 48 trade partners, only 17 had drawn up agreements with Turkey, while among the countries providing new-generation FTAs, only South Korea has agreed to conclude an agreement with Turkey, accepting the invitation formulated in the 'Turkey clause' of the KOREU.

⁽¹³⁾ Agreements have also been signed with the **Eastern African States, Ecuador, Singapore, Vietnam** and **West Africa**. None of these agreements have been put into effect, even where finalised.

⁽¹⁴⁾ Global Economics Dynamics Study, Turkey's EU integration at a crossroads, What Consequences does the new EU trade policy have for economic relations between Turkey and Europe, and how can these be addressed?, Bertelsmann Stiftung, April 2016.

7. Enhancement of bilateral trade relations

7.1 EU-Turkey economic and political cooperation is a necessary requirement, and would suffice to achieve stability in a particularly volatile part of the world, and updating the CU could send a clear positive signal of cooperation and stability.

7.2 Alternative options for EU-Turkey trade and economic relations have been carefully discussed, including potentially (i) maintaining the status quo, (ii) replacing or supplementing the CU with an RTA, or (iii) updating the CU. Of these, the EESC deems the last-mentioned alternative to be ideal in terms of promoting and deepening bilateral relations on the basis of mutual advantage.

7.3 The 'do-nothing' scenario — also bearing in mind the long time horizon of accession negotiations — does not represent a realistic alternative solution, as it is considered essential to tackle the problems outlined above and to immediately harness the untapped potential of trade relations.

8. Main elements of the revision

8.1 In the context of the new EU trade and investment policy launched in 2015 with the publication of the Commission's Communication *Trade for all* ⁽¹⁵⁾, it is already clear that the EU is committed to using its leadership position in the sphere of trade to respond to the new challenges of a globalised market and the needs of the modern-day trade environment, to promote development and to work for institutional change by setting reform priorities ⁽¹⁶⁾.

8.2 It is evident in relation to this effort that a new trade policy cannot be one-dimensional but must be multilevel and complex, embracing a multitude of areas of activity, if it is to be regarded as effective and beneficial to more of those affected, such as workers, consumers and SMEs.

8.3 Specifically, including European values in the same framework of principles has significance at many levels given that negotiations on trade and investment agreements are now manifestly **not only economic in character but constitute a broader socioeconomic project to introduce multidimensional and multilevel reforms**.

8.4 **Sustainable development and protection of the environment** are now of equal importance and integral to these values, particularly since the adoption of the Paris Agreement (COP21) by the EU and the new Sustainable Development Goals (SDGs) by the UN Economic and Social Council ⁽¹⁷⁾.

8.5 This feature is obviously even more prominent where the countries with which an agreement is being negotiated are in the process of accession talks, Turkey being the prime example.

8.6 The revision must also be based on international standards and conventions to protect labour rights ⁽¹⁸⁾.

8.7 This is why the EU decided to proceed on the basis of three basic principles to achieve the above. Those principles are:

- (a) **Effectiveness**: so that both macroeconomic (e.g. the economic situation of EU countries in crisis) and microeconomic (e.g. SME) needs are taken into account, ensuring optimum adaptability to new trade projects;

⁽¹⁵⁾ http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁽¹⁶⁾ EESC (J. Peel — Rapporteur), Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 'Trade for All — Towards a more responsible trade and investment policy' COM(2015) 497 final (OJ C 264, 20.7.2016, p. 123).

⁽¹⁷⁾ The nexus of commitments of course includes the UN Framework Convention on Climate Change and the Kyoto Protocol. For the Paris agreement, see FCCC/CP/2015/L.9, 2015.

⁽¹⁸⁾ ILO Core Labour Standards, OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights.

- (b) **Transparency:** through greater visibility and participation of as many stakeholders as possible in negotiations;
- (c) **European values and models:** an evolving concept that has now been extended to include issues such as the protection of human rights and fundamental freedoms (including those of workers), sustainable development and combating corruption.

8.8 Any attempt at convergence with trade partners must thus include:

1. high-level studies on existing global value chains (GVCs) and global supply chains (GSCs);
2. updated measures to promote trade and services so that they reflect the current global situation of fragmented production based on subcontracting (outsourcing), shifting production overseas (offshoring) and setting up of branches ('branching');
3. measures to facilitate e-commerce and mobility, and of course effective extension of formal cooperation both at the negotiating stage and when evaluating and overseeing the implementation of agreements.

