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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

531th EESC PLENARY SESSION OF 17 AND 18 JANUARY 2018

Opinion of the European Economic and Social Committee on ‘Promoting SMEs in Europe with a special focus on a horizontal legislative SME approach and respect of the SBA’s “think small first”’

(exploratory opinion)

(2018/C 197/01)

Rapporteur: **Milena ANGELOVA**

Co-rapporteur: **Panagiotis GKOFAS**

Consultation	Bulgarian Presidency of the Council, 5.9.2017
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	18.12.2017
Adopted at plenary	17.1.2018
Plenary session No	531
Outcome of vote	241/5/8
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) stresses that SMEs require special attention⁽¹⁾ and invites the European Commission (EC) to make the Small Business Act (SBA) and its principles legally binding. This must be accompanied by swift, carefully-designed, coordinated joint actions by the European Union (EU), the Member States (MS) — including at regional and local levels — and business associations, aimed at improving the situation for SMEs in real terms. All actors must be committed to implementing what they have jointly agreed and must shoulder their responsibility in the context of societal development and economic progress.

⁽¹⁾ Especially now, 35 years after the adoption by the EP of ‘the European Year of Craft businesses’, 25 years after the launch of the Internal Market, 15 years after the euro’s introduction.

1.2. Closer involvement of social partners and representative SME organisations in the European Semester is needed, including consistent reporting and monitoring of the implementation and results of MS' partnership agreements. The EESC invites the EC and the Council to include implementation of the SBA as a permanent scrutiny exercise in the Semester and Annual Growth Survey, in close cooperation with the representative SME organisations.

1.3. The EESC calls for an inclusive, coherent, effective horizontal European SME policy which also takes into account the needs of all the different SME sub-groups, e.g. value-generating companies, micro, small, family and traditional companies as well as those operating in remote areas, the self-employed and crafts, and considers it essential to have a definition for each and every one of them⁽²⁾. The freedom to conduct business based on forms of economic democracy inherent in the EU social and market model — as recognised in the Charter of Fundamental Rights — must be effectively safeguarded and entrepreneurial spirit, culture and education must be enhanced in Europe.

1.4. The EESC recommends that the Bulgarian, Austrian and Romanian rotating Presidencies of the EU Council establish and operate a permanent inter-institutional joint 'SMEs Advisory Group' with the SMEs' representative organisations. It should start its work by following up and reporting on specific 2014-2020 work plans concerning horizontal and cross-sector SME policies and programmes.

1.5. The EESC highlights the need to swiftly implement the specific proposals set out in this document and calls upon the EC, the European Parliament (EP) and the Council to take prompt steps to that end.

2. Context and state of play

2.1. In September 2017 the forthcoming Bulgarian Presidency of the Council of the EU requested an exploratory opinion on promoting SMEs in Europe with special focus on a horizontal legislative SME approach and respect for the SBA and 'think small first' principle. The EESC very much appreciates this initiative, as it is in line with the numerous calls in EESC opinions to make the SBA and the principles it establishes legally binding.

2.2. In June 2017 the EC published a Roadmap⁽³⁾ to start consultations on the relevance and need to update the definition of SMEs. The initial reactions to it showed that a majority of the respondents — 18 out of 22 — find the definition outdated and call for it to be updated and adjusted⁽⁴⁾.

2.3. In 2011 the EC published a Review of the SBA for Europe⁽⁵⁾ with the aim of speeding up its implementation⁽⁶⁾, and launched a public consultation in 2014 on how the SBA should be revised⁽⁷⁾, but it is a pity that no further policy actions were taken to follow this up. The SBA's annual progress is reviewed by the SME Envoy Network, but much work is needed to ensure that this information actually reaches SMEs and their representative organisations.

2.4. The EESC appreciates the focused efforts of the EC to implement the 'think small first' principle, and especially the approach of taking care of SMEs' interests, as applied in REFIT and the Start-Up and Scale-Up Initiative⁽⁸⁾.

⁽²⁾ OJ C 318, 23.12.2009, p. 22; OJ C 226, 16.7.2014, p. 10.

⁽³⁾ http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

⁽⁴⁾ http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2868537/feedback_en?size=10&page=2. The efforts of the EC to launch the next stage of the consultation in all EU languages deserves praise, allowing for a broader input.

⁽⁵⁾ COM(2011) 78 final.

⁽⁶⁾ COM(2008) 394 final.

⁽⁷⁾ https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act_en, Ref. Ares(2015)812234 — 25/02/2015.

⁽⁸⁾ COM(2016) 733 final.

3. General remarks

3.1. The EESC regrets that progress in the real application of the ‘think small first’ principle remains fragmented and far from being complete. This implementation delay is very dangerous because SMEs are currently facing more challenges than ever — harsh competition, shortage of skilled labour, new forms of work and of consumption, an increasingly complex and intense flow of information, limited resources for innovation, constant downgrading of the entrepreneur’s role, volatile financial markets, complicated access to finance and high dependence on the external environment, limited bargaining power⁽⁹⁾. The SME situation is further aggravated by an overly complex process of technical standardisation, intellectual property and general data protection rules, market abuses by global actors, and impeded participation in EU/national public contracts and in global value chains. More efficient solutions should be designed, especially where the SMEs are negatively affected by structural problems and market failures.

3.2. Digitalisation and the technological developments it entails, including e-commerce, present not only valuable opportunities for SMEs but also pose important challenges, prompting them to change their culture, activities and business models. It would be highly desirable for the economic sectors and regions that are most critical for SMEs to be involved more closely in Industry 4.0.

4. Better policy-making and more effective delivery

4.1. The EESC sees the SME definition not as the answer to all SME problems, but as an instrument to provide for better access to support measures. Any revision of the definition should be based on an evaluation of the effects of the proposed changes on the EU’s SME policies and programmes and especially on their contribution to growth and job creation. The update must take into consideration the key recommendation based on the results of the consultations and the decision of the EU Court of Justice⁽¹⁰⁾. The EESC calls for further work to explore the possibility for the revision to include at least⁽¹¹⁾: flexibility for SMEs to choose which two of the three criteria of Article 2 of the Annex to the Recommendation⁽¹²⁾ to meet, instead of imposing the ‘staff headcount criterion’⁽¹³⁾ as the only major criterion; measures to update, whenever necessary, the thresholds of Article 2, including by aligning them with the most up-to-date approach as set out in Directive 2013/34/EU⁽¹⁴⁾ and reassessing and revising the restrictive rules in Article 3⁽¹⁵⁾. Should the SME definition be revised, the Commission must do so in close cooperation with the SME organisations at European, national and regional level.

4.2. A more detailed, differentiated approach to devising SME support measures should be applied, taking into consideration the heterogeneity and diversity of SMEs and the different market failures that they face. The specific needs of different sub-groups⁽¹⁶⁾ that have the potential to add value to the process of economic development⁽¹⁷⁾, with their various different legal forms and models of operation⁽¹⁸⁾ should be explored, in order to design and effectively deliver an adequate portfolio of policy measures to promote their growth, including by providing a definition for each and every one of them⁽¹⁹⁾. Effective marketing should be used and objective studies including quantitative analyses of the promotion and support measures in the MS should be monitored and assessed under the EU Semester at EU level every year.

5. SME financing

5.1. The majority of SMEs are very small and micro- enterprises, encompassing the self-employed and the liberal professions. These groups have very specific needs in terms of financing — relatively low amounts, no collateral, and a very

⁽⁹⁾ Various studies — e.g. EP, 2011; CSES, 2012; EC, 2008; OECD, 1998.

⁽¹⁰⁾ http://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=uriserv:OJ.C_.2017.030.01.0056.01.ENG&toc=OJ:C:2017:030:FULL, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=183329&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=687947>, <http://curia.europa.eu/juris/document/document.jsf?http://curia.europa.eu/juris/document/document.jsf?text=&docid=183335&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=691887>.

⁽¹¹⁾ OJ C 81, 2.3.2018, p. 1.

⁽¹²⁾ Art. 2, Annex, 2003/361/EC.

⁽¹³⁾ Art. 4, Annex, 2003/361/EC.

⁽¹⁴⁾ Directive 2013/34/EU, 26 June 2013.

⁽¹⁵⁾ Art. 3, Annex, 2003/361/EC.

⁽¹⁶⁾ OJ C 81, 2.3.2018, p. 1.

⁽¹⁷⁾ OJ C 81, 2.3.2018, p. 1.

⁽¹⁸⁾ OJ C 345, 13.10.2017, p. 15 (point 3.2).

⁽¹⁹⁾ OJ C 318, 23.12.2009, p. 22; OJ C 226, 16.7.2014, p. 10.

limited ability to cope with administrative formalities. Appreciating their considerable potential to create sustainable jobs, especially in relatively small and remote towns, the EESC invites the EC to place greater emphasis on designing simple, easy-to-access instruments to meet their financing needs.

5.2. *Debt*

5.2.1. Since the SME Charter and the SBA are included amongst the recent EU Banking Union priorities, the EESC calls for a more comprehensive, in-depth, consistent approach to measure how the 'think small first' principle has been or could be applied to EU banking policies and different national banking and financial legislation in the MS. The EESC invites the European Banking Authority to include EESC representation in the Banking Stakeholder Group as well as in other relevant technical fora.

5.2.2. The EESC calls for the creation and development of a network of 'credit ombudsman' by the MS under EU coordination, in order to further facilitate and balance the dialogue between SMEs and credit institutions.

5.2.3. In order to decrease the information gap between banks and SMEs and to improve their financial knowledge, the EESC suggests that qualitative data be requested and analysed in order to learn how the financial instruments are used by the intermediary banks to reach the SMEs that most need financial resources⁽²⁰⁾ and what the reasons are for credit not being granted to them, in line with the principles of the feedback from banks⁽²¹⁾.

5.2.4. The EESC is very concerned by the reports of bank failures putting some small enterprises out of business because of simple cash flow problems and calls upon the EC to take swift measures to prevent such events in the future. A company credit card that keeps the credit history and allows for an increase in the credit limit on the basis of a prudent record⁽²²⁾ could be one solution.

5.2.5. The innovative platforms for peer-to-peer lending have great potential as an alternative source of funding for SMEs, making possible non-bank forms of financial mediation. However, the high potential of these new forms of lending is still hampered by unclear areas of law and regulation. The EESC calls for an international effort by policymakers, regulators and interested parties to clarify the rules that govern key financial intermediaries in this area, without generating a major regulatory burden.

5.2.6. The MS' good practices for easy and affordable access of SMEs to financing should be studied and disseminated, and their replication should be incentivised.

5.2.7. SMEs in Europe have little or no access to the corporate bonds market, because of lack of liquidity, high issuing costs and high information requirements. The EESC believes that proportionate listing and disclosure requirements for SMEs, the adoption of specific incentives and the creation of specialised SME capital markets at MS level will help overcome these obstacles.

5.3. *EU funds*

5.3.1. The state aid rules must be simplified and updated, to remove any uncertainties for SMEs, especially those related to the physical persons connection, state and municipal ownership, holding structures and other limitations that are very difficult to trace. The EESC supports the conclusions of the Gold-plating in the ESIF study published in 2017 by the EP's DG for Internal Policies, in particular the need to further simplify the rules, as well as bringing them more closely into line with conditions on the ground and applying them more flexibly, since their complexity increases the administrative burden, the risks of duplicating requirements and the preference for compliance with rules over the performance of the implemented projects⁽²³⁾.

⁽²⁰⁾ To counteract the existing negative practice whereby commercial banks offer cheap, EU-supported financial resources to their loyal customers, depriving the bulk of SMEs from access to it.

⁽²¹⁾ <http://www.ebf.eu/wp-content/uploads/2017/06/High-level-principles-on-feedback-given-by-banks-on-declined-SME-credit-applications.pdf>

⁽²²⁾ As Hungarian 'Széchenyi card'.

⁽²³⁾ [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/585906/IPOL_STU\(2017\)585906_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/585906/IPOL_STU(2017)585906_EN.pdf)

5.3.2. When support measures and programmes are designed at EU level, they should include criteria that will guarantee a reasonable geographical balance.

5.3.3. The EESC urges the EC to maintain and further develop the COSME programme, as an important SME support instrument ⁽²⁴⁾.

5.3.4. The EESC regrets that data is very scarce on the clear impact of resources devoted to SME policy measures under the 2014-2020 MFF. The Committee invites the EC to promptly address this and, when assessing their effect, to report on and monitor both qualitative and quantitative criteria.

5.3.5. The EESC calls on the EC and the MS to implement the Partnership Principle ⁽²⁵⁾ in a more effective way when setting the framework for the next Multiannual Financial Framework (MFF). Even though the participation of the social partners in the decision-making process is binding, in practice there are a lot of impediments that prevent them from having a real impact on decisions.

5.3.6. Support for SMEs has mostly been geared towards increasing research and innovation and towards start-ups. Without questioning the importance of these policies, the EESC wants to emphasise that a very limited fraction of all SMEs will benefit from them and therefore calls for more diversified support instruments, targeting all types of enterprises and covering all phases of their life cycle.

5.4. Equity

5.4.1. The development of the Capital Markets Union (CMU) — expansion of venture funds, private equity markets — including informal markets, business angels and crowdfunding, has improved access to venture capital for particular categories of SMEs. However, a very large proportion of SMEs are unlikely to be able to benefit much from these. Even for innovative companies, start-ups and mid-size companies, the new instruments are not easy to use and considerable differences persist between countries due to the level of development of the local capital markets and the lack of proper legislation.

5.4.2. The EESC calls on the EC to provide more information and mentoring for SMEs in order to broaden the scope of their strategic vision and to improve their ability to use equity financing. Since traditionally SMEs have relied mostly on debt financing, their awareness and understanding of alternative instruments is limited and their behaviouristic attitudes are hesitant regarding equity financing. While recognising the recent efforts of the EC to increase knowledge of individual financial instruments, the EESC stresses that this is not enough and calls for business organisations to be supported and incentivised to develop SMEs' long-term strategic approach to business financing. As they are in daily contact with SMEs, they can help them to increase their understanding of how different instruments can serve SMEs' different financing needs at specific stages of their life cycle.

6. Evidence-based, practical actions to support SMEs are needed

6.1. In spite of its potential usefulness ⁽²⁶⁾, regrettably the network of SME envoys has failed to prove its real added value in a number of countries and it is very difficult to track the result of its work. If the excellent idea of such a network is to be revived, it needs to be given a more important role, including closer and immediate contact with the national and local SME organisations, and the exchange of good practices and reports. The EESC recommends that the network create and make available a platform for exchange of good practices in order to produce, in collaboration with EU/national representative SMEs organisations, an annual report on how effectively the 'think small first principle' is being enforced. It also recommends that the national SME envoy be mirrored by one appointed by SME organisations.

6.2. The EESC finds it helpful for the envoys to participate in the Annual SME Performance Review and to have general guidelines from the EC for more systematic and structured cooperation with SME organisations.

⁽²⁴⁾ OJ C 181, 21.6.2012, p. 125.

⁽²⁵⁾ Regulation (EU) No 1303/2013 (art. 5), developed further in Delegated Regulation (EU) No 240/2014.

⁽²⁶⁾ http://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-envoys_en. The activity reports and other documents: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2666>.

6.3. The SME Assembly is promoted as 'the general assembly of the SMEs', and the EESC fully endorses the idea of a forum where SMEs can meet, identify pressing issues and search for solutions. In order to upgrade the SME Assembly to a more effective level and to strengthen its role as a discussion and decision-making platform, the EESC strongly recommends that:

- SMEs organisations be involved more closely in the annual preparation and follow-up of the Assembly, and to have a real advisory role;
- meetings of the Assembly provide more analytical material with important facts, trends, expectations presented by neutral researchers — primarily academic institutions;
- good examples and successful benchmarking of similar scale forums be swiftly implemented ⁽²⁷⁾;
- a transparent and inclusive procedure for calls for participation be adopted, guaranteeing a proper mix of entrepreneurs, SME organisations, intermediaries, academic and research institutions and policymakers from all the MS ⁽²⁸⁾;
- tangible results be achieved based on the discussions and work of the Assembly — e.g. takeaways, to-do-lists, etc. Each year a report on how the previous year's decisions have been implemented should be produced and made available;
- consultation with SMEs and their representatives be included when the programme and scope of issues to be discussed during the Assembly is decided.

6.4. Deeply convinced that representativeness increases the effectiveness of policies and measures at EU, national, regional and local level and can provide an extra impetus to social dialogue at sectoral level, the EESC calls for better representation of SMEs by investing in joint actions by strong and representative SME organisations and the exchange of experience and good practices.

6.5. Some EC information web portals, which are important for SMEs, are not translated into all EU languages, which puts SMEs at a disadvantage. The same applies to most of the public consultations.

6.6. The EESC is concerned that too many EC studies and surveys are outsourced to private consultants, which do not have in-depth knowledge of SMEs' policies and their effects since they are not in daily contact with SMEs and do not represent them. Independent scientific bodies and public/private partnerships in cooperation with SME organisations are urgently needed to deliver real value added for SMEs at EU level.

7. Administrative and regulatory burdens

7.1. When excessive, the European, national, regional and local regulatory burdens remain a major obstacle for SMEs as they tend to be poorly equipped to deal with these sorts of problems. The EESC supports cutting the red tape and constraints on small, medium-sized and micro-enterprises and the public. The Commission should focus on quality rather than quantity and prioritise reductions in red tape, which has been seen to translate into a cost on businesses, a brake on their competitiveness and an obstacle to innovation and job creation. It goes without saying that when such steps are taken, consideration must be given to the aim and purpose for which obligations were put in place. The EESC insists that compliance procedures should not be unnecessarily costly or lengthy. The silent consent principle needs to be promoted when legislating at European, national and regional level. MS need to be encouraged to keep administrative taxes to a level not exceeding the administrative costs.

⁽²⁷⁾ For example EuroFi Financial Forum <http://www.eurofi.net/>, Annual Financial Services Forum, etc.

⁽²⁸⁾ The representation of SMEs is currently a matter for discussion, because 'Entry to the SME Assembly and European Enterprise Promotion Awards is by personal invitation from the EC only'. This has led to a situation where every year the same circle of participants is gathered, without guarantee of whether they represent the SME community in their countries or whether they have the capacity to pass on to that community the messages from the Assembly. Suggestions are not elicited on the topics and the agenda includes only fragmented examples of entrepreneurship. The Assembly does not debate important issues or produce proposals.

7.2. The 'once only' principle and the SME test should be more thoroughly and systematically applied by the relevant services of the EC ⁽²⁹⁾ and be made legally binding, because currently their application in practice is extremely limited as it is left to the good will of the MS. This endeavour must cover both the legislation and the administrative procedures affecting SMEs (including by introducing single interlocutor and reduced reporting obligations ⁽³⁰⁾). The EESC points out that whilst it is important to avoid any duplication of requests for information, to ensure sound public governance and therefore relevant and essential data and information for establishing, monitoring and assessing the policies must be available in the government data registers.

7.3. The EESC calls on the EC to review its commitments to assessing different pieces of legislation and regulations, which are pending or delayed, and to proceed swiftly with those which are related to SMEs. The Committee calls on the EC to strengthen and increase the administrative capacity of the special directorate for SMEs.

7.4. The EC must ensure that the impact assessment and the REFIT programme puts, when applicable, a special focus on the needs of SMEs. This must also be mirrored by MS. The intention stated by the EC in the SBA review to 'explore the possibility for reducing gold-plating by MS' must be implemented in practice ⁽³¹⁾, in accordance with the communication on Smart Regulation, without curtailing the regulations on protecting the public, consumers and workers, or gender and environmental standards ⁽³²⁾, including by encouraging the MS to give a particular central body responsibility for monitoring. This might take a form of an early warning service, monitoring the coherence of the transposition of EU legislation at national, regional and local level, in order to prevent gold-plating legislation or unnecessary administrative burdens. The EESC also suggests that it should be obligatory for the agendas of SME envoys to include issues that are on the EC's regulatory agenda.

7.5. The EESC calls on European and national policymakers to ensure that there is systematic scrutiny of new regulations and their implementation by representatives of EU, national, regional and local business associations. The reduction of unnecessary costs and burdens should be based on evidence from a 'case-by-case' assessment.

7.6. Appreciating the crucial importance of business transfers for SMEs and especially family businesses, the EESC calls for swift measures to facilitate and streamline them at reasonable costs.

7.7. The culture of risk-taking must be wider promoted, including by creating a more favourable legislative second chance framework. Projects like PRE-SOLVE and Early Warning Europe should be further developed and replicated to cover all Member States.

8. Human resources

8.1. While most of the new jobs in the EU are created by SMEs, recently they have faced serious problems in accessing skilled labour, especially workers equipped with digital economy-related skills, which is due, among other things, to the deteriorating demographic picture in many regions in terms of population and ageing trends.

8.2. Even in regions where the population is growing it is difficult for SMEs to hire and keep highly-skilled labour and to comply with the increasing regulatory and bureaucratic requirements of the labour market institutions. SMEs need assistance in identifying, attracting and training human resources. Measures are needed to support SMEs with regard to health and safety training and healthcare services for workers — for example offering such services to a cluster or group of SMEs, in order to reduce the costs and to limit the technical formalities.

8.3. The EESC invites the EC to develop support measures providing off-season and tailor-made training programmes to qualify their workforce and to encourage MS to create systems for offering such programmes on a regular basis, since small companies suffer from high quit ratios. These measures will help SMEs to overcome the labour market deficiencies which hamper their prospects.

⁽²⁹⁾ <http://www.eurochambres.eu/Content/Default.asp?PageID=1&DocID=7733>.

⁽³⁰⁾ COM(2011) 78 final, p. 8.

⁽³¹⁾ COM(2011) 78 final, p. 8.

⁽³²⁾ OJ C 303, 19.8.2016, p. 45 (§2.9.1).

8.4. The EESC underlines in particular the need to increase the number of apprenticeships, as well as to devise special programmes for mentoring and tutoring, in order to cope with the problems of youth unemployment. This has to be done with the least possible administrative burden for SMEs.

8.5. The EESC notes that the increase in employment is occurring primarily in the SME sector and in medium-sized enterprises in particular. At the same time, it is a challenge to find appropriate ways to provide an opportunity for social dialogue between employees and employers in these enterprises, and to give it a specific structure. An initiative aimed at gathering innovative examples drawn from the best practices of various countries can make a contribution to this.

9. Entrepreneurship

9.1. In line with its previous opinions⁽³³⁾, the EESC is concerned because the recent data show that ‘necessity entrepreneurship’ prevailed over ‘opportunity entrepreneurship’, and calls on the EC and the MS to start designing measures to reverse this trend⁽³⁴⁾, and to encourage a stronger culture of entrepreneurship in Europe.

9.2. The Entrepreneurship Action Plan⁽³⁵⁾ is far from being implemented. The EESC would consider any further delay to be extremely detrimental, since the entrepreneurial spirit in Europe is lagging behind compared to other parts of the world and the measures in place produce limited effect⁽³⁶⁾.

9.3. The low level of take-up by SMEs of the digital internal market in their cross-border commercial relations is an important concern for them, and especially for the micro companies. They should be encouraged to participate under the same market conditions and on an equal footing with large international and European on-line traders. SMEs need to be reassured on their right to choose in which market to operate and on their freedom to contract, so as to restore confidence in carrying out online cross-border transactions.

9.4. The EESC calls for an overall positive climate to be created that can boost entrepreneurial activity for all, without putting a special focus on specific groups of entrepreneurs. To that end, an Action Plan for Entrepreneurial Mind-Set Education is urgently needed.

9.5. Underlining the role of cultural and social norms, the EESC calls on the EC and the MS to be more innovative in finding ways to tackle the culture of risk aversion. The value of entrepreneurs and companies and their crucial role in creating employment and growth must be better promoted, including by devising a special Pillar of Entrepreneurs’ Rights⁽³⁷⁾, which should cover all special forms of entrepreneurs, and declaring a Year of Entrepreneurs. The EC and the MS must improve the framework conditions for entrepreneurship such as access to finance, the regulatory framework and entrepreneurial education.

9.6. The EESC calls on the EC to support and promote advisory services and programmes for improving the management of small and family traditional businesses, since everything in these companies is directly related to this factor, as well as for lifelong learning, including by providing online educational tools in areas such as business planning and production standards, consumer legislation or other regulations.

10. Access to markets

10.1. Some studies show that a very small proportion of SMEs⁽³⁸⁾ consider the internal market as their home market. Even though the majority of SMEs are local, their business activities are highly dependent on internal market regulations. The EESC calls for the internal market, both for products and services, to be deepened, for regulatory barriers and administrative burdens to be reduced, and for instruments to support SMEs’ expansion within the internal market to be created.

⁽³³⁾ OJ C 81, 2.3.2018, p. 1.

⁽³⁴⁾ The data shows that for the five years after the beginning of the crisis in 2008 the number of SMEs increased while value added and the number of employees declined. EC SME Performance Review dataset (2014 edition).

⁽³⁵⁾ COM(2012) 795 final.

⁽³⁶⁾ EESC study on ‘Assessment of the effectiveness of the EU SMEs policies 2007-2015’.

⁽³⁷⁾ http://www.eurochambres.eu/custom/EUROCHAMBRES_proposal_for_a_European_Pillar_of_Entrepreneurial_Rights-2016-00213-01.pdf

⁽³⁸⁾ In Sweden — only 6 %.

10.2. The EESC invites the EC to evaluate which SME instruments in the different sectors could help SMEs to be more active and involved in participating in trade agreement and trade defence negotiations, and to make an effort to further promote the most effective instruments, putting the 'think small first' principle at the heart of EU trade policy.

10.3. The EESC underlines the fact that SMEs are an increasingly important subject for the EU and calls for swift action so as to increase their internationalisation, enabling them to take advantage of the opportunities that foreign markets provide.

10.4. The EESC calls on the EC to ensure better and more effective operation of the SME centres intended to help SMEs enter important markets — e.g. China, Japan, etc. It invites the EC to ensure better and more effective cooperation between SMEs representative organisations and standardisation authorities with respect to existing and new EU technical standards.

10.5. Some MS report unfair trade practices on the part of the big trade chains which impose excessively heavy trading conditions on SMEs. This issue must be studied further and properly addressed.

10.6. The EESC also calls on the EC to step up its efforts through its European and national programmes to increase small firms' share of government contracts obtained from public procurement ⁽³⁹⁾.

10.7. The EESC believes it is important to involve SME organisations in partnerships so that, through training and better coordination, they can deal with the consequences of natural and non-natural disasters at EU level.

Brussels, 17 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽³⁹⁾ https://ec.europa.eu/growth/single-market/public-procurement/strategy_en; <https://www.ppact.eu/>; www.sesamproject.eu;
<http://www.tenderio.com/>

Opinion of the European Economic and Social Committee on 'Adopting a comprehensive approach to industrial policy in the EU — improving business environment and support for the competitiveness of the European industry'

(exploratory opinion)

(2018/C 197/02)

Rapporteur: **Gonçalo LOBO XAVIER**

Co-rapporteur: **Dirk BERGRATH**

Consultation	Bulgarian Presidency of the Council, 5.9.2017
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	18.12.2017
Adopted at plenary	17.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	134/1/0

1. Conclusions and recommendations

1.1. The EESC recognises that a renewed EU industrial policy strategy is a key factor in orienting growth and the rapid adaptation of Member States to the new trends and to a new economic model. Industry in the broader sense is essential to job creation. Therefore the EESC urges the Commission and the Member States to adopt a long-term and comprehensive strategy with a global vision to address the challenges as opposed to an approach based on short-term remedies that will not allow growth and job creation in a more concrete and sustainable way. In this context, it would be useful if the Commission were to draw up a comparative study on the different plans to support manufacturing industry recently adopted in the US, China, and Korea.

1.2. Fast-expanding business services are already crucial for manufacturing activities, especially for SMEs. The right combination of business services and manufacturing activities is fundamental to achieving efficiency and competitiveness and must be part of a modern industrial policy strategy. Start-ups must be encouraged to develop solutions that can boost industrial activities and increase competitiveness, especially if they want to be sustainable in the long term.

1.3. The aim that industry should account for approximately **20 % of GDP by 2020** ⁽¹⁾, compared with the current 15,1 %, must not be only a political objective but also a priority adapted to a long-term perspective. European policy must remain focused on this goal but always bearing in mind the different structural situation of each Member State and the need to avoid fragmentation of the single market. This should remain the priority for the Commission. The definition of new, reliable and measurable targets could also improve Member States' commitment and awareness of the contribution of industrial activities to European citizens' welfare.

1.4. The EESC welcomes the main objective stated by President Juncker of making European industry stronger and more competitive, and remaining, or becoming, the world leader in innovation, digitalisation and decarbonisation. To achieve this, Europe needs a long-term strategy based on true smart specialisation and structural diversity and flexibility in its Member States and the anticipation of fundamental, rapid and unprecedented changes in the operating environment.

⁽¹⁾ COM(2017) 479 final.

1.5. The EESC believes that, in order to achieve a better balance between the Member States in the field of competitiveness, structural reforms agreed by the social partners and civil society organisations must be implemented, and specific policy changes regarding education, R & D activities, public and private investment and productivity must be on the agenda. The best practices in these specific areas must be shared. Europe's current generally positive economic performance makes this the right moment to do it.

1.6. The EESC strongly believes that Europe's attractiveness must be a priority for any industrial policy based on innovation and competitiveness, and the reshoring of some sectors must be on the agenda. This reshoring must be based on Europe's main assets, such as an economic model based on knowledge, innovation, high-level skills, R & D activities and a friendly and sustainable environment for business respecting EU social standards. This can only be achieved through strong cooperation between 'big' companies and SMEs in order to complete the virtuous innovation cycle. This cooperation must be reflected in the allocation of EU R & D+I funding and should be strengthened under the Multiannual Financial Framework (2014-2020). A positive fiscal stance would make it much easier to earmark new resources aimed directly at raising the competitiveness of European industry.

1.7. The EESC fully supports the annual 'Industry Day' as a way of highlighting the EU's priorities and of raising awareness of this objective. The EESC draws attention to the need to involve the social partners and civil society organisations in Industry Day and to their ability to cooperate in tackling this challenge. It is essential for Europe that all citizens understand the power of the 'Made in Europe' brand and everyone's role in meeting this challenge. European industry has an impact on society and that must be clear to European citizens.

1.8. The EESC draws attention to the need to design and adapt new policies on skills. Europe must face this challenge by involving civil society organisations and the social partners, in order to ensure respect for the current workforce and their rights and duties, but also with its sights set on the future and the need to speed up the adaptation of education and training systems to match the new jobs that are on the horizon.

1.9. The EESC welcomes the new initiative of the Commission to create a European framework for quality and effective apprenticeships which can help to overcome shortages in the labour market and provide companies with a labour force that has the requisite practical skills and knowledge⁽²⁾. The quality and quantity of the European labour force is probably one of the most important challenges for Europe's competitiveness, and every Member State must be engaged in this huge task.