9. Conclusion process and content of the new agreement

9.1 The scope of application of the new agreement should be extended to include other sectors such as:

- (a) **agriculture** (with rigorous application of European standards and traceability of products, but also after research into the impact of import liberalisation on European farmers), with consideration also being given to maintaining or introducing temporary protectionist measures beyond the adjustment period if this is deemed absolutely essential to protect European products;
- (b) **investment;**
- (c) **regulation of public procurement;**
- (d) **services;**
- (e) **more topical areas such as sustainable development, environmental protection, the energy sector, etc., as well as raw materials and unprocessed products, etc.**
- (f) protection of copyright and patents.

The agreement should also include binding provisions for the immediate transposition and incorporation of European legislation, as well as special provision for the mandatory settlement of disputes arising in the course of its implementation by means of a mechanism **that does not require a political decision for it to be triggered**, unlike the situation to date, which is making it very difficult to resolve disputes effectively and in a transparent way.

9.2 It is also considered of the utmost importance that the whole endeavour be linked to the EU's revised trade approach, with the EU bringing to the table non-negotiable calls for democratisation and transparency in decision-taking, at both international and national level, as well as emphasis on the role of the social partners and civil society in processes of public dialogue and negotiation, the aim being to achieve more effective and people-centred implementation of the revised agreement.

9.3 Enhanced trade relations through the new CU Agreement could have a number of positive effects, including:

- liberalisation of the newly regulated sectors will generate revenue and an increase in foreign direct investment,

- bilateral liberalisation of public procurement by lifting barriers for non-nationals wishing to take part in tenders will benefit European companies since these represent 7 % of the country's GDP,
- opportunities will be created for small and medium-sized companies, boosting average income in Turkey, creating new jobs and increasing productivity.

9.4 The process of concluding the agreement must be initiated with negotiations starting immediately and with the involvement of the social partners and civil society organisations, to be conducted on the basis of transparent procedures.

9.5 The EESC welcomes the public consultation and recommends that comparable studies be carried out on social and well-being indicators, and in other areas such as consumer and workers' rights.

9.6 The EESC believes it should be made clear from the outset that the process is part of the broader accession negotiations and not simply a monolithic deepening of EU-Turkey trade cooperation, and also that successful conclusion of the talks will require full harmonisation of aspects agreed on up to this point.

9.7 Not only must the current issues be addressed in the new agreement, but it must be broadened to include a specific chapter on environmental protection, sustainable development and energy security and cooperation (renewable and conventional sources).

9.8 The EESC also considers it necessary to draw up a new framework for investment cooperation, with enhanced standards for investor protection together with provision for an impartial dispute settlement mechanism, an aspect which will strengthen market confidence in the ability of the economy to weather political shocks in the future. Such a framework should take account of the concerns about investor protection⁽¹⁹⁾.

9.9 Obviously the new agreement must contain rigorous provisions on protectionist and discriminatory measures against foreign products and supplementary or hidden tariffs, which revised EU trade legislation regulates against. More robust legislation will also be needed to combat money laundering, corruption and the grey economy, and there will have to be closer institutional cooperation in tackling cross-border crime.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁹⁾ Some of these concerns were summarised in point 8.8 of the EESC's Opinion 'The position of the EESC on specific key issues of the Transatlantic Trade and Investment Partnership (TTIP) negotiations' (OJ C 487, 28.12.2016, p. 30).

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 — ‘Lives in dignity: from aid-dependence to self-reliance’

(COM(2016) 234 final)

(2017/C 075/23)

Rapporteur: **Michael McLOUGHLIN**

Consultation	European Commission: 21 June 2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	External Relations
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Plenary session No	521
Outcome of vote (for/against/abstentions)	203/0/1

1. Conclusions and recommendations

Lives in dignity — Recommendations

1.1. The Committee believes the communication ‘Lives in dignity’ is an ambitious and timely document that follows best practice in development and humanitarian assistance. The EU needs to be conscious of the challenges involved in making it a reality.

1.2. The Committee feels that the defined and clear geographic regions that give rise to forced displacement offer the opportunity to tailor and focus responses and ensure joined-up responses across the European Commission and other institutions.

1.3. The Committee recommends that the European External Action Service, in conjunction with Member States, should develop a high-level political strategy to engage with states and international organisations in connection with the ‘Lives in dignity’ communication, given some of the key geopolitical challenges involved.

1.4. The Committee recommends that dedicated approaches to key issues for women and young people should be developed alongside the communication, and these groups must be consulted and involved in any delivery.

1.5. The Committee believes that while a development-led approach can produce considerable results with current budget, the need for extra resources should not be ruled out.

1.6. The Committee supports the proposal that civil society, end-users, development partners and NGOs should be involved in the delivery and in making the communication operational.

1.7. The Committee recommends that social and civil dialogue structures and processes be enhanced and improved in partner and host countries to assist with the delivery of the communication.