1.10. The EESC believes that it is crucial for a level playing-field that a compromise be reached concerning the respect of fair trade among global players⁽³⁾. Europe must lead by example and by actively engaging other regions regarding sustainability, respect for European social standards, and fair competition. But Europe cannot ignore the existing 'bad practices' by other global players that put at risk European values, competitiveness, jobs and welfare. Europe must be vigilant and use the right tools in order to support its values and industrial companies. Overcapacity, illegal state aid and other forms of unfair competition must be tackled by European regulation, while respecting WTO rules. Antidumping measures imposed by the European Commission are essential to achieve a fair business environment, but they must be better monitored, swifter and more flexible in order to accomplish the ultimate goal without having indirect 'side effects' impacting different industrial sectors⁽⁴⁾.

2. State of play in Europe and the Commission communication

2.1. The request of the forthcoming Bulgarian Presidency arrived a few days before the Commission published its Communication on 'Investing in a smart, innovative and sustainable Industry — A renewed EU Industrial Policy Strategy'.

⁽²⁾ COM(2017) 563 final — A European framework for quality and effective apprenticeships.

⁽³⁾ In line with Sustainable Development Goal No 9 on Industry, innovation and infrastructure which has been agreed by all EU Member States.

⁽⁴⁾ The Commission Implementing Regulation (EU) 2017/336 of 27 February 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the PRC was a good example of an anti-dumping measure, but the side effects must be monitored (http://data.europa.eu/eli/reg_impl/2017/336/oj).

2.2. On 5 July 2017 the European Parliament called for the creation of an ambitious EU industrial policy strategy including 'a Union strategy and an action plan for a consistent and comprehensive industrial policy aimed at Europe's reindustrialisation, with targets, indicators, measures and time scales'.

2.3. The communication issued subsequently at the very least shows the Commission's concern regarding this issue.

2.4. The purpose of this opinion is not to focus on the communication. However, the following points cannot be ignored:

- the communication presents European industry as developing in a steady upward trend since 2009. It is puzzling why the Commission refers to 2009, the worst year of the economic crisis. Neither the share of manufacturing value-added nor employment have returned to their pre-crisis levels of 2007, in spite — or precisely because — of the structural reforms and supply-oriented policies which are still hampering demand on Europe's periphery;
- it is difficult to identify exactly what is new in the Commission's approach. The communication largely consists of the usual industry (supply-oriented) policy recommendations from the Commission: reducing bureaucracy, deepening of the single market and developing investment capital (revitalisation of the securitisation market for venture capital, EFSI, etc.);
- in addition to the single market strategy, the Commission emphasises the necessity of additional qualification measures. However, except for its intention to expand its support for the development of 'national competence strategies' to other sectors (i.e. steel, paper, green technologies and renewable energies), no concrete proposals are actually made;
- when it comes to funding, the Commission lists the existing Structural and Investment Funds, supporting bodies and programmes (ESIF, EFSI, EIB, Horizon 2020, etc.), completely ignoring the crucial question of how a reduced post-Brexit EU budget would be able to support industrial policy initiatives;
- in the areas of energy, transport, digitalisation and trade policy the Commission sums up the measures already taken;
- with the emergence of a new economy based on technological start-ups that focus on services, it would be desirable to get those companies more involved with the industrial field not only to better serve the different sectors but also to contribute to their sustainability. (50 % of entrepreneurs experience business failure within the first five years of activity! ⁽⁵⁾).

2.5. The communication is not completely new ⁽⁶⁾. It is a summary of the policy measures already taken, without a new, coherent strategic approach as called for by the EP and promised in the title of the communication, 'A renewed EU Industrial Policy Strategy'. It is now time for Europe to learn lessons from the past and look to the future, bearing in mind the interests of its citizens and the sustainability of the European model.

2.6. In the context of a European industrial strategy there is a need for a consistent industrial action plan with binding targets, timetables, instruments and shared responsibility to tackle the four key challenges of the next 10 years: digitalisation, climate change, globalisation and demographic change (in particular, the challenges posed by mobility and ageing).

3. General comments

3.1. European industry, and industry worldwide, is undergoing a huge transformation. This brings with it vast challenges. European industry is fundamental for European growth and the economy of the Member States. It accounts for 80 % of Europe's exports and boosts private and public innovation and high-skilled jobs for citizens. It is also crucial for the internal market. Europe still enjoys a competitive advantage in high value-added products and services and it must continue to maintain this. But it must take advantage of this asset and sustain activities that create growth. Industry provides

⁽⁵⁾ <http://www.eesc.europa.eu/?i=portal.en.int-opinions.41082> (point 2.4).

⁽⁶⁾ COM(2014) 14 final.

36 million direct jobs and contributes to high standards of living for our citizens. It plays a key role in supporting Europe's global leadership and international stature. European industry is crucial to boosting research and innovation activities and makes a major contribution to job creation and growth.

3.2. The EESC believes that the current industrial revolution is based on a dramatic and rapid change in global players, a fundamental shift in consumer habits, and game-changing developments in science and technology. This is combined with the well-known progression of digitalisation, the circular economy, robotisation and new production processes. This implies that the long-term industrial strategy has to be prepared for unprecedented conditions brought about by e.g. the introduction of Artificial Intelligence and even further the emergence of 'Industry 5.0'.

3.3. This paradigm shift is already essentially changing business and society and, therefore, industry in all its aspects. One of the most relevant aspects of this revolution is going to be the transformation of work and skills. This new industrial order will affect most economic sectors. Industry 4.0 needs Labour 4.0, with a right of access to education and life-long learning. Only a qualified workforce will be able to react to changing markets and innovative workplaces.

3.4. The European Economic and Social Committee calls on the European Commission to draw up a comparative study on the different plans to support manufacturing industry recently adopted in the United States, China and Korea, and to make this study available to it. Such a quantitative and qualitative analysis of the resources mobilised, as well as of the sectoral and thematic priorities, will provide the information needed to 'develop a comprehensive EU industrial strategy with a focus on 2030 and beyond, including medium to long-term strategic objectives and indicators for industry and to be accompanied by an action plan with concrete measures'⁽⁷⁾.

3.5. The EESC believes that there is a direct link between education programmes and facilities and social cohesion. Up-to-date skills and qualifications for digital technology users and reskilling are key issues. Social partners and civil society organisations should be closely involved in developing curricula for all levels and forms of education. Other global players besides Europe — namely the United States ('America First'), China, Japan, India and Korea — are already taking measures to address these challenges, and a new skills approach is crucial.

3.6. Similarly, the 'Make in India' strategy is seeking to prepare the country to be the 'next manufacturing destination'. This process concerns not only technology but also, and most importantly, to skills. It is interesting to note that the People's Republic of China is already preparing a state-driven programme entitled 'Made in China 2025', based on the German Industrie 4.0 and other European trends. This means that Europe is once again leading this change. But to lead the process might not be enough. At the same time we must be aware of the challenges ahead and how we need to adapt in order to advance and consolidate Europe's leadership, with results and growth for all.

3.7. Europe's industrial competitiveness must be perceived globally in spite of the differences between the Member States. Several studies show a clear division between 'Member States leading in competitiveness' (10), 'Member States following in competitiveness' (7) and 'Member States catching up in competitiveness' (11)⁽⁸⁾.

3.8. This means that EU policies originally based on convergence do not sufficiently take into account the deepening of divergence between EU Member States: one size does not fit all, and this must be addressed with courage and always bearing in mind the principle of growth for all. The link between competitiveness, convergence and cohesion must be re-established.

3.9. This can also be applied to R & D+Innovation activities. It is very important to increase and at least maintain investment in these activities, but always taking into account the specific situation of each Member State. European policy must take account of the structural diversity of the Union, also regarding R & D+I activities⁽⁹⁾.

⁽⁷⁾ Conclusions of the Competitiveness Council of 30 November-1 December 2017.

⁽⁸⁾ Factors for Growth — Priorities for competitiveness, convergence and cohesion in the EU; Lighthouse Europe.

⁽⁹⁾ EESC Information Report on the Interim evaluation of Horizon 2020 (INT/807).

3.10. Finally, the EESC stresses the need to enhance labour relations as a *sine qua non* of comprehensive reindustrialisation.

4. Specific comments

4.1. Trade and globalisation (including companies' internationalisation activities)

4.1.1. There is no doubt that the internal market is crucial for Europe's growth, and it must offer a fair environment for creating, launching, developing and maintaining businesses. It is very important to create the right conditions for operating in the EU area. We must not of course forget Europe's position in the world and the need to interact with other economic regions. The recent trade agreements with other economies and the negotiations with other possible partners must be far-sighted and seen as an opportunity for growth and for developing industry. But at the same time Europe cannot overlook certain unfair practices in other economic regions of the world, and it must react firmly to such action.

4.1.2. European social standards must remain at the heart of every policy, and although Europe cannot impose these standards on the world, measures must be taken to defend them and create a friendly 'lead by example' corporate social responsibility culture globally.

4.2. Energy and sustainable industry based on the circular economy

4.2.1. Europe must continuously invest in a sustainable industry that can be accepted by citizens. A society that can reduce its burden on nature by ensuring that resources remain in use for as long as possible is one that is better prepared. The concept of the circular economy must be at the heart of every industrial policy in order to recover, reuse, remanufacture or recycle to create new products in a sustainable environment.

4.2.2. The use of alternative and green energy is more than ever a priority⁽¹⁰⁾. Citizens must be made aware of these activities that create jobs and allow European manufacturing industry to lead in many fields of knowledge transfer. This particular 'industry' shows Europe's ability to combine the knowledge gathered by academia and other institutions and the manufacturing system.

4.2.3. Instead of focusing solely on domestic measures, the EU should aim at favourable conditions for EU industries to export technologies, products and solutions, so as to contribute to tackling the global climate and natural resources challenges in the most efficient way.

4.3. Research, Development and Innovation

4.3.1. European R & D projects should be boosted by public funding and coordinated with the initiatives taken internally by the Member States. Increasing the level of investment in R & D+I activities in each Member State must be a priority. In addition, the EESC calls (again) for simplification of the processes for accessing EU finance for innovation⁽¹¹⁾.

4.3.2. The EESC also believes that the innovation ecosystem truly benefits from EU investment in 'big companies' to boost the participation of SMEs. The virtuous circle of innovation is possible only when the investment of big companies and the search for solutions from SMEs are brought together. In this area, European projects like COSME should have more visibility in the Member States in order to change the narrative among citizens.

⁽¹⁰⁾ The recent results on 'wind energy' performance (<https://windeurope.org/about-wind/daily-wind/>; on Thursday 23 November 2017, 19,2 % of Europe's electricity demand was covered by wind energy. Top 3 countries: Denmark 93 %, Germany 47 % and Portugal 46 %) show that it is possible to improve energy efficiency.

⁽¹¹⁾ Some indicative estimates show put investment under Horizon 2020 at EUR 74,8 billion, including EUR 16,4 billion for industrial leadership. Under the current MFF, funding from the Structural Funds for research and innovation amounts to EUR 43,7 billion; for the competitiveness of SMEs the figure is EUR 63,7 billion and for the low-carbon economy EUR 44,8 billion. News about the Made in China project indicates a total of state investment of USD 1,5 billion.

4.3.3. Furthermore, the EESC calls for Responsible Research and Innovation (RRI) to be strengthened. This is a holistic approach established under Horizon 2020 involving the participation of all players (from the research community to institutions and governments) through inclusive and participatory methodologies.

4.3.4. The EESC has not forgotten — and would draw particular attention to — the most recent technological developments resulting from advances in research and in implementing findings in the area of artificial intelligence (AI). In this respect, the EESC points to the impact and consequences of its application in respect of not just industrial production processes but also on work and generally on the very way people live.

4.4. *Brexit*

4.4.1. The impact of Brexit on different sectors will vary depending on the agreement ultimately negotiated between the UK and the EU-27. Some sectors are likely to be more sensitive to the impact of Brexit, others less. However, the exposure of individual sectors should not be examined separately since there is high interconnection between sectors which may amplify the impact for each individual one. Problems faced by food and drink manufacturing will impact hotels and restaurants, for example, while setbacks for the metals industry will affect automotive manufacturing.

4.4.2. Two aspects seem to be particularly important: access to the market and access to labour on both sides. While the UK's access to EU labour tends to be broadly similar across many sectors, the relative importance of exports to the EU varies significantly, with some larger sectors such as construction and wholesale and the retail trade being more domestically focused.

4.4.3. For the EESC, it is crucial to protect the integrity of the single market. In addition, it is important to ensure legal certainty.

5. **Investment plan**

5.1. Investment plays a key role in the context of a new industrial era. The EESC believes that a number of measures could be taken to improve the effectiveness of investment and to take industrial companies into another dimension:

- expanding public investment: fiscal leeway for Member States, easing the debt criteria for public investment ('golden rule'); increasing the EU budget for industrial transformation processes, investment in sustainable (trans-)European infrastructure;
- strengthening private investment: stimulating the investment activity of the European Investment Bank, establishing new funding programmes from national banks and strengthening existing ones. The aim is to provide SMEs with a secure and long-term financing framework, in particular with regard to complex transformation processes;
- supporting the European Commission's sustainable financing strategy in the context of the Capital Markets Union, which will facilitate long-term investment by directing private flows of capital towards sustainable investments. In this connection, the Committee stresses the importance of the forthcoming final report by the High-Level Expert Group on Sustainable Financing and the subsequent action plan.

5.2. The allocation of EU funding must be focused on the achievement of industrial policy development goals, particularly with added value for the EU (CO₂ reduction, energy efficiency, renewables, digitalisation, etc.) and linked to EU social standards and benchmarking.

5.3. These sustainability objectives are fundamental for European industry and European leadership. However, these objectives require an appropriate investment framework for SMEs that allows them to stay competitive.

5.4. The EESC also considers that the possibility for Member States to include social and regional procurement criteria in their own procurement practices (concept of 'good content') should be examined.

5.5. Finally, it also proposes rethinking the corporate taxation system with a view to addressing tax evasion and tax competition issues.

Brussels, 17 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

531th EESC PLENARY SESSION OF 17 AND 18 JANUARY 2018

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — The Annual Union Work Programme for European standardisation for 2018’*(COM(2017) 453 final)**(2018/C 197/03)*Rapporteur working alone: **Juan MENDOZA CASTRO**

Consultation	European Commission, 9.10.2017
Legal Basis	Article 304 TFEU
Section responsible	Single Market, Production and Consumption
Adopted in section	18.12.2017
Adopted at plenary	17.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	195/1/0

1. Conclusions and recommendations

1.1. The Committee welcomes the 2018 standardisation programme, in particular social and environmental actions, but recommends that in future versions a summary of compliance with previous programmes be included.

1.2. It recommends that all actions in the field of ICT be included in a single document.

1.3. It urges the Commission to keep a close watch to avoid the possible abuse of patent rules and closed standards.

1.4. The Committee highlights the role of the Commission in the European Standardisation System, which is essential for the development of the internal market and places the EU as a world leader in this field.

1.5. It calls on the Commission to maintain adequate budgetary resources and the necessary staffing to meet the objectives of Regulation (EU) No 1025/2012.

1.6. It insists that a detailed follow-up be carried out on the efforts made by the main standardisation players. The EESC could, as a priority, create an ad hoc forum on the inclusiveness of the European Standardisation System.

1.7. The Committee considers in general the 27 actions planned for 2018 to be appropriate but highlights the following aspects:

- The Digital Single Market (DSM): The EESC expresses its concern because worldwide 'de facto' standards are often driven by non-EU industry giants with negative consequences;
- New standards on ethanol: the EESC strongly recommends considering environmental protection;
- The Committee welcomes especially the various actions aimed at significantly improving environmental and human health;
- Standards on medical devices: the EESC suggests that cost effectiveness should also be considered;
- Harmonisation of criteria on emissions in the transport sector: the EESC highlights the limited progress made since the first steps in 1995.

1.8. The EESC supports the Commission on international cooperation but would like to draw the Commission's attention to the fact that a growing number of standards are now elaborated at international level without coordinated European input.

1.9. The EESC recommends that the European Standard Organisations (ESOs) should simplify the procedures for Annex III organisations to access the standards drafting process and as such 'lower the barrier' for effective participation.

1.10. The EESC welcomes the different Joint Initiative on Standardisation (JIS) actions but also proposes to consider the *indirect* effects of the standard-setting activities on issues such as dislocation of jobs, inclusiveness of society, education and training, etc.

2. The Commission proposals

2.1. The EU's annual work plan addresses and echoes the challenges and considerations concerning standard essential patents, ICT standardisation, the international dimension of standardisation and automated vehicles.

2.2. The plan also reflects the Joint Initiative on Standardisation of June 2016 ⁽¹⁾.

2.3. Actions are set out in support of the following strategic priorities aimed at supporting relevant initiatives under the Commission Work Programme for 2017 and the standardisation needs for 2018 stemming from these initiatives:

- The Digital Single Market (DSM) Strategy;
- The Energy Union Strategy;
- The European Space Strategy;
- The EU Action Plan for the Circular Economy;
- The European Defence Action Plan;
- A deeper and fairer internal market with a strengthened industrial base.

2.4. The Commission will organise inter-institutional training to enhance legislators' and co-legislators' understanding of the use of standards in the implementation of legislation and policies.

2.5. It invites also the ESOs to maintain and intensify their efforts to facilitate the work of Annex III organisations and of all interested stakeholders, with a specific focus on their internal rules and procedures, and on work at international level, in particular within ISO and IEC.

⁽¹⁾ COM(2015) 550 final.

3. General Comments

3.1. The EESC welcomes the 2018 annual work programme presented by the Commission, which covers social and key environmental issues, including the important topics of the circular economy, climate change and clean energies. It notes, however, that a summary should be included in future versions detailing the extent to which previous annual programmes have been achieved.

3.2. There is a need to streamline the platforms and mechanisms for coordination in the field of ICT to avoid duplicating efforts and a possible lack of coordination. All standardisation actions in this area should be incorporated into a single document.

3.3. Open standards are important for industrial and technological development in the EU. The Committee urges the Commission to prevent usage that is abusive and contrary to the principles of competition of the patent rules and of the closed source standards. In the case of standard essential patents, we support the principles of fair, reasonable and non-discriminatory (FRAND) licences.

3.4. The standardisation model places the EU as a world leader. The EESC highlights the work of the Commission in this area. The uniformity and consistency of the body of European standards is ensured through the underlying principle of 'one standard, one test — accepted throughout Europe'. This provides businesses with investment, as well as legal and financial security.

3.5. Given the specific nature and importance of the European Standardisation System (ESS) for industry, SMEs, consumers and workers, the EESC calls on the Commission to maintain budgetary resources and staffing to meet the objectives of Regulation (EU) No 1025/2012.

3.6. The Committee calls for close monitoring of the efforts of the key standardisation players, in order to increase the inclusiveness of the ESS. The EESC could, as a priority, create an ad hoc forum on the inclusiveness of the ESS. This body would be responsible for organising an annual public hearing to evaluate the progress made in this regard.

3.7. Given the lack of a satisfactory response at the moment about the conclusion of the European Court of Justice in the James Elliott case ⁽²⁾, which for the first time recognises that European standards are part of EU laws, the EESC stresses the importance of the Commission exercising its necessary power of control over standardisation work in close cooperation with the other European institutions, and ask for an interinstitutional discussion about this issue.

3.8. The EESC suggests the EC to examine the consultation process of the preliminary draft of the AUWP for consultation, because it provided no strategic outlook, no structure, no context, and no explanation of reasoning for proposals put forward.

4. Comments on the actions to be taken in 2018

A new boost for jobs, growth and investment

4.1. *Establishment of standardised rules for the manufacture of fertilisers (including organic)* ⁽³⁾

The Committee has already observed that some definitions and standards concerning fertilisers originating from secondary raw materials are not clear. To improve implementation of the new regulation, the EESC recommends more thorough integration and harmonisation with the existing Directive on Waste ⁽⁴⁾ and remember also the importance of environmental considerations with fertilisers.

Digital Single Market (DSM)

4.2. *Improving the quality of fixed and wireless mobile services* ⁽⁵⁾

4.2.1. Standardisation plays a role of unquestionable importance in this field and avoids fragmentation of the market which may produce anticompetitive practices ⁽⁶⁾.

⁽²⁾ C-613/14 — James Elliott Construction.

⁽³⁾ COM(2016) 157 final.

⁽⁴⁾ OJ C 389, 21.10.2016, p. 80.

⁽⁵⁾ COM(2016) 176 final.

⁽⁶⁾ BEREC (Body of European Regulators for Electronic Communications) Report on Enabling the Internet of Things, 12.2.2016.

4.2.2. The EESC fully support the Commission on the DSM strategy but would like to point out that it has important consequences for the organisation of the European labour market as a growing number of ‘crowd workers’ are working for platforms in often very short-lived and ‘volatile’ employment relationships.

4.2.3. The digitalisation of industry is a worldwide trend that will only increase in the next few years. ICT standards are essential in the development of digital technologies across many industry sectors. Worldwide ‘de facto’ standards are however driven by non-EU industry giants.

4.2.4. The development of national, European or international standards by the official Standardisation Bodies (CEN, Cenelec, ETSI) takes too long for the rapidly changing digital technology. Businesses therefore develop their own standards — in much shorter time and with their own rules.

4.2.5. There is a risk that the development of standards will become non-transparent and exclusive.

4.3. *Establishment of rules that facilitate the development of 5G technology in the 26 GHz band (24,25-27,50 GHz) and in other bands with higher wavelengths*⁽⁷⁾

The EESC considers this action essential to maintaining the EU’s leadership in the implementation of 5G technologies.

4.4. *Establishment of common standards for improving radio communication systems, exchanging passenger data and timetables and IT security*⁽⁸⁾

The EESC suggests that technological changes and new business models emerging from tourism should also be normalised; likewise, that the development of integrated smart ticketing and information services should be promoted.

4.5. *Interoperability and data exchange between operators to encourage more efficient transport and logistics services*⁽⁹⁾

The Commission proposes ‘ancillary action’ on establishing standards. Nevertheless, it is important to remember the big challenges ahead in this industry given the present situation: ‘repeated data submission into different systems because of a mosaic of non-interoperable standards; lack of interconnected systems and insufficient confidence in the protection of sensitive data; e-transport documents not being recognised by authorities, banks, insurance companies; lack of a critical mass of stakeholders sharing data and exploring new business opportunities’⁽¹⁰⁾.

A resilient energy union with a forward-looking climate change policy

4.6. *Creating new sensors and measurement methods for assessing ambient air quality*⁽¹¹⁾; *Monitoring emissions of ammonia (HN₃), chlorine and chlorine dioxide into the atmosphere and emissions of hydrogen fluoride (or total emissions of gaseous fluorides) from industrial sectors*⁽¹²⁾; *Protecting health against polycyclic aromatic hydrocarbons*⁽¹³⁾

The Committee welcomes the proposed improvements, which contribute significantly to improving environmental and human health. The exposure of the general population to polycyclic aromatic hydrocarbons (PAHs), many of which are known carcinogens, has long been recognised as a matter of concern and there are several pieces of EU legislation which already limit the presence of these substances in certain food products, in water and in ambient air.

⁽⁷⁾ Directive 2014/53/EU (OJ L 153, 22.5.2014, p. 62).

⁽⁸⁾ Directive (EU) 2016/797 (OJ L 138, 26.5.2016, p. 44).

⁽⁹⁾ COM(2011) 144 final, COM(2009) 8 final, COM(2013) 913 final, SWD(2013) 524 final, C(2015) 2259 final.

⁽¹⁰⁾ See Digital Transport and Logistics Forum — Background, 2015.

⁽¹¹⁾ Directive 2008/50/EC (OJ L 152, 11.6.2008, p. 1); Directive 2004/107/EC (OJ L 23, 26.1.2005, p. 3).

⁽¹²⁾ Directive 2010/75/EU (OJ L 334, 17.12.2010, p. 17).

⁽¹³⁾ Regulation (EC) No 1907/2006 (OJ L 396, 30.12.2006, p. 1).

4.7. *Eco-design: reduction in consumption of many products (computers, etc.)* ⁽¹⁴⁾; *energy-efficiency labelling of centralised systems* ⁽¹⁵⁾; *green infrastructure* ⁽¹⁶⁾

The EESC highlights the resilience of key EU infrastructure in the face of the inevitable impacts of climate change, and the slow response from the standardisation system to this important issue. Standards can increase the development of Green Infrastructure, contributing to improved resource efficiency in the building sector and better resilience to the impacts of climate change.

4.8. *Developing standards for a 20/25 % ethanol blend in petrol (now 10 %)* ⁽¹⁷⁾

If the Commission decides to provide CEN with a mandate on this issue, the EESC strongly recommends considering: the ecological impacts of monoculture crop plantations; damage to water and soil from the application of pesticides and fertilisers; soil erosion; nutrient leaching; increased use of fresh water resources; loss of biodiversity and wildlife habitat ⁽¹⁸⁾.

4.9. *Harmonisation of criteria on emissions in the transport sector* ⁽¹⁹⁾

According to the EESC, the Commission should make more specific proposals on this action, which is clearly needed. It is worth noting that the first step towards reducing emissions in the transport sector was taken in 1995 ⁽²⁰⁾.

Internal market

4.10. *Strengthening the role of the European Committee for Inland Navigation Standards (CESNI)* ⁽²¹⁾

Action is needed given the huge number of current requirements regarding short sea shipping ⁽²²⁾, but the EESC considers the proposal should be more precise.

4.11. *Roadmap for European Global Navigation Satellite System (EGNSS) downstream standardisation & implementation of roadmap and increasing the interoperability of Galileo services with the aviation market* ⁽²³⁾

The EESC fully supports this proposal, noting that the global market for GNSS-based products and services — called 'downstream' market — was worth EUR 200 billion in 2013 ⁽²⁴⁾.

4.12. *E-Procurement* ⁽²⁵⁾

Harmonisation is a key step towards democratising a market which is intended to be transparent and accessible, with a view to extensively deploying public funds. At the same time, it is important to keep costs low when creating, adjusting and maintaining existing platforms. Standardisation is therefore vitally important ⁽²⁶⁾.

4.13. *Developing standards for printers and other equipment* ⁽²⁷⁾

The EESC agree on the need for new Harmonised Standards since consumers expects new and innovative products such as 3D printers, robots and autonomous vehicles to be as safe as more traditional products. It is imperative that new products do not pose a threat to consumer safety.

⁽¹⁴⁾ Directive 2009/125/EC (OJ L 285, 31.10.2009, p. 10).

⁽¹⁵⁾ Directive 2009/28/EC (OJ L 140, 5.6.2009, p. 16); COM(2016) 767 final.

⁽¹⁶⁾ COM(2013) 249 final; COM(2013) 216 final; COM(2014) 445 final.

⁽¹⁷⁾ Directive 2009/28/EC (OJ L 140, 5.6.2009, p. 16).

⁽¹⁸⁾ Project: Biofuel Marketplace. May 2006.

⁽¹⁹⁾ Directive 2003/87/EC (OJ L 275, 25.10.2003, p. 32).

⁽²⁰⁾ COM(95) 302 final.

⁽²¹⁾ Directive (EU) 2016/1629 (OJ L 252, 16.9.2016, p. 118).

⁽²²⁾ European Standard laying down Technical Requirements for Inland Navigation vessels. Edition 2015/1.

⁽²³⁾ COM(2016) 705 final.

⁽²⁴⁾ Galileo Services Position Paper on the main priorities of the Horizon 2020 Space Work Programme 2018-2020.

⁽²⁵⁾ COM(2013) 453 final; Public Procurement Directives (2017/24/EU); COM(2015) 0192 final.

⁽²⁶⁾ OJ C 67, 6.3.2014, p. 96.

⁽²⁷⁾ Directive 2006/42/EC, Directive 95/16/EC (recast) (OJ L 157, 9.6.2006, p. 24).

4.14. *Updating safety and performance requirements for medical devices* ⁽²⁸⁾

The EESC agrees with the Commission that the new Regulation ‘reinforces safety and performance requirements for medical devices, to keep pace with technological and scientific progress’. This is the main objective, but because new technology is the primary driver of rapidly rising healthcare expenditure, the EESC suggests that cost effectiveness should also be considered.

4.15. *Updating safety and hygiene requirements for construction products in contact with drinking water* ⁽²⁹⁾

The EESC regrets that, even after 10 years of discussion, European standards have yet to be developed in this area. The decision to modify the current mandate (M/136) ⁽³⁰⁾ obliges standardisation bodies to provide the initial results by the end of 2018.

4.16. *Support work on the essential requirements for unmanned aircraft systems (UAS)* ⁽³¹⁾

The EESC notes that there has been increasing public debate about the use of drone technology for recreational and commercial use, including its safety and security risks. International standards are critical in creating the global commercial market. It is vital that these standards bring about a globally harmonised airspace for routine UAS access that will expand commercial opportunities without compromising on safety and overall airspace efficiency. Critical standards that are currently being developed include ‘detect and avoid’, and ‘command and control’ ⁽³²⁾.

4.17. *Revision of the harmonised criteria on explosives for civil use (especially detonators)* ⁽³³⁾

The aim of this action is to increase the safety of civil explosives, yet widely used products (in particular electronic detonators) are not covered at all by the existing harmonised standards. The Committee, of course, considers the proposal fully adequate.

4.18. *Interoperability: new technical specifications for interoperability of the rail system* ⁽³⁴⁾

The EESC welcomes this proposal as one more step along the long path towards railway integration in Europe; in this case, rolling stock standards for 1 520 mm track gauge favour the relationship with the European 1 435 mm track gauge.

4.19. *Protection of workers’ health against risks from explosive atmospheres (ATEX)* ⁽³⁵⁾

The EESC fully agrees with this, since the new ATEX Directive requires an update of the mandate according to the New Legislative Framework.

4.20. *Improve safety of consumers* ⁽³⁶⁾

The EESC hopes the new standards comply with the principle that consumer protection requires that the goods and services made available to consumers do not, when used in normal or foreseeable circumstances, endanger the health of consumers, and, where they do, that they be withdrawn from the market by means of fast, simple procedures ⁽³⁷⁾.

Area of justice and fundamental rights

4.21. *Standardisation: Establish requirements of detection devices for protection from terrorist attacks (in areas other than aviation)* ⁽³⁸⁾

While it fully endorses this action, the EESC stresses that cooperation between the EU and the USA is essential, given that

⁽²⁸⁾ Regulation (EU) 2017/745 (OJ L 117, 5.5.2017, p. 1); Regulation (EU) 2017/746 (OJ L 117, 5.5.2017, p. 176).

⁽²⁹⁾ Regulation (EU) No 305/2011 (OJ L 88, 4.4.2011, p. 5); Council Directive 98/83/EC (OJ L 330, 5.12.1998, p. 32).