1.8. The Committee recommends economic action in the affected regions to support and develop entrepreneurship as a viable development path for many forcibly displaced people.

1.9. The Committee recommends that actions on health should pay particular attention to mental health and mental illness and be consistent with Article 11 of the UN Convention on People with Disabilities.

1.10. The Committee recommends that education and training responses should be based on a lifelong learning approach, and the possibility of making EU programmes available to forcibly displaced people should be considered where relevant.

1.11. The Committee recommends that the highest standards of accountability and transparency should be applied in moving towards a development approach.

1.12. The Committee calls for parliamentary accountability at EU and national level as well as oversight by other relevant bodies as part of a move towards a development-led approach.

2. Background

2.1. The number of forcibly displaced persons (refugees, internally displaced people and asylum-seekers) is one of the key issues for the international community, with unfortunately no end in sight to ongoing conflicts in Syria, parts of Africa and other areas. At the heart of this policy challenge is the emergence of a permanent class of displaced persons who remain in situ for many years after their original displacement.

2.2. This situation presents a number of issues, chief among which is the fact that the responses of the international community may be dominated by an 'emergency' response, when a longer-term, development-based regime is more appropriate. Resolving this dilemma is difficult, as changes may raise many questions for host countries, donors, NGOs and displaced people themselves, depending on the approach.

2.3. Over 65 million people were considered forcibly displaced in 2015, with 21,2 million of these refugees and 40,8 million internally displaced, while 3,2 million were seeking asylum. The countries that produce the vast majority of forcibly displaced persons are Syria, Afghanistan, Somalia, Sudan, South Sudan and the Democratic Republic of the Congo. Neighbouring countries are accommodating the vast bulk of refugees while internally displaced people remain within the borders of these states.

2.4. For refugees, the main neighbouring countries are Pakistan, Iran, Turkey, Lebanon, Jordan and Ethiopia. Turkey is the country with the largest numbers of refugees worldwide. Numbers are also extremely high for many countries, such as Jordan and Lebanon, on a per capita basis. For internally displaced people the main countries are Syria (6,6 million), Colombia (3,6 million), Iraq (3,3 million) Sudan (3,2 million), Yemen (2,5 million) and Nigeria (2,1 million).

2.5. The European Union is the main supporter of development assistance and emergency aid in the world today. This fact is one of the hallmarks of the values of the EU and its Member States. The EU has also sought greater coherence and effectiveness in its aid and emergency responses through greater coordination in the countries targeted by Member States' efforts and the EU's approach.

2.6. The EU provided over EUR 1 billion of humanitarian assistance dedicated to forcibly displaced persons in 2015. In April 2016 the European Commission, in association with the EEAS, adopted a development-led approach to forced displacement. The 'Lives in dignity' communication sets out for the first time how the EU views a move towards a new dispensation in the area of supporting forcibly displaced persons.

2.7. 'Lives in dignity' outlines the challenges facing forcibly displaced people. It clearly sets out the argument that the vulnerability of displaced persons should be the primary consideration even ahead of their legal status. The communication draws on a comprehensive approach to development assistance and the EU's approach to resilience in this field, thus eschewing a 'linear approach'. It seeks to move away from the 'silos' approach to policy and bridges the gap between the humanitarian and development worlds, which can sometimes be large.

2.8. The Commission believes that there should be no extra cost involved in this new approach as it is a way of bringing existing funding together. A strong emphasis is placed on host governments and implementing partners. Similarly, early warning systems and the early involvement of all actors are advocated. Examples of already-existing practices relating to joint country planning and strategic programming are cited. Common targets and programming are to be prioritised.

2.9. Two elements of a new policy framework are envisaged with ancillary actions, these being: a stronger humanitarian and development nexus and strategic engagement with partners, including the private sector. There is also a sectoral focus with actions on education, the labour market (including social dialogue) and access to various services such as housing, water, sanitation, etc.

3. General comments

Geopolitical considerations

3.1. Overall the 'Lives in dignity' communication is a very worthwhile initiative, setting out a bold vision for a strategic adjustment in policy aimed at addressing real issues and focused on the need to change in order to benefit those who need it most. It is in keeping with much of the development of thinking in the sector and those working in the field, making bridges between humanitarian and aid work and focussing on longer terms needs such as health and education. The EU has considerable authority in this area and is an important stakeholder, and together with Member States can make a real impact. We welcome the ambition of the proposals in the communication. The EU and other actors need to be clear on the scale of the task while maintaining its ambitious approach.

3.2. Due regard should be paid to the importance of geopolitics in this area. Indeed, we have seen how the well-intentioned plans relating to the resettlement of much smaller numbers of refugees have unravelled in the EU itself. Displaced people emerge from complex and sensitive conflicts and do not, unfortunately, cease to be subject to these conflicts after becoming displaced. Any change in policy or approach, no matter how well-intentioned or widely supported by donors, may have the potential to have unexpected outcomes or impact in some unexpected way on a conflict itself. This impact may be on surrounding states or regions or on very subtle balances of ethnicity, power or geopolitics. This may particularly be the case if a population which is even nominally 'temporary' comes to be seen as 'permanent'. Already countries like Lebanon and Jordan feel these pressures. Positive examples from the communication such as access to land in Uganda may help in this regard.

3.3. The states that are home to the considerable numbers of forcibly displaced people are often fragile or weak states, making the issue of geopolitical sensitivity all the more real. In other instances, the 'host' state may be an autocratic regime but the sensitivity remains. Inevitably 'neighbours', 'hosts' and parties to the conflict may be difficult to distinguish or quite fluid. Indeed, there will often be connections between the conflict itself and neighbouring countries or subsets of populations in both. A host, neighbour or region may 'gain' or 'lose' from any change in the status of forcibly displaced persons and may react.

3.4. Hearing local voices is a recurring theme in the communication and this is entirely commendable. However, in limited circumstances, these may be partisan or influenced by the conflict or by the broader set of circumstances that brought about the conflict. The challenge of encouraging a desire in many regions for greater permanence of displaced people simply cannot be underestimated. The recent decision to close the Dadaab camp in Kenya, which has existed for 24 years, and the offering of financial incentives to Afghan refugees in Pakistan, illustrate the challenges involved. It is perhaps a sad but unavoidable reality that the sovereignty of the host remains supreme in international law, despite the need to focus on the forcibly displaced.

3.5. As security is consistently seen as the main motivator for people to leave or stay, the concept of early warning as raised in the communication is vital. Many movements are also seen as predictable. This once again reinforces the need for strong political actions and engagement in furthering the aims of the communication.

Joined-up policies

3.6. The communication rightly cites the need for joined-up policy and thinking, particularly between the worlds of emergency response and development policy. In welcoming this, the EESC encourages even more ambition in this direction. It may be possible to look at an even broader set of policies where the European Union and its Member States could improve the lives of the forcibly displaced. Given the defined set of countries the areas might include trade, aid, arms and human rights. The communication is also very strong on synergies and joined-up thinking; this needs to go beyond the traditional areas of emergency response and development assistance. It would be interesting to hear what other DGs in the Commission, such as Trade, can contribute to this work. The communication does provide some positive examples such as a Joint Humanitarian Development Framework document for malnutrition in northern Nigeria, but it would be important to show that such an approach is systematic, particularly in Brussels.

3.7. Some humanitarian NGOs have expressed doubt as to whether these tasks are suited for humanitarians and if the distinctiveness of humanitarian assistance will be maintained in such a move. The London-based ODI believes that the system of humanitarian assistance is in need of a radical shake-up given the changed circumstance it finds itself in and the preponderance of a limited number of donors and recipients.

While the Commission communication states there should not be any new cost in delivering on 'Lives in dignity', the ability to attract new finance or put in place greater synergies should not be ruled out.

EU policies on refugees and asylum-seekers

3.8. 'Lives in dignity' addresses separate and distinct issues from the EU's own policies on refugees and asylum. However, there is some connection, particularly in relation to having a tangible and ongoing resettlement policy for a certain number of forcibly displaced persons. Moreover, the moral authority of the EU in this field may be diminished after the arrangements entered into with Turkey, as indeed may that of certain Member States. This makes the adherence to the highest standards of international law and best practice all the more important in delivering on this communication. The involvement of end-users in policy delivery is important. Social and civil dialogue offers great potential here. Integration policies in the EU also need to be improved and are relevant to forcible displacement, as the resettlement of many forcibly displaced people will need to be an option. These include the right to work, language support and anti-discrimination measures. The recent development of pilot 'humanitarian corridors', particularly by the Italian Government but also in other EU countries, Switzerland, Canada and the U.S., has much to recommend itself in terms of resettlement.

Monitoring, oversight and accountability

3.9. The need for the highest standards of accountability and transparency for all humanitarian and development funding is clear. Any move towards a new approach for forcibly displaced people must satisfy the highest standards of accountability. All spending should be subject to the oversight of The European Parliament, the European Court of Auditors, OLAF and the European Ombudsman and equivalent national bodies where relevant.