⁽³⁰⁾ Revised mandate for CEN/Cenelec.

⁽³¹⁾ COM(2015) 613 final.

⁽³²⁾ ISO. How standards will target the drone industry.

⁽³³⁾ Directive 2014/28/EU (OJ L 96, 29.3.2014, p. 1).

⁽³⁴⁾ Directive (EU) 2016/797 (OJ L 138, 26.5.2016, p. 44).

⁽³⁵⁾ Directive 2014/34/EU (OJ L 96, 29.3.2014, p. 309).

⁽³⁶⁾ Directive 2001/95/EC (OJ L 11, 15.1.2002, p. 4).

⁽³⁷⁾ OJ C 271, 19.9.2013, p. 81.

⁽³⁸⁾ COM(2014) 247 final; COM(2015) 624 final; COM(2012) 417 final.

both are suffering from the scourge of terrorism ⁽³⁹⁾. It is worth addressing, inter alia, issues relating to cybersecurity and threats that are specific to the transport sector.

The EU as a stronger player on the international stage

4.22. *Development: Support Member States' efforts to develop joint European defence capabilities (minimum standards)* ⁽⁴⁰⁾

The EESC, while waiting to learn more about the study that is being prepared by the Commission and its subsequent decision, supports the development of common standards both for arms and for dual-use items, while avoiding duplicating existing standards, in particular NATO standards ⁽⁴¹⁾.

5. International cooperation

5.1. The EESC support the Commission's initiative to intensify its policy dialogue with the international standardisation actors, but would like to draw its attention to the fact that a growing number of standards are now elaborated at international level without coordinated European input.

5.2. This internationalisation of standard setting has consequences: societal stakeholders, SMEs and market surveillance authorities can no longer participate as they do not have sufficient resources to actively influence the international standard-setting scene.

5.3. As these international standards can be directly taken over at national level, bypassing the ESO's involvement, there is a growing risk of de-harmonisation of the internal market.

6. Inclusiveness

The EESC welcomes the Commission's actions to monitor the progress of the implementation of a genuinely inclusive European standardisation system. The EESC strongly encourages the ESOs to simplify the procedures for Annex III organisations to get access to the standards drafting process and as such 'lower the barrier' to effective participation.

7. Delivering the Joint Initiative on Standardisation (JIS)

7.1. The EESC welcomes the different JIS actions. Regarding an 'EU-level Study on the economic and societal impacts as well as access to standards in the EU and the EFTA Member States'; it also proposes considering the indirect effects of the standard-setting activities, with a focus on issues such as dislocation of jobs, inclusiveness of society, education and training, etc.

7.2. The EESC welcomes the initiatives to speed up the standard-delivering process, but is concerned that it comes to the detriment of reduced 'visibility' of the preparatory work that leads to standards.

Brussels, 17 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽³⁹⁾ The Benefits of U.S.-European Security Standardisation. National Institute of Standards and Technology. U.S. Department of Commerce, June 2012.

⁽⁴⁰⁾ COM(2016) 950 final.

⁽⁴¹⁾ OJ C 288, 31.8.2017, p. 62.

Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA’

(COM(2017) 489 *final* — 2017/0226 (COD))

(2018/C 197/04)

Rapporteur: **Victor ALISTAR**

Consultation	European Parliament, 2.10.2017 Council, 25.10.2017
Legal basis	Article 83(1) of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	18.12.2017
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	129/0/1

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s initiative to prioritise the fight against cybercrime — a form of crime targeting electronic payment instruments — even though this should have been made a priority a long time ago. The benefits of digitisation must be flanked by mechanisms able to meet the accompanying challenges, so that the European economy and Europeans can enjoy the information society to the full. The EESC endorses the Commission proposal, as it aims to protect Europeans and businesses from cybercrime networks, and includes measures to boost confidence in the use of electronic payment instruments.

1.2. On analysing the proposal for a directive, the EESC finds that a number of shortcomings need to be addressed and corrected:

1.2.1. In Article 11 on jurisdiction of investigation, it must be clarified whether the fundamental principle is the location of the person or of the computer or information system used in order to avoid a conflict of jurisdiction. The EESC asks that a subpoint be added to Article 11 on settling conflicts of jurisdiction using one of the two methods suggested.

1.2.2. The proposal for a directive does not fully consider a situation involving other non-EU jurisdictions as well, or mechanisms for referring to other legal instruments for international judicial cooperation, and so a predictable and clear procedural framework must be established.

1.2.3. Article 16 on prevention should include specific measures, stipulated in the Member States’ transposition legislation, regarding the requirement to provide information. This requirement would have to be met either by providers of electronic payment products or by national regulatory authorities, or by those responsible for financial education.

1.2.4. In conjunction with Articles 12 and 13, provision must be made for the exchange of best practice with regard to detecting, investigating and dealing with cases of cybercrime involving electronic means of payment fraud.

1.3. Although the area of regulation here is part of investigative and judicial cooperation in the area of cyberfraud, it is important to establish deterrents and mechanisms to inform the public about the modus operandi of offenders as well, through awareness-raising campaigns conducted by law enforcement authorities in the Member States.

1.4. In order to ensure efficient protection of individuals and to meet the objectives behind this initiative (namely, boosting confidence in electronic and digital payment instruments and increasing compliance and prevention), Article 15 must require national legislation to institute financial insurance against fraud, so that victims are compensated fully should the holders of electronic payment instruments be harmed by cyberfraud. This compensation would be paid out to the payment product provider, as the civil plaintiff concerned, upon completion of the investigation.

1.5. In order to make the policy on combating the counterfeiting of electronic payment instruments both efficient and effective, a requirement to report incidents involving counterfeited electronic payment instruments must be built into the directive, as it is in the case of policies on combating money laundering or the regulation on personal data protection.

1.6. The EESC points to the need to increase our capacity to understand and prevent digital and electronic payment instrument fraud by setting up a system for gathering statistics that would bolster strategies aimed at preventing and remedying the effects of such fraud. Furthermore, there should be an ongoing impact assessment of the measures taken by the Member States to transpose the directive, with quantitative reporting on an annual basis and a qualitative impact assessment every two or three years, so as to ascertain how effective the policy is and whether it needs to be adjusted.

1.7. With a view to making the fight against cyberfraud and counterfeiting of payment instruments more effective in the medium term, Article 16 should be reinforced by clearly stipulating that Member States are required to build up expertise in this area, developing investigative experience and the exchange of experience, in order to enhance the broad spectrum skills of graduates (through optional studies) and the skills of experts and investigators (through specialised ongoing training).

1.8. Moreover the Committee is of the opinion that cooperation on the ground is absolutely essential and should be encouraged. This concerns both national and cross-border cooperation for combating or preventing this type of crime. All stakeholders, in both the public and private sectors, should be involved here.

1.9. There may be some confusion regarding the subject of this directive, and so we would propose altering its title and replacing the phrase *non-cash means of payment* with *electronic and digital means of payment*.

2. Commission proposal

2.1. The purpose of the directive is to ensure uniformity between the relevant instruments and increase the ability of Member States to investigate fraud committed using digital or electronic means of payment. The proposal focuses on cross-border cooperation between investigating authorities and a set of relevant measures, as well as common minimum standards on prevention, assistance to victims and the responsibility of the issuers of these instruments. In this respect, the approach taken is to define the scope of the instrument, which aims to provide a technology-neutral perspective.

2.2. Given the technological developments and diversification in modus operandi in the field of cyberfraud, including in strategies used by groups of offenders, the Commission acknowledges in *A Digital Single Market Strategy for Europe* ⁽¹⁾ that the Framework Decision insufficiently addresses new challenges and technological developments such as virtual currencies and mobile payments.

2.3. Cards are the most important non-cash payment instrument in the EU in terms of number of transactions, and fraud involving cards issued in the euro area reached EUR 1,44 billion in 2013 according to a European Central Bank study, and continues to grow ⁽²⁾. Although fraud data exist only for card payments, cards are the most important non-cash payment instrument in the EU in terms of number of transactions ⁽³⁾.

2.4. The Commission analysis shows that one of the areas most vulnerable to fraud is electronic payment of travel expenses, train and plane tickets, accommodation and related transactions, along with various other payments.

⁽¹⁾ COM(2015) 192 final

⁽²⁾ European Central Bank, *Fourth report on card fraud*, July 2015 (most recent data available).

⁽³⁾ See footnote 2.

2.5. The Commission proposal aims to ensure that a robust and technology-neutral legal framework is in place, to eliminate operational obstacles and to enhance prevention of fraud involving electronic means of payment.

2.6. With a view to providing efficient means to combat electronic payment instrument fraud and cybercrime, the proposal for a directive establishes common standards for national legislation on: offences covered by criminal legislation on cyberfraud involving means of payment; participation in offences and criminal policy establishing penalties; liability of legal persons and the establishment of uniform dissuasive penalties. The EESC would note one particular novelty here: this is the first move to regulate virtual currencies in EU law. The definition of offences covers behaviours which do not immediately constitute the actual fraud, but which are committed in preparation for fraud (stealing and counterfeiting, but also sale and mere possession of stolen payment instruments).

2.7. In order to enhance European cooperation on combating cybercrime and electronic payment instrument fraud, the directive aims to establish specific, relevant provisions for institutional mechanisms and investigative jurisdictions in the Member States, as well as for the European mechanism for the exchange of information between national authorities.

2.8. One key element is the requirement to establish efficient means of safeguarding the interests of victims and provide access to an effective remedy.

2.9. The Commission proposal falls fully within the legislative scope of the European Union, in accordance with Article 83 of the Treaty on the Functioning of the European Union, and calls for minimum harmonisation between the Member States with a 24-month transposition period.

3. General comments

3.1. The legislative option chosen is much more suitable, since a directive can establish standards which will be binding upon all national jurisdictions (with the exception of Denmark, if it does not join on a voluntary basis). This will do much more than standardise practices, as laid down in Framework Decision 2001/413/JHA, without affecting the content of the framework decision.

3.2. The EESC notes that the proposal for a directive is in synergy with other regulatory instruments to which the Member States are party and complements other EU policies, such as pan-European mechanisms on cooperation in criminal matters and combating cyberfraud or money laundering. In this context, it must be pointed out that this needs to be linked both to methods of protecting personal data held by financial institutions and to cybersecurity measures.

3.3. Basically, there are a number of legal instruments at EU level laying down standards applicable to the financial market and financial services and stipulating the requirement to exercise due diligence when providing, managing and securing payment instruments, and the proposal for a directive contributes to the construction of a stronger legal infrastructure for reporting, investigating and sanctioning cyberfraud involving means of payment.

3.4. The EESC points to the need to increase our capacity to understand and prevent digital and electronic payment instrument fraud by setting up a system for gathering statistics that would bolster strategies aimed at preventing and remedying the effects of such fraud. Furthermore, there should be an ongoing impact assessment of the measures taken by the Member States to transpose the directive, with quantitative reporting on an annual basis and a qualitative impact assessment every two or three years, so as to ascertain how effective the policy is and whether it needs to be adjusted.

3.5. Similarly, given that liability of legal persons and penalties will be established by a more robust mechanism for guaranteeing legal means, it must be reiterated that operators providing electronic payment products or using online payment platforms must be given support to comply with sectoral regulations⁽⁴⁾.

⁽⁴⁾ OJ L 267, 10.10.2009, p. 7.

3.6. As regards the mechanism for information exchange on investigations into cybercrime involving payment instrument fraud, as laid down in Articles 13 and 14 of the proposal for a directive, provision must be made to empower the Commission to use delegated acts to regulate the information exchange mechanism and standardised reporting data on ongoing cases.

3.7. As regards prevention, although the Commission communication refers to a similar approach to that taken by Directive 2011/93/EU, the EESC considers that there is a need for greater clarity regarding obligations with regard to prevention, and for the introduction of mandatory awareness-raising activities with regard to causes, risks and individual means of prevention in order to avoid financial payment instrument fraud arising from traps laid by cybercrime networks.

3.8. Expertise in this area must be built up, developing investigative experience and the exchange of experience, in order to enhance both the broad spectrum skills of non-specialised graduates through optional studies and a competency framework for experts and investigators through specialised ongoing training.

3.9. It is important that there be effective cooperation on the ground in order to counter this type of crime. Cooperation must be organised in different domains and all stakeholders involved as much as possible. This should make it possible to combat but also prevent this serious form of crime. This applies at both national and cross-border level.

3.10. The proposal for a directive does not fully consider a situation involving other non-EU jurisdictions as well, or mechanisms for referring to other legal instruments for international judicial cooperation, and so a predictable and clear procedural framework must be established.

3.11. Although the area of regulation here is part of investigative and judicial cooperation in the area of cyberfraud, it is important to establish deterrents and mechanisms to inform the public about the modus operandi of offenders as well, through awareness-raising campaigns conducted by law enforcement authorities in the Member States. In this respect, the final provisions of the proposal should specify the instruments for international judicial cooperation in criminal matters that will be referred to in extraterritorial situations and the manner in which investigations will be conducted using these instruments. In terms of procedure, this is a useful regulatory tool that can clarify the situation.

4. Specific proposals

4.1. In Article 11 on jurisdiction of investigation, it must be clarified whether the fundamental principle is the location of the person or of the computer or information system used in order to avoid a conflict of jurisdiction between the situation described in Article 11(2)(a), regarding physical presence, and the situation in Article 11(2)(b), if the person has committed the offence in the territory of a Member State but used a remote shell programme. This could mean that both EU Member States have jurisdiction. A subpoint should be added to Article 11 on settling conflicts of jurisdiction, either by identifying the competent body (such as EUROJUST) or by referring the matter to a similar settlement mechanism (such as Framework Decision 2009/948/JHA⁽⁵⁾).

4.2. Article 16 on prevention should include specific measures, stipulated in the Member States' transposition legislation, regarding the requirement to provide information. This requirement would have to be met either by providers of electronic payment products or by national regulatory authorities, or by those responsible for financial education.

4.3. With regard to the requirement to establish a mechanism for the exchange of information regarding fraud investigations, laid down in Article 13 of the proposal of a directive, a single contact point must be identified, similar to the one for combating money laundering or upholding food safety, so as to ensure a standardised approach across the EU. This single contact point could be the ministry of justice or another body common to most EU jurisdictions. The EESC considers that while the phrase 'appropriate [...] channels' goes some way towards meeting the need for efficiency, it fails to meet the need for a standardised approach.

⁽⁵⁾ OJ L 328, 15.12.2009, p. 42.

4.4. In conjunction with Articles 12 and 13, provision must be made for the exchange of best practice with regard to detecting, investigating and dealing with cases of cybercrime involving electronic means of payment fraud.

4.5. In order to ensure efficient protection of individuals and to meet the objectives behind this initiative (namely, boosting confidence in electronic payment instruments and increasing compliance and prevention), Article 15 must require national legislation to institute financial insurance against fraud, so that victims are compensated fully should the holders of electronic payment instruments be harmed by cyberfraud. This compensation would be paid out to the payment product provider, as the civil plaintiff concerned, upon completion of the investigation. Such safeguards must cover damage caused to traders represented by SMEs in the event of failure to settle amounts up to a reasonable ceiling, determined at Member State level.

4.6. In order to make the policy on combating the counterfeiting of electronic payment instruments both efficient and effective, a requirement to report incidents involving counterfeited electronic payment instruments must be built into the directive, as it is in the case of policies on combating money laundering or the regulation on personal data protection.