4. Specific comments

4.1. While the communication focusses on forgotten conflicts and areas with large numbers of forcibly displaced people, those with the greatest numbers of long-term displaced peoples are highlighted. Notwithstanding the political sensitivities of particular situations, some conflicts may merit specific attention due to their extremely protracted nature. The cases of Western Sahara and the Palestinians seem relevant. The situation of Ukraine also deserves special attention, as the country lies in the EU's immediate neighbourhood.

4.2. The communication admirably states that the legal status of forcibly displaced people should not matter with regard to humanitarian assistance and longer term development aid; this is welcome. However, in some circumstances there may be an advantage where a legal status confers some security and utility on a displaced person, for example when they satisfy the criteria under the 1951 Convention, when they hold citizenship of the host country or a third country, when their children have such citizenship or when they themselves are minors, or other relevant situations. This for example would be particularly apposite for unaccompanied minors.

4.3. The approach of the communication may benefit from some outside or independent verification and academic rigour from the worlds of the social sciences or psychology. Examples of these approaches might include Maslow's hierarchy of needs or asset-based community development. There are, of course, numerous examples of these, but a focus on enhanced human needs beyond mere existence is required.

4.4. The communication's principal approach to demonstrating the operational dimension of the change envisaged is by way of current examples. These are very valuable. While the operational dimension may be for the future, it would be valuable to clarify and develop this. In other words, what will it look like, what are the actual instruments, will it be driven by just aid? These are important questions for many stakeholders such as Member States, NGOs, aid workers and of course displaced people themselves. Any process of change can give rise to fear. Regardless of the dysfunctionality of any regime, the alternative usually has losers and winners and early establishment of the operational aspects can assist in dealing with this.

4.5. Similarly, it would be important to set out the envisaged delivery and transmission of a new approach, particularly in relation to the relevant multilateral agencies, non-EU states and NGOs. While the EU is an important player and indeed considered to be a leader in this field, it is not the only one. There can be other different and competing priorities with these stakeholders. Given the mixing of funds and efforts involved in most operations, a shared agenda is critical.

4.6. Democracy and good governance are essential if aid is to be worthwhile and actually reach its intended beneficiaries. The rule of law is of fundamental importance here, as are effective anti-corruption measures. In the past it has been estimated that up to 40 % of funding has been sidelined either for the purchase of arms or the personal enrichment of leading politicians. The rule of law is also essential to ensure that civil society can have an effective voice and play an important monitoring role, without the fear of subsequent intimidation or even imprisonment.

4.7. Considerable emphasis is rightly placed on planning in the document; however, events may move rapidly in this area and time may be of the essence. Any approaches or operational plans should be capable of rapid deployment.

4.8. As in all fields there can be language and terminology specific to this area in the communication and elsewhere. The development of policy should, as far as possible, avoid jargon. Considerable attention is also paid to ideas such as synergies, strategies, plans and joined-up thinking. More concrete approaches or directions might be employed in these areas.

4.9. The provisions on social dialogue in the communication are welcome and should be recognised across all of its relevant provisions. The education and labour market elements of the proposed actions should consider greater emphasis on self-employment and entrepreneurship. Such activity is often very visible in camps for displaced people and creativity may be an inevitable outcome of the situation people find themselves in. This is supported in the World Bank report on forced displacement.

4.10. It is reasonable to ask what approach will be taken in the future. As with all policy changes there will be a transition. Will there be a backlog or a two-tier system? 25,1 million people are currently seen as being protractedly displaced. How will a different environment be managed if this situation continues?

4.11. The involvement of civil society, locally as well as end-users (displaced people), is an important concern. Consultative structures generally exist in camps as it stands, but what of host countries? This may provide a considerable challenge but should nonetheless be part of any policy change. It is not hard to envisage how difficult this might be for internally displaced people in many conflicts.

4.12. As with any major shift in policy and particularly given the need for transparency, oversight measures for the new approach should be ensured including relevant civil society actors and NGOs. The example of civil society monitoring mechanisms covering the 'Trade and sustainable development' (TSD) chapters in existing EU trade agreements may be helpful here.

4.13. Economic regeneration of regions will be needed if the forcibly displaced people residing within them are to benefit. The regions where forced displacement is concentrated are, however, some of the poorest in the world and also provide a poor environment for business and social protection. Again, the geographically focused nature of forced displacement should offer solutions here, such as regional investment plans, tax policies and development of infrastructure. Greater support for entrepreneurship should also figure in any approach to economic development. Dignity in employment and quality jobs must also be prioritised along with the involvement of the social partners.

4.14. Many of the regions and countries hosting forcibly displaced people score poorly on most economic indicators and can be seen as difficult for businesses to operate in. The need for quality data is also flagged by the World Bank and others. Economic opportunity must be at the centre of a development-led response to forced displacement and this furthers the need for other actors in the EU to actively support the communication.

4.15. Employment by local civil society organisations and in camps, and in the general responses to displacement, is currently common and considered best practice. This should be an important and clear aspect of the actions on employment.

4.16. Actions on health should pay particular attention to mental health and mental illness — an extremely important and often neglected area for forcibly displaced people. The vast majority of forcibly displaced people suffer from PTSD and other mental disorders due to stressful transitions. The systematic and long-term care for their mental health in the host countries is hindered by a shortage of skilled healthcare workers. This shortage could be compensated by involving forcibly displaced people with mental disorders in the public services for psychological support and by assisting civil society initiatives providing psychological consultancy services to displaced people locally.

4.17. The UN Convention on the Rights of People with Disabilities, and in particular Article 11, should be the determining document in addressing provisions for forcibly displaced peoples with disabilities.

4.18. The impact of forced displacement on women and girls is particularly pronounced. Although more information is needed, key issues are an increased risk of sexual and gender-based violence and indeed trafficking. Furthermore, gender sensitivity in service provision, for example with regard to issues like privacy, should be respected. Higher risks of complications in pregnancy have also been observed.

4.19. Provision of education is obviously a key response. Any move towards a longer-term, more effective approach should be evident in the type, level and volume of support in education. A lifelong learning approach may assist in this regard to recognise the diversity of needs. Given the importance and volume of children and young people amongst the forcibly displaced, consideration should be given to an extension of EU programmes to include forcibly displaced young people, for example Erasmus+ or other relevant programmes.

4.20. Forced displacement is increasingly an urban issue rather than being restricted to camps. There is a need to change the perception of the public and donors in this regard. Clearly, the policy mix involved in moving to a development-led approach needs to reflect this in terms of planning and issues such as housing, transport, health and education.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on ‘An integrated European Union policy for the Arctic’

(JOIN(2016) 21 final)

(2017/C 075/24)

Rapporteur: **Mr Stéphane BUFFETAUT**

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1. Conclusions and recommendations

1.1. The EESC is keenly aware of the importance of the Arctic region for the European Union, and in particular for the Kingdom of Denmark, Finland and Sweden, which are members of the Arctic Council.

1.2. But it is equally aware of the fact that the European Union only acts as an observer in the Arctic Council, even if it has *de facto* been able to go beyond the strict role of an observer. The Committee has previously expressed its desire for the EU to play a bigger role in Arctic region (see opinion REX/371 by Filip Hamro-Drotz)⁽¹⁾.

1.3. The EESC stresses that the EU sits on or participates in other international bodies that also deal with Arctic issues and that it is therefore able to expand its influence. This is particularly true with regard to climate change, maritime agreements and the law of the sea, fishing, and even certain aspects of space policy.

1.4. On the one hand, the communication is based on three pillars — climate change, sustainable development and international cooperation — while on the other hand, effectiveness is dependent on the results of this international cooperation, and sustainable development is the priority for representatives of the people living in the region. Given this, the EESC suggests reversing the order in which the EU's objectives are presented so as to make them clearer and more effective, especially as the objectives and projects mentioned by the Commission are commendable and their intention can scarcely be criticised.

1.5. One of the consequences of climate change has been to open up new waterways in the north: the famous North West Passage vainly sought for by Chateaubriand in the late 18th century. This development opens up specific opportunities for shipping, fishing, and even mining, which in turn mean an increased risk of ‘perils of the sea’ and drilling incidents requiring rescue infrastructure which is not present in those locations. The Committee therefore recommends treating the issues of safety and security — not only in terms of transport but also in terms of drilling — as being of the utmost importance, and underlines the fact that the environmental consequences of these new waterways, opened up by the melting ice, are not yet known.

1.6. In this regard, the EESC emphasises that the deployment of Galileo has the potential to contribute to monitoring and preventing pollution and maritime disasters and that it will be of particular use with regard to the Arctic. The EESC also underlines how important it is for other European policies — in addition to climate and environmental policies, of course — to take account of Arctic issues. This applies in particular to the EU's structural policy, common agricultural policy, fisheries policy and maritime policy.

⁽¹⁾ OJ C 198, 10.7.2013, p. 26.

1.7. The EESC believes that the principles of responsible fishing should apply in the Arctic region and that the potential development of tourism and other economic activities should follow a philosophy of responsibility towards and protection of this environment — an environment that is as sensitive as it is fragile, and one that has already been severely affected by the warming of the northern hemisphere.