Brussels, 18 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements’

(COM(2017) 335 final — 2017/0138 (CNS))

(2018/C 197/05)

Rapporteur: **Victor ALISTAR**

Co-rapporteur: **Petru Sorin DANDEA**

Consultation	Council of the European Union, 10.7.2017
Legal basis	Articles 113 and 115 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	20.12.2017
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	184/2/7

1. Conclusions and recommendations

1.1. The Commission proposal contains a directive amending Council Directive 2011/16/EU, which governs administrative cooperation among Member States in the field of taxation, and an annex setting out a list of hallmarks that could potentially indicate aggressive tax planning. It is proposed that the automatic exchange of information (AEOI) tool be used by the individual Member States to make the information reported by intermediaries available to the other Member States.

1.2. The EESC endorses the Commission’s proposal given that current legal provisions do not allow Member States to exchange information where tax avoidance and/or evasion schemes come to their attention.

1.3. The EESC welcomes and supports the European Commission’s decision to tackle the problem of intermediaries enabling aggressive tax planning. Making their activities transparent, through the reporting obligation proposed in the proposal for a directive, will deter intermediaries from offering their clients aggressive tax planning schemes, and thus reduce the harmful erosion of Member States’ tax bases. This should create a level playing field and tax justice between companies that have a framework for aggressive tax planning and those that do not but which are subject to higher taxation to make up for the erosion of the tax base in the individual Member States. Thus, the proposal provides a response to the desire of the majority of European companies for tax fairness between taxpayers, and to the increasing pressure from individual taxpayers.

1.4. In this context, the EESC welcomes the Commission’s decision to provide logistical and technical support to the Member States for the implementation of the secure central directory to be used to record the information subject to administrative cooperation. Given the complexity of some aggressive tax planning schemes, the EESC recommends that the Commission also support the Member States when it comes to training the staff who will be responsible for recording and exchanging the information concerned.

1.5. The proposal is very wide in its scope. It is important to ensure that the directive will be an effective deterrent to aggressive tax planning. More precise requirements for qualification of reportable transactions are required in order to prevent over-reporting from companies with time-consuming administration for both tax administrations and taxpayers.

1.6. The EESC notes that the requirement to comply with the arm's length principle of the OECD transfer pricing guidelines is not an exact science and inevitably includes a subjective interpretation from taxpayers and tax authorities. The EESC therefore calls for appropriate and constructive guidance from the Commission and Member States as to whether transactions fall within that hallmark or not.

1.7. The EESC notes that the taxpayer carries the ultimate responsibility to comply with the proposed directive. To fulfil the requirement of proportionality, the administrative costs must be reduced to the furthest extent possible for all sizes of businesses.

1.8. The EESC calls on the Commission to review the five-day deadline for reporting, so as to ensure that it is feasible for the entities that are subject to the reporting obligation and, at the same time, is consistent with the objective of an effective reporting policy. It would thus seem necessary and proportionate to extend this deadline.

1.9. The proposal for a directive leaves a number of issues unresolved, such as how it is to be applied to taxpayers in the digital economy, given the difficulty in determining their physical presence as taxable persons in individual Member State jurisdictions. Another issue relates to the clarity of the criteria laid down in the proposal for the purposes of ensuring a uniform approach across the national rules governing penalties for failure to report.

1.10. The Committee would point out that the reporting mechanisms must not create instability in tax legislation as a result of frequent changes, and that account must be taken of the fact that direct taxation falls within the legislative competence of the Member States.

2. The Commission proposal

2.1. Globalisation has increased the mobility of capital to an unprecedented level. In this context, and in the light of the scandals ⁽¹⁾ that have emerged in recent years concerning corporations and jurisdictions that have promoted aggressive tax planning schemes, which have often resulted in tax base erosion in the Member States, the Commission has placed the fight against tax avoidance and aggressive tax planning among the top priorities on its agenda.

2.2. The Commission proposal contains a directive amending Council Directive 2011/16/EU, which governs administrative cooperation among Member States in the field of taxation, and an annex setting out a list of hallmarks that could potentially indicate aggressive tax planning.

2.3. The proposal for a directive introduces a reporting requirement for institutions and professionals providing advice on tax planning, which are referred to in the directive as intermediaries. These may be tax advisers, banks, rating agencies, and others who meet the definition of intermediaries as 'any person that carries the responsibility vis-à-vis the taxpayer for designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation'. Under certain circumstances, the obligation to file becomes the responsibility of the taxpayer.

2.4. Entities, individuals and companies providing advice in the field of tax planning will be required to disclose a reportable cross-border arrangement, or series of arrangements, no later than five days after the scheme has been made available for implementation. The information is to be made available to the relevant tax authorities and will be subject to the automatic exchange of information between Member State tax authorities. The automatic exchange will be carried out on a quarterly basis.

2.5. The Commission considers that the directive will have a deterrent effect on intermediaries that provide advice on aggressive tax planning, and will reduce aggressive tax planning practices.

2.6. The Commission considered three options for implementing its policy objectives: a (non-binding) recommendation for Member States to introduce mandatory disclosure into their national legislation, a code of conduct for intermediaries, or an EU directive requiring Member States to introduce a mandatory disclosure regime.

⁽¹⁾ Luxleaks, Panama and Paradise Papers.

2.7. The Commission has chosen to proceed by means of a directive, in order to ensure that these measures aimed at tackling aggressive tax planning are implemented uniformly across all of the Member States. The Commission's initiative corresponds to Action 12 of the OECD's BEPS project, which recommends deterring the activities of intermediaries that advise companies on aggressive tax planning; it establishes a set of instruments to put this action into practice.

2.8. The Commission proposal is based on the principle of dialogue between the taxpayer and the tax authority, and on the principle of sincere cooperation between them at single-market level. The mechanism to be established is prior notification of potentially aggressive tax planning transactions, under four standard types of indicators (or 'hallmarks'), set out in the annex to the proposal for a directive. It should be clear that simply reporting the arrangement does not mean automatic presumption of aggressive tax planning, but rather opens a dialogue between the taxpayer and the tax jurisdiction. Thus, the Commission has opted for a preventative approach, which should reduce the risk of penalties for taxpayers.

2.9. In the proposal for a directive, the Commission has also established a direct prior reporting obligation for the taxpayers themselves if the potentially aggressive tax planning scheme or transaction is carried out following an in-house proposal, without the involvement or advice of an intermediary, or if the intermediary/adviser is bound by a confidentiality clause or protected by national legislation on professional secrecy, or thirdly, if the intermediary or adviser is not under the jurisdiction of a Member State.

3. General and specific comments

3.1. The EESC welcomes and supports the European Commission's decision to tackle the problem of intermediaries enabling aggressive tax planning. Making their activities transparent, through the reporting obligation proposed in the proposal for a directive, will deter intermediaries from offering their clients tax planning schemes that artificially reduce the amount of tax they pay. As a result, the directive will reduce the harmful erosion of Member States' tax bases.

3.2. The proposal for a directive assumes the good faith of taxpayers, rather than an intention to avoid tax. It should be emphasised that the mere reporting of tax arrangements that could potentially constitute aggressive tax planning does not necessarily mean that aggressive tax planning has actually taken place.

3.3. The Commission's proposal should create a level playing field and tax justice between companies that have a framework for aggressive tax planning and those that do not but which are subject to higher taxation to make up for the erosion of the tax base in the individual Member States.

3.4. The proposal is very wide in its scope. It is important to ensure that the directive will be an effective deterrent to aggressive tax planning. More precise requirements for qualification of reportable transactions are required in order to prevent over-reporting from companies with time-consuming administration for both tax administrations and taxpayers.

3.5. A wide-range of interpretations must be avoided and more guidance from the Commission and Member States is therefore required to make the proposal effective. This is particularly the case relating to the application of the arm's length principle of the OECD transfer pricing guidelines.

3.6. Furthermore, the proposal for a directive leaves a number of issues unresolved, such as how it is to be applied to taxpayers in the digital economy, given the difficulty in determining their physical presence as taxable persons in individual Member State jurisdictions. Another issue relates to the clarity of the criteria laid down in the proposal for the purposes of ensuring a uniform approach across the national rules governing penalties for failure to report.

3.7. The EESC considers a more comprehensive impact assessment necessary in order to ensure that the proposed directive is proportionate. There is a need to assess how time consuming it would be for tax administrations and intermediaries/businesses to comply with the rules.

3.8. The Commission proposes that the automatic exchange of information (AEOI) tool be used by the individual Member States to make the information reported by intermediaries available to the other Member States. The EESC endorses the Commission's proposal given that current legal provisions do not allow Member States to exchange information where tax avoidance and/or evasion schemes come to their attention.

3.9. The EESC calls on the Commission and Member States to ensure a timely and effective implementation of the Directive on Dispute Resolution ⁽²⁾.

3.10. The EESC believes that, by using aggressive tax planning schemes, certain companies with cross-border activities are shifting a significant portion of the profits they make in a given Member State to jurisdictions with a lower rate of taxation, thus artificially reducing the Member States' tax bases and causing serious distortions on the internal market. The Committee therefore supports the Commission's proposal that the Member States make provision in their national legislation for penalties for breaching the directive, applicable to both intermediaries and taxpayers using aggressive tax planning schemes.

3.11. Here, the EESC calls on the Commission to introduce clear rules in the proposal for a directive on identifying the potential triggers for liability on the part of taxpayers and intermediaries that use aggressive tax planning schemes, and to leave it up to the Member States to decide on the level of the penalties involved.

3.12. It is imperative that European business and free competition in the single market — including a fair distribution of the tax burden — be protected by the Commission. The EESC thus urges the Commission to set out the areas in which it may add to the categories of hallmarks indicating aggressive tax planning schemes listed in the annex to the directive, by means of delegated acts.

3.13. The Committee would point out that the reporting mechanisms must not create instability in tax legislation as a result of frequent changes, and that account must be taken of the fact that direct taxation falls within the legislative competence of the Member States.

3.14. The EESC welcomes the Commission's decision to provide logistical and technical support to the Member States for the implementation of the secure central directory to be used to record the information subject to administrative cooperation. Given the complexity of some aggressive tax planning schemes, the EESC recommends that the Commission also support the Member States when it comes to training the staff who will be responsible for recording and exchanging the information concerned.

3.15. The EESC calls on the Commission to review the five-day deadline for reporting, so as to ensure that it is feasible for the entities that are subject to the reporting obligation and, at the same time, is consistent with the objective of an effective reporting policy. It would thus seem necessary and proportionate to extend this deadline.

3.16. The EESC asks the Commission to revise the timeframe for evaluating the implementation of the directive with a view to drawing up a report every two years, and calls for the report to be made public for European taxpayers and citizens. Given the considerable administrative effort, the EESC believes that this two-yearly report will ensure transparency if it centralises quantitative data, without infringing the companies' legitimate rights.

Brussels, 18 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽²⁾ Proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union and EESC opinion 'Improving double taxation dispute resolution mechanisms' (OJ C 173, 31.5.2017, p. 29).

Opinion of the European Economic and Social Committee on the 'Recommendation for a Council Recommendation on the economic policy of the euro area'

(COM(2017) 770 final)

(2018/C 197/06)

Rapporteur: **Javier DOZ ORRIT**

Consultation	European Commission, 18.1.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	20.12.2017
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	182/2/5

1. Conclusions and recommendations

1.1. The EESC welcomes the emphasis on sustainable and inclusive growth, resilience and convergence as policy objectives in the European Commission's recommendation for the euro area policies ⁽¹⁾.

1.2. The EESC notes that although economic recovery in the euro area has gathered pace since last year, it remains 'fragile', 'incomplete' and 'atypical', as mentioned in the European Commission's Autumn Forecast ⁽²⁾.

1.3. Despite increases in the number of jobs created, there is ample evidence both from the European Commission and the European Central Bank that the 'labour market slack' remains significant, a factor that has been underlying relatively weak wage growth compared to the strength of economic recovery. The persistence of unemployment and underemployment in the euro area implies losses of skills and productive capacity for these Member States and constitutes a major threat to social inclusion, well-being and equality.

1.4. Moreover, investment in the area remains below 2008 levels, also contributing to significant losses in production potential in many euro area Member States. The persistent current account surplus of the euro area with the rest of the world further suggests that domestic demand in the area remains low.

1.5. The EESC acknowledges that high public and private debt levels in the euro area make its economy vulnerable and accepts the need to reduce them.

1.6. After carefully weighing up the relative opportunities and risks arising from the above factors, the EESC disagrees with the European Commission's proposal for an overall broadly neutral fiscal stance and instead proposes a positive fiscal stance of around 0,5 % of GDP. The likelihood of a slowdown in growth between 2017 and 2019, which the Commission forecasts, the change announced in the ECB's monetary policy, the persistence of a clear investment deficit and world trade and geopolitical risks would also require that the baton be passed from monetary policy to fiscal policy.

⁽¹⁾ Recommendation for a COUNCIL RECOMMENDATION on the economic policy of the euro area, COM(2017) 770 final.

⁽²⁾ European Economic Forecast — Autumn 2017, European Commission, November 2017.

1.7. A fiscal stimulus focusing on public investment would deliver stronger demand in the short-term but also expand growth potential in the long-term, thus addressing the question of public debt sustainability. Such public investment should focus not just in infrastructure but also in education and skills policies ('social investment'), thus helping to implement some of the principles of the recently proclaimed European Pillar of Social Rights.

1.8. The EESC recommends that in applying the fiscal rules, the European Commission should exclude public expenditure on investment from the scope of application of the Stability and Growth Pact.

1.9. The EESC welcomes the explicit mention in the recommendation by the European Commission to prioritise structural reforms that will not only increase productivity and growth potential, improve the business environment and support investment, but also support the creation of quality jobs and reduce inequality, in line with calls made in previous EESC opinions ⁽³⁾. It reiterates that if vital support of citizens for the reconstruction of the euro area and the achievement of structural reforms in this regard is to be secured, the social dimension of these reforms needs to be strengthened, and democratic, transparent forms of euro area governance, aimed at ensuring economic prosperity and a high standard of living, must be deployed.

1.10. The EESC commends the European Commission for calling on Member States to combat tax avoidance, among other things by continuing to work towards the establishment of a Common Consolidated Corporate Tax Base (CCCTB). It also considers it a priority that, for economic, political and ethical reasons, the European institutions and the Member States implement effective measures — those already agreed upon and new ones — against tax fraud, money laundering and the illicit activities of tax havens.

1.11. The EESC supports the necessary steps for deepening the EMU, including full and speedy completion of both the Banking Union — European Deposit Insurance Scheme, common backstop for the Single Resolution Fund and the strengthening of the European supervisory framework for avoiding the accumulation of risks — and the Capital Markets Union. Both should not only contribute to better and more diversified financing of the economy, but at the same time should make the financial and economic system safer, more stable and more resilient to shocks through more cross-border private risk-sharing and financial integration.

1.12. In line with its previous opinion ECO/435, the EESC reiterates its view that the euro is the currency of the whole of the EU and emphasises the need to:

- create a fiscal union;
- strengthen Member States' responsibility for and ownership of obligations vis-à-vis the EMU;
- introduce structural reforms within the European Semester platform;
- further strengthen economic coordination and governance, and create a European Monetary Fund;
- improve the system of financial intermediation, leading to the reinforcement of real long-term investment by optimising the role of the EIB, EIF and EFSI 2.0;
- make the EMU more resilient so that it can exert greater influence in the world.

2. Background

2.1. Following the launch of the debate on the future of Europe and the accompanying reflection papers, most notably on the deepening of the EMU and the future of the EU's social dimension, and the proclamation of the European Pillar of Social Rights by the Social Summit of Gothenburg, the European Commission published its Annual Growth Survey, accompanied by a recommendation for euro area policies for 2018. The main recommendations of the European Commission are set out the following points.