1.8. It also stresses that, while they wish to preserve their cultures, people living there also want to be able to benefit from the opportunities offered by sustainable economic and social development, which are very often brought about by means of improved physical and non-physical means of communication.. The EESC calls for civil society to be able to play an active role in promoting the interests and concerns of people who live there. They must not be passive, but should be actively involved in policies relating to the Arctic. The EESC is in favour of better protecting Arctic resources which are the natural capital of future generations, and of viewing current environmental changes in the Arctic as a measure of European and global progress on climate protection. The preservation of Arctic regions and the fight against climate change must not be undertaken without consideration for inhabitants or in a way that is detrimental to them.

1.9. The objectives of the integrated European Union policy for the Arctic cannot be pursued without the agreement and support of countries that are not — and never will be — EU Member States. Some of them are global superpowers that do not necessarily have the same economic and strategic objectives as the EU. The success and tangible impact of this Arctic policy will therefore depend on the EU's diplomatic skill, its ability to make these goals a crosscutting concern in its diplomacy in areas that, strictly speaking, go beyond the Arctic, and its ability to bring other countries round to positions that align with its own. International cooperation is, and will continue to be, crucial to any Arctic policy.

2. Introduction

2.1. Eight countries are Arctic states, including three EU Member States: the Kingdom of Denmark, Finland and Sweden. Two non-EU members of the European Economic Area, Iceland and Norway, as well as Canada, the United States and Russia are also Arctic countries. With the 1996 Ottawa Declaration, these eight countries founded the Arctic Council, which aims to promote sustainable social, economic and environmental development in the region.

2.1.1. As a result, and without encroaching on national competences, the EU was unable to ignore the Arctic as an important strategic area. However, the Commission places a strong emphasis on the climate issue, on the premise that this region of the world plays a central role in climate matters while also suffering the effects of climate change. Recent studies suggest that the Arctic is heating up twice as fast as the rest of the world. Moreover, the Arctic is both affected by and has an enormous impact on climate change. It should also be noted that indigenous people live in this region.

2.1.2. However, the European Union is not a member of the Arctic Council but has a standing invitation to attend as observer. China, France, Germany, India, Italy, Japan, the Netherlands, Poland, Singapore, South Korea, Spain and the United Kingdom have observer status. The EU applied for permanent observer status in 2008; this request is pending a final decision. The large number of countries with observer status in the Arctic Council demonstrates just how important the Arctic is for the international community.

2.1.3. Meanwhile, the representative institutions and associations of indigenous people (Sami, Aleuts, indigenous peoples of Siberia and the Russian North and Far East, the Arctic Council of Alaska, etc.) are 'permanent participants', which demonstrates a real desire to take their lives and their wishes into account in terms of development. These population groups are small but very much present in the Arctic, and represent rich cultures.

2.2. The Arctic would seem to be a prime arena for EU policy that aims to combat climate change and limit rising temperatures, but the EU cannot act alone: it is reliant on powers whose priorities are geared more towards military, economic and maritime transport strategies. Moreover, the Arctic Council has hitherto mainly been concerned with the issue of the region's — sustainable (of course) — development.

2.3. Climate change can have a major impact on the living conditions of the people who live in the region. It is clear that policies geared towards climate change must not be developed in opposition to these people, but with them and for them.

2.4. The Arctic is of not inconsiderable economic importance for the EU, which consumes many Arctic products — in particular fishery products and energy sources. Nor should the economic, social and environmental effects of new waterways opening up be neglected. Moreover, what is true for the European Union is also true for the countries that are present in this region. Thus the United States has granted authorisations to drill in the Arctic.

2.5. The Commission has structured its document around three themes that demonstrate its priorities. The question is to decide whether they are relevant:

- tackling climate change and safeguarding the Arctic environment;
- promoting sustainable development;
- supporting international cooperation on Arctic issues.

2.6. It should be emphasised that this last point is crucial and ultimately has an impact on the first two, as the EU's only direct involvement is in the form of three Member States and it has to accommodate the United States, Russia and Canada — three major powers that all have significant economic and strategic interests in the Arctic region. It should be noted that some Asian countries — especially China, Japan, South Korea and Singapore — are showing a great deal of interest in the region.

2.7. It is also worth questioning the role given to environmental and climate change-related issues, which are the primary concern for the Commission but not necessarily for our international partners, who view sustainable development as very important but not as a priority.

3. General comments

3.1. The Commission's priority is evidently to combat the effects of climate change on the Arctic. It is particularly concerned about the permafrost thawing (which could have a catastrophic effect in terms of methane and CO₂ emissions) and the protection of local ecosystems. These are legitimate concerns, but the EU alone does not hold the keys to solving these problems.

3.2. In order to be better able to meet these challenges, the Commission stresses the importance of Arctic research and monitoring efforts and mentions the funding dedicated to this end. It highlights the need for enhanced international cooperation and calls for transnational access to research infrastructure and data.