⁽³⁾ See in this regard the following EESC opinions: Euro area Economic Policy (2016) OJ C 177, 18.5.2016, p. 41; Euro area Economic Policy (2017) OJ C 173, 31.5.2017, p. 33; and Euro area Economic Policy 2017 (additional opinion) OJ C 81 2.3.2018, p. 216.

2.2. Pursue policies that support sustainable and inclusive growth and improve resilience, rebalancing and convergence. Member States with current account deficits or high external debt should additionally aim at containing growth in unit labour costs. Member States with current account surpluses should additionally promote wage growth and implement as a priority measures that foster investment, support domestic demand and facilitate rebalancing in the euro area.

2.3. Aim at a broadly neutral fiscal stance at the aggregate level for the euro area and a balanced policy mix.

2.4. Implement reforms that promote quality job creation, equal opportunities and access to the labour market, fair working conditions, and support social protection and inclusion.

2.5. Continue work to complete the Banking Union with regard to risk reduction and risk sharing, including the creation of a European Deposit Insurance Scheme, making the common backstop for the Single Resolution Fund operational and strengthening the European supervisory framework to prevent the accumulation of risks.

2.6. Take measures to tangibly accelerate reduction of the levels of non-performing loans on the basis of the agreed Council (ECOFIN) Action Plan and promote orderly deleveraging in Member States with large stocks of private debt. Enhance the integration and development of EU capital markets to support growth in the real economy while safeguarding financial market stability.

2.7. Make swift progress on completing the EMU.

3. General and specific observations

3.1. Output growth has gathered pace compared to previous European Commission forecasts and extended to more Member States in the euro area compared to last year. On the other hand, the following three issues should be noted.

3.2. First, that this acceleration in recovery is taking place after a relatively long period of stagnation in the euro area as a whole, in comparison to economies such as that of the US. This stagnation and the failure of economic policies in the Eurozone to mitigate it has left serious economic and social scars in many parts of the area and has undermined the trust of citizens in the EU's capacity to deliver prosperity.

3.3. Secondly, in its Autumn forecasts the European Commission forecast that the output growth rate for 2017 — 2,2 % — is likely to represent a peak compared to 2018 and 2019, when growth is expected to fall slightly — by 2,1 % and 1,9 % respectively. Domestic demand in the euro area, as evidenced by the remarkably high current account surplus with the rest of the world, has remained subdued: private consumption, although growing, is expected to slow down, while the investment gap persists.

3.4. Thirdly, the recovery has depended on the support of expansive and unconventional monetary policies which have so far been actively delivered by the ECB, with fiscal policy unduly constrained. The ECB has recently announced the gradual phasing out of its unconventional policies. While this will not necessarily mean that monetary policy support will be rolled back, the need for fiscal policies to be more supportive of the recovery has not diminished.

3.5. In addition to the changes in monetary policy and the projected slowdown in growth after 2018, there are other reasons for proposing a moderately positive fiscal stance in the euro area, which the EESC would set at 0,5 % of GDP: its persistent investment deficit, which does not occur in other economic regions of the world; a rate of unemployment that is too high — 9,1 % in 2017; and the persistence of geopolitical risks and risks in world trade due to the emergence of protectionist policies, particularly on the part of the US. It is therefore necessary for the policy mix to use all the instruments that favour sustainable growth.

3.6. The EESC thinks that a somewhat more expansionary fiscal stance for the euro area as a whole than that currently proposed by the European Commission would be beneficial for recovery and compatible in the longer term with public debt sustainability. Applying the Golden Rule for Investment (including social investment) in implementing the fiscal rules would help in this respect and create a favourable context for more inclusive growth and upwards convergence. It would be equally helpful to boost socially responsible investment and investment geared to attaining the UN's SDGs.

3.7. The EESC expresses its total agreement with the Commission's criterion of the need for countries with fiscal space and balance of payments surpluses to increase their public investment rates on the grounds that this '[...] would generate significant positive spillovers to the rest of the euro area. Long-term GDP effects would exceed the short-term impact as public investment would raise the productivity of private capital and labour over a sustained period of time' ⁽⁴⁾.

3.8. The EESC welcomes the European Commission's call for Member States with current account deficits and high external debt to focus not just on improving their productivity growth, but also on improving the business environment. In this context, it notes that fair redistribution of income and wealth deriving from productivity gains should increase equality and have a positive impact on domestic and aggregate demand in the euro area. It is important to stimulate domestic demand as a necessary condition for supporting growth and overcoming the crisis. Increasing wages, especially the lowest, is today one of the main tools for achieving these objectives in the European economy and society.

3.9. The coordination of fiscal policies should be complemented by progress towards tax harmonisation, one of the main objectives being to end tax avoidance in the EU. The EESC supports the urgent adoption of the CCCTB Directive. It is a necessary instrument for the implementation of the measures that put an end to the scandalous tax evasion carried out by various multinational companies and that deprive public budgets of between EUR 40 and 60 billion ⁽⁵⁾, while exercising unfair competition vis-à-vis companies that comply with their tax obligations.

3.10. Tax fraud, money laundering or the sum of illicit activities developed in tax havens move sums much higher than those of the previous paragraph that detract from public finances at a time when they are especially necessary. In the opinion of the EESC, it should be a priority for the EU institutions and their Member States to lead the global fight against these crimes and urgently implement the legal instruments already approved to confront them and take whatever measures are necessary to significantly reduce them.

3.11. The EESC believes that priority in structural reforms should go to those reforms that enhance productivity growth but also strengthen job security and the social protection system within the framework of appropriate business conditions. No euro area country can compete in the modern world on the basis of low wages and casual employment. The emphasis should be on reforms that combine negotiated flexibility with security so as to enhance, and create incentives for enhancing, skills and innovation. Labour market reforms should promote greater stability in employment, which will help improve both the supply and the demand side of the euro area economy, even in the short term. They should also help to boost collective bargaining, based on the independence of the social partners, and social dialogue.

3.12. The EESC thinks that the proposed steps towards completing the Banking Union are essential in order to relieve the burden on national government budgets, alongside ensuring the public benefit of banking system stability.

⁽⁴⁾ Commission Staff Working Document: Analysis of the Euro Area economy, accompanying the document Recommendation for a Council Recommendation on the economic policy of the Euro Area, SWD(2017) 660 final, page 5.

⁽⁵⁾ Commission Staff Working Document, *Ibid*, page 9.

3.13. Efforts should also be made to establish the Capital Markets Union. Together with the Banking Union, this should expand and diversify sources of financing for the economy. More cross-border private risk-sharing and financial integration should make the financial and economic system safer, more stable and more resilient to shocks. Where appropriate, they can also help to absorb asymmetric effects of economic shocks more effectively, which will benefit all Member States.

3.14. In line with the above, the EESC stresses once more that tackling the issue of non-performing bank loans is of paramount importance for complementing policies that aim to relaunch growth. Steps should be taken promptly to address the problem, while at the same time taking into account consumer protection considerations.

Brussels, 18 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector’

(COM(2017) 281 *final* — 2017/0123 (COD))

(2018/C 197/07)

Rapporteurs: **Stefan BACK** and **Pasi MOISIO**

Consultation	European Parliament, 15.6.2017 Council of the European Union, 20.6.2017
Legal basis	Article 91 of the TFEU
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	4.1.2018
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	221/3/2

1. Conclusions and recommendations

1.1. The EESC reiterates its support for the objective of the Proposal and the entire Mobility Package to strengthen the competitiveness of the European mobility sector, including by ensuring a socially fair and competitive internal market for road transport services ⁽¹⁾.

1.2. The EESC welcomes the Communication’s emphasis on clean, cooperative and connected mobility which enables sustainable and efficient multimodal choices, and its recognition of the vital role of road transport.

1.3. The EESC therefore welcomes the aims of the Proposal to ensure a level playing field in an unfragmented internal road transport market, avoid excessive administrative burdens on businesses, improve the clarity and enforcement of the regulatory framework and address abuse, such as the use of letterbox companies, non-transparent business models and illegal cabotage.

1.4. The EESC supports the objectives of the Proposal to introduce into Regulation (EC) No 1071/2009 establishment requirements that will prevent the use of letterbox companies for road transport operations and strengthen compliance monitoring, including by improving cross-border cooperation between authorities and implementing the European Electronic Register of Transport Undertakings (ERRU).

The EESC also supports the improved rules on infringement procedures and on the assessment of sanctions involving the risk of loss of good repute, both of which improve legal certainty. The EESC underlines the importance of harmonised application of the threshold requirements set out in Article 6 paragraph 1, third subparagraph (a) and (b), for infringements to have an effect on good repute.

With respect to letterbox companies, the EESC concludes that efficient enforcement will remain dependent on the efficiency of national authorities, efficient cross-border cooperation and uniform interpretation of establishment criteria. Account should also be taken of progress in the digital domain.

⁽¹⁾ OJ C 13, 15.1.2016, p. 176.

The EESC welcomes the improvement of information available in national registers and the introduction of time limits for answering requests for information. The EESC would welcome real time access for control authorities to electronically available information in national registers.

The EESC considers that the data to be entered in national electronic registers should also include information regarding the drivers employed by an undertaking, which is relevant in determining the level of compliance with social and labour laws, and asks the Commission to consider such a measure.

1.5. The EESC questions the incomplete way in which light commercial vehicles (LCVs) have been brought within the ambit of Regulation (EC) No 1071/2009 on admission to the profession and questions the added value of this measure, bearing in mind that those vehicles remain outside the scope of Regulation (EC) No 1072/2009. The EESC therefore considers that LCVs should be fully covered by Regulations (EC) No 1071/2009 and (EC) No 1072/2009, albeit possibly in an alleviated form.

1.6. The EESC welcomes the main thrust of the amendments proposed to Regulation (EC) No 1072/2009 to simplify and clarify rules on cabotage and strengthen compliance monitoring. The EESC takes note of the potential of the digital tachograph as an efficient means of compliance control and supports its early installation, including on existing vehicles.

However, the EESC strongly stresses that the proposed amendments regarding cabotage can only be successfully and fairly introduced if provisions are introduced to make clear when provision of cabotage services ceases to be temporary and an obligation of establishment arises, and if the complete set of posting of workers rules applies to every cabotage operation without any exemptions.

1.7. The EESC regrets that the occasion was not used to clarify a number of further points regarding cabotage rules, which have been the subject of different interpretations. An essential prerequisite for efficient compliance monitoring, in particular at roadside checks, is clear and simple rules that enable an immediate and certain compliance assessment on the basis of readily available facts. The EESC regrets that, although the Proposal is a step forward, the legislation remains unclear and open to different interpretation on a number of points.

1.8. The EESC regrets that Directive 92/106/EEC on combined transport, which in practice provides a parallel market access, is not addressed at the same time as Regulations (EC) No 1071 and No 1072/2009. In order to have effective legislation, cabotage in all forms should be subject to similar rules.

1.9. The EESC supports the creation of a European Road Transport Agency as an efficient means to improve cross-border enforcement in the sector.

2. Background

2.1. The proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector ('the Proposal') is part of the Mobility Package presented by the European Commission on 31 May 2017.

2.2. The main aims of the Proposal are:

to create conditions for competitive and fair mobility, eliminate letterbox companies, simplify and clarify cabotage rules, and enable efficient monitoring through improved cooperation between authorities, including through the European Register of Road Undertakings (ERRU).

2.3. The overarching aims of the package as a whole, on top of the aims set out in points 2.1 and 2.2 above, are set out in the Commission Communication 'Europe on the Move — An agenda for a socially fair transition towards clean, competitive and connected mobility for all' [COM(2017) 283] ('the Communication').

2.4. The Communication sets out a strategy for Europe to maintain its role as a leader in clean competitive, cooperative and connected mobility which enables sustainable and efficient multimodal choices. This is necessary due to the vital role of mobility in the functioning of a Europe without frontiers, and requires a modern mobility system, which is key to the transition to a low carbon economy.

2.5. The Communication recognises the key role of road transport and is accompanied by a set of proposals focusing on this sector, including a framework for a strong internal market, improved working conditions in road haulage, digitalised transport and revised rules on road charging.

3. General comments

3.1. The EESC supports the mobility strategy outlined in the Communication with its emphasis on optimal multimodality and recognition of the vital role of road transport.

3.2. The main aims of the Proposal to eliminate letterbox companies and simplify the rules on road haulage cabotage to make them easier to understand and enforce conform with the aim of ensuring a fair and competitive internal market in road transport set out in the Communication and are fully supported by the EESC.

3.3. The EESC refers to its earlier opinions TEN/566 'Roadmap to a single European transport area — progress and challenges' and TEN/575 'Internal market of road freight: social dumping and cabotage' where the need to complete the internal market in road transport was highlighted, as was the need to prevent fraudulent activity, circumvention and abuse, including by operation through letterbox companies and circumvention of cabotage rules. The EESC welcomes the fact that the Proposal addresses some of the very urgent problems raised in these opinions. However, the EESC regrets the fact that the opportunity is not used to expressly address social dumping, consensually defined by the EESC in the opinions cited ⁽²⁾ as fraudulent action, circumvention and abuse (see also the European Parliament's Resolution on social dumping in the European Union of 14 September 2016, section I, para. 1 (2015/2255 (INI)).

3.4. There remains, however, the question of whether the means chosen to address these problems are adequate, if other or further measures should have been taken and if the proposed measures are disproportionate in view of the aims sought.

3.5. The EESC is of the opinion that the establishment of a European Road Transport Agency will be of key importance in stepping up cross-border enforcement in road transport.

4. Regulation (EC) No 1071/2009 — access to the profession

4.1. The EESC supports the amendments to Article 1 in as far as they make the text clearer or otherwise bring added value by improving the functioning of the internal market in road transport. The EESC doubts the added value of quoting one of many possible cases of non-commercial activity in the proposed addition to Article 1 paragraph 4(b), without addressing the question of the burden of proof which in principle should fall on those exercising an activity. The proposal on this point could create more problems than it resolves. It adds no legal certainty and entails the risk of increasing distortions of competition and creating a 'grey market'.

4.2. The new paragraph 6 first subparagraph of Article 1 includes undertakings operating LCVs under 3,5 tonnes in the scope of the Regulation but dispenses them from the requirements of good repute and professional competence as well as the requirement for a transport manager.

The EESC considers that such exemptions would send a very unfortunate signal. The EESC recommends including LCVs fully in both Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, albeit possibly in an alleviated form. Only this would ensure the common level of professionalisation of the sector and a level playing field.

The EESC underscores that adequate resources must be provided to deal with the increased work volumes needed to ensure compliance with the widened scope of Regulations (EC) No 1071/2009 and (EC) No 1072/2009.

The EESC also questions the possibility given to Member States to apply, entirely or in part, the provisions on good repute, professional competence and transport manager to LCVs. This option threatens to disturb the coherence of the internal market. It is furthermore not coherent with the proposal to delete the option under the current Article 3.2 allowing Member States to add further requirements for admission to the profession.

⁽²⁾ OJ C 13, 15.1.2016, p. 176,

4.3. The EESC supports deleting the possibility under Article 3.2 for Member States to impose additional requirements for admission to the profession, beyond those stipulated in Article 3.