3.2.1. This observation demonstrates — if such a demonstration were necessary — that the efficacy of EU policies depends on the efficacy of international cooperation.

3.2.2. The Commission sets out its 'climate policy' objectives, with reference to the particular case of the Arctic. In practice, the Commission is confronted with the following broad challenge: it is not able to act effectively if its goals are not shared at global level, in particular by the Arctic states, even if it takes specific action via the European Structural and Investment Funds. The ratification of the Paris agreements on climate change should make measures and policies in the Arctic region more effective.

3.3. The Commission rightly calls for a high level of biodiversity protection and the establishment of marine protected areas, as well as advocating that pollution from heavy metals and heavy pollutants be tackled. However, it should be stressed that marine protected areas on the high seas are very ineffective, except in terms of a ban on fishing. Indeed, they are by definition impossible to control and safeguard as they are in constant flux, both in terms of the water and the species that live within them and that are constantly fluctuating.

3.4. Similarly, the Commission stresses the need for international cooperation in the field of oil and gas operations, in particular so as to prevent major accidents. Once again, how effective this is depends on the strength of the international relations forged with the other countries involved in the Arctic. In this regard, it should be noted that difficult relations with Russia have not had a negative effect in terms of the Arctic, where cooperation is satisfactory.

3.5. While it possesses many sought-after resources — fish, minerals, oil and gas —, the vast and sparsely populated Arctic region does not enjoy easy transport links. The Commission calls for the development of a sustainable economy, which is all the more necessary given that the natural areas are fragile and are being ravaged by climate change. The Arctic's natural resources should be protected as a reserve for future use, while also respecting the interests of the people who live there. The EESC is in favour of better protecting Arctic resources which are the natural capital of future generations, and of viewing current environmental changes in the Arctic as a measure of European and global progress on climate protection. The preservation of Arctic regions and the fight against climate change must not be undertaken without consideration for inhabitants or in a way that is detrimental to them.

3.6. The EU should support the introduction of innovative technologies, in particular to cope with the rigours of the Arctic winter. The InnovFin programme could be deployed for the Arctic. The Commission also calls for effective access to the single market. At present, this is still a distant prospect. But other European policies are also involved: the common agricultural policy, fisheries policy and maritime policy.

3.7. The Commission plans to set up a forum to strengthen cooperation and coordination between the various EU funding programmes. This forum would set investment and research priorities.

3.7.1. In parallel, and as part of Interreg, a network of management authorities and stakeholders would be set up which could give rise to an annual conference of Arctic stakeholders. This idea is appealing, provided that its implementation is flexible, responsive and adaptable.

3.8. In terms of investment, the Commission particularly emphasises transport networks, which are necessary to enable Arctic regions to break out of their isolation, and points out that the northern reaches of Finland, Sweden and Norway are part of the trans-European transport network. This element is clearly crucial to opening up the region to the rest of the world.

3.9. The size of the Arctic and its low population density mean that the use of space technologies is particularly appropriate. The Copernicus and Galileo programmes will be invaluable to the region. We can only support the Commission's approach in this regard.

3.10. The melting of ice has led to the North East Passage opening up; navigation safety along new routes should be ensured. The EESC can only support the Commission's approach in this regard. The idea of the Arctic Coast Guard Forum should be retained.

3.11. It is the success of international cooperation that will determine whether the policies embarked upon succeed or fail.

3.11.1. The Commission lists the various legal instruments and relevant forums and stresses the need for the EU's robust involvement, while also noting the need for bilateral cooperation, in particular with the major players: the United States, Russia and Canada, as well as Greenland and certain Asian countries that are taking a great deal of interest in the issue of the Arctic.

3.12. It emphasises the need for dialogue with indigenous people, who, it should be remembered, are the ones who are the first to be affected and should not have to suffer the aftereffects of policies that might be detrimental to them, especially in terms of the region's sustainable economic and social development. Civil society therefore has an important role to play in ensuring that indigenous people's concerns are properly taken into account, both in terms of the economy and in terms of society. In this regard, the EESC could be their voice within the European Union.

3.13. In terms of the economy, and in this spirit, the Commission welcomes the declaration on fishing activities signed by five Arctic Ocean coastal states but rightly emphasises that the issue does not concern solely these coastal states.

3.14. Finally, with regard to research, the Commission supports the idea of enhanced scientific cooperation, in particular under the Transatlantic (and Arctic) Ocean Research Alliance and would like to map the entire seabed by 2020, a goal that is of considerable scientific interest and that can only be welcomed, but one that has repercussions — in terms of security, transport and economic activity — that go beyond merely scientific knowledge.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
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