4.4. The amendments proposed to the establishment criteria in Article 5 are directed against letterbox companies. The proposed requirements are more developed than the current provisions. The Proposal puts more emphasis on the actual exercise of commercial and administrative activities at the premises of the undertaking in the Member State of establishment, where also core business documents are to be kept, for instance by adding that the administrative and commercial activities should be continually and effectively conducted in that Member State while maintaining the requirement for management of transport operations of the vehicles at the disposal of the undertaking. On top of this, the requirement is added that the undertaking should hold assets and employ staff proportionate to the activity of the establishment. The EESC supports these amendments and stresses the importance of uniform interpretation to ensure foreseeability. The EESC assumes that core business documents may also be kept in electronic form, wherever legally possible.

4.5. Nevertheless, the EESC believes that it will remain difficult to prove that an activity is carried out in the form of a letterbox company. The proposed texts leave a large margin of appreciation which entails a risk of diverging discretionary practices. Decisions based on such texts can easily be challenged. Particular problems may arise with undertakings that are part of an international group or that outsource, for instance, certain administrative activities. There is an obvious risk that national practices may evolve very differently due to diverging national interpretations.

4.6. In the EESC's opinion a clearer picture of the status of an undertaking could be obtained through an obligation to provide information on the ownership picture⁽³⁾.

4.7. The EESC therefore draws attention to the implementation difficulties and underscores the importance of efficient cross-border cooperation and exchange of best practice between enforcement authorities.

4.8. The EESC takes note that in spite of the further details added in Article 6 paragraph 1 second subparagraph on the circle of persons whose behaviour may influence the good repute assessment, Member States will still retain freedom to add further 'relevant persons'. Therefore, the circle of persons concerned may still vary between Member States.

The EESC supports the addition of 'tax law' as grounds for doubting good repute proposed in the same paragraph third subparagraph (a) which reflects the increasing importance attached to tax law compliance, as well as the importance attached to compliance with the rules on the posting of workers, reflected in Article 6 paragraph 1 third subparagraph (b) xi.

In both cases, legal certainty is ensured by thresholds providing that only acts that have resulted in convictions or penalties for serious breach of national or EU rules are to be taken into account.

4.9. The EESC questions the inclusion of penalties for serious infringements of EU law concerning the law applicable to contractual obligation since it takes issue with rules on choice of applicable law, and not substantive problems. If a breach of mandatory choice of applicable legal rules is aimed at, this should be clearly stated. A more pertinent measure might be to address adverse findings in civil proceedings based on misconduct, fraud or mismanagement.

4.10. The EESC approves the amendments to the procedural provisions in Article 6(2). Considering the potential effects of serious infringements of EU rules with respect to the possibilities of an undertaking or a transport manager to exercise an activity, the EESC questions the appropriateness of having a list of such acts by the Commission through delegated acts as proposed in the new paragraph 2(a) of Article 6.

4.11. The EESC questions the proportionality of the one-year bar to the rehabilitation of a transport manager from the date of loss of good repute. Timing and appropriateness of restitution of good repute should be made on a case-by-case basis by the competent national authorities.

⁽³⁾ OJ L 140, 30.5.2012, p. 32.

4.11.1. Regarding the conditions concerning financial standing, the EESC questions the proposal for a provision in the new paragraph 2 of Article 7 stipulating that the competent authority shall recognise 'another binding document' as sufficient proof of financial standing. The proposed provision is not satisfactory because the character of the document in question is too vague.

4.12. The EESC approves the proposal to include additional information in the national electronic registers under Article 16, and to have all infringements entered in the register. In particular, the EESC welcomes the five-day time limit for answering a request for information and points out that control authorities should be given real-time access, during roadside and/or company checks, to all information available in electronic form in relevant registers.

The EESC is also of the opinion that the data to be entered in national electronic registers should also include information regarding the drivers employed by an undertaking, which is relevant in determining the level of compliance with social and labour laws. This would have a particular impact in reducing the fraudulent practices referred to in point 3.3. The EESC asks the Commission to consider such a measure (see the European Parliament's Resolution of 18 May 2017 on road transport in the European Union (2017/2545 (RSP)), para. 33).

4.13. The EESC welcomes the improvement of administrative cooperation in the new Article 18 including the introduction of clear procedures and time limits for complying with a request for information. Nevertheless, the EESC would suggest the following improvements:

In paragraph 3, the EESC suggests that checks should always be carried out when requested by competent authorities of other Member States. It is further suggested that the credibility requirement in the last sentence of paragraph 3 should be taken out as the issue of substantiation of the request for information is adequately addressed in paragraph 4.

The EESC considers that the time limit in paragraph 5 for informing a requesting Member State about problems in obtaining information should be shortened to five days.

4.14. The EESC appreciates the yearly reporting duty regarding requests made under Article 18 paragraphs 3 and 4 and the way they were followed up. Efficient cooperation between Member States is key to efficient enforcement and compliance monitoring is therefore essential.

5. Regulation (EC) No 1072/2009 — market access

5.1. The EESC welcomes the amendments proposed with a view to clarifying market access rules regarding cabotage and availability of evidence at roadside checks. Nevertheless, the proposals made raise a number of questions, as set out below. The EESC also regrets that a number of issues, mainly relating to cabotage, remain unresolved, as further explained below.

5.2. The EESC draws attention to the following overarching issues.

- As pointed out in point 4.2, the EESC regrets that Regulation (EC) No 1072/2009 is not extended to LCVs which means an unwarranted market opening for vehicles covered by rules on access to the profession. This might distort competition and have a negative impact, for instance on congestion and the environment.
- The EESC regrets that the question of when a cabotage activity is no longer temporary but turns into such a continuous and permanent activity that the right to provide services in a Member State other than the one where the undertaking is established, as set out in Article 8, no longer applies, is not addressed in the Proposal at all.

The current situation, where operations respecting the formal criteria for cabotage operations, as set out in Article 8, can be carried out systematically and regularly over a long period, even under a long term contract, and still remain temporary is not satisfactory and not consistent with the criteria defining the temporary character of the right to provide cross-border services (see European Court Reports 1995 p. I-04165 and European Court Reports 1985 p. 01513). The EESC therefore deems it crucial to find a clear rule on what is temporary.

The EESC points out that Article 91(1)(b) of the TFEU gives the EU legislator a wide margin of appreciation in establishing the conditions for carrying out cabotage as a temporary provision of services. Possible solutions could be a maximum number of operations or operational days over a given period or to establish a cooling-off period between batches of cabotage operations. In the EESC's opinion, it is very important that rules on this matter are clear and easy to apply, for instance at a roadside check.

- Ensuring national authorities have access to staff with adequate competence to carry out effective checks under the proposed Article 10a is key to efficient compliance monitoring. In the EESC's opinion, it is vital that both these elements are in place and that a network is set up for exchanging best practice.
- The EESC regrets that the proposal for a review of Directive 92/106/EEC on combined transport is not submitted at the same time as the Proposal since in practice that directive grants a parallel market access to national transport operations for hauliers established in another Member State. In the opinion of the EESC, the fully legitimate transport policy aim to promote combined transport chains can be achieved without this special market access rule. Therefore, the road leg of a combined transport operation to and from ports or railway terminals inside one Member State should be considered as a national transport operation and the provisions on cabotage in Regulation (EC) No 1072/2009 or provisions to that effect should apply.

5.3. The EESC takes note of the addition to Article 1 paragraph 1 regarding carriage of empty containers or pallets and concludes that a transport contract is decisive and will also make a very insignificant load qualify as carriage for hire or reward.

5.4. The current limitation to three cabotage operations during the cabotage period has been subject to different interpretation as to what is included in one operation, and it has proved difficult if not impossible in practice to check compliance with this rule.

The EESC approves the proposal to eliminate the limitation to three operations and to reduce the time available for cabotage operations from seven to five days provided that:

- (1) the temporary character of cabotage is ensured by a clear definition, as requested in point 5.2 above;
- (2) the rules on posting of workers (Directives 96/71/EC and 2014/67/EC) apply to all cabotage operations from day one. This could be done by including Directives 96/71/EC and 2014/67/EC among the rules applicable to cabotage operations in Article 9, irrespective of the provisions of Article 1(3)(a) of Directive 96/71/EC EC.

Otherwise, the EESC prefers keeping the current rules on cabotage because the proposal made by the Commission without compliance with the above conditions would in practice mean almost full market opening which might cause unpredictable effects on the market.

The EESC also welcomes the limitation of cabotage operations allowed in Member States other than the one which is the destination of the international journey (the host Member State), to Member States contiguous to that Member State which facilitates compliance control. However, the Proposal should be amended to make it clear that new cabotage rights following a new international transport operation to a contiguous Member State will extinguish existing cabotage rights in order to prevent cumulation of such rights ('chain cabotage'). This question of legal foreseeability is very important.

5.5. The proposed adjustments to the rules on the posting of workers to the transport sector [COM(2017) 278] make it clear that those rules will apply to cabotage operations from day one. Though the rules on posting of workers may not entirely eliminate the cost level gap between Member States, this rule would reduce it. However, the EESC questions the efficiency of the lighter posting declaration for even a six month period and lighter documentation requirements without obligation to designate a representative regarding cabotage proposed by the Commission in the proposal for specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU, as long as the issue of the temporary character of cabotage set out in points 1.6 and 5.2 is not resolved.

5.6. In 2011, the Commission gave its views on the interpretation of the provisions on cabotage on a number of points (The New Cabotage Regime under Regulation (EC) No 1072/2009, available on the website of DG MOVE). The current proposal has included the Commission's understanding of a cabotage operation in the proposed amendment to the definition in Article 2 point 6 and settles the question of availability of documentation in the vehicle for roadside inspections, addressed in the proposed new paragraph 4a under Article 8.

The EESC welcomes those clarifications but regrets that some other pertinent questions addressed in the Commission's interpretative document have not been addressed in the Proposal. This is the case regarding the question of whether all international cargo must be delivered before cabotage can start and how the seven-day cabotage period stipulated in Article 8 paragraph 2, as it now stands, is to be calculated.

The EESC also regrets that the opportunity was not used to make it clear whether tachograph data may also be used for checking compliance with cabotage provisions. The Commission's 2011 interpretative document makes it clear that the view of the Commission is that this is the case. The EESC considers that the opportunity should have been used to make this crystal clear in the text of the Regulation.

The EESC in any case points to the importance of full availability of the digital tachograph as a means of compliance control and would like to see a substantial reduction in the time limit for retrofitting existing vehicles with this type of tachograph.

5.7. The EESC welcomes the new liability provision in Article 14a but points out that proving voluntary commissioning of illegal services may be problematic.

Brussels, 18 January 2018.

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 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector’

(COM(2017) 278 *final* — 2017/0121 (COD))

and on the

‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs’

(COM(2017) 277 *final* — 2017/0122 (COD))

(2018/C 197/08)

Rapporteur: **Tanja BUZEK** (DE-II)

Consultation	European Parliament, 15.6.2017 Council of the European Union, 20.6.2017
Legal basis	Article 91 of the TFEU
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	4.1.2018
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	173/89/17

1. Conclusions and recommendations

1.1. The EESC recognises the important role of transport as a driver of the EU economy and supports the European Commission in its ambitions to ensure that the EU remains in a leading position in clean, competitive and connected mobility in the future. The EESC underlines that the essential tool to reach this end remains a well-functioning fully implemented single market in the transport sector, which is socially sustainable and minimises administrative burden.

1.2. For the further development of road transport in particular, however, the EESC stresses that there are also limits resulting from the shortage of space for the construction of roads and parking lots, from the ecologically motivated lack of social acceptance in many regions of Europe, from the unresolved road safety issue as well as from the importance of work-life balance of the drivers. These limits should be taken into account in all legislative and non-legislative initiatives of the EU in this area. Moreover, the future economic models may reduce road transport seeking more sustainable ways of organising production and distribution.

1.3. The EESC welcomes the fact that the EC is taking the initiative to clarify the regulatory framework on road transport and to ensure better enforcement and closer cooperation between Member States, while fighting social dumping, defined as all forms of unacceptable and illegal practices which endeavour to circumvent or are in breach of social or market access regulations (letterbox companies) in order to gain competitive advantages in its exploratory opinion TEN/575, and in line with the adopted enforcement directive 2014/67/EU, thus ensuring a well-functioning and fair internal market and fully respecting workers’ rights in the sector.

1.4. However, the EESC is of the opinion that the proposed changes to legislation on driving times and rest periods and on the posting of drivers fail to effectively address the identified problems in road transport in several aspects, including not

making the rules simpler, clearer and more enforceable. The EESC is of the opinion that the shortcomings of the proposals are due to insufficient problem analyses and considers that the proposals on social legislation fall short of meeting the EC's own policy objectives while legal uncertainty prevails. The EESC takes note that the initiative has generated different points of views among Member States, social partners and operators themselves.

1.5. The EESC points out that the only way to achieve the EC agenda for a socially fair transition towards clean, competitive and connected mobility for all is to safeguard social rights, to ensure both enforcement and enforceability of rules and to guarantee fair competition while reducing burdensome procedures. The internal market has to work for all stakeholders and in all Member States, both old and new.

1.6. With regard to the extension of the reference period for the distribution of rest periods from two to four weeks, the EESC takes note of the EC's efforts to address industry and transport operators demands for greater flexibility in road transport operations, but points out that this could have an impact on the fine balance between fair competition, driver health and safety and road safety as well as on a common harmonised interpretation of the rules while making their enforcement and control more difficult.

1.7. The EESC asks the legislator also to consider allowing compensation for a reduced weekly rest period in connection with daily rest periods, as provided for in the current regulation. With respect to breaks, the EESC suggests considering an impact assessment on the possibility of leaving a more flexible distribution of the 45 minutes of break over 6 hours to the discretion of the driver. This impact assessment should focus on the driver's ability to use the break to rest and refresh in-between nine hours, respectively 10 hours, of driving.

1.8. The EESC regrets the fact that, particularly when it comes to bus and coach passenger transport, the proposed changes come without any thorough assessment of passenger, driver or road safety. The EESC would therefore welcome an EU-wide general study on driver fatigue and regrets that the EC has not offered solutions for how to address this problem.

1.9. Against the critical backdrop of pricing in the transport sector, the EESC points out that it is of key importance to come up with rules which can effectively guarantee a level playing field for all road transport operators, irrespective of their size, and for all mobile workers, without creating new barriers to the internal market or cutting back on social legislation.

1.10. The EESC endorses the EC statement that efficient enforcement of the rules is essential and highlights the importance of close cooperation between Member States and the efficient exchange of information. Therefore, the EESC is of the opinion that it is necessary to ensure better enforcement of existing rest time rules before considering creating more flexible ones without a satisfactory evidence base.

1.11. Furthermore, the EESC calls for the EC to make progress towards smart enforcement, and to provide all possible support for the full introduction and use of risk-rating systems; it also calls for the EC and Member States to give enforcement authorities real-time access to national electronic registers, making maximum use of the European Register of Road Transport Undertakings (ERRU) to this end.

1.12. The EESC recommends that the EC adopt clear enforcement measures to eliminate the risk of manipulation of digital tachographs by a) bringing forward the deadline for the introduction of the 'smart' tachograph on all commercial vehicles engaged in cabotage and international transport; and b) deploying all necessary innovative technological means to ensure that manual entries of tachograph data are accurate by, for example, connecting a weight sensor to the tachograph as a more effective means of checking loading and unloading activities, which are actually part of drivers' working time.

1.13. The Committee also advises the EC and Member States to address the problem of secured parking areas, including the current limited availability of spaces with appropriate facilities for drivers, without which the mobility package risks making an obligation to rest outside the cabin a dead letter. The EESC appeals the EC to provide a thorough verification of existing parking network in the Member States particularly in geographically peripheral roads and transport corridors, as well as to develop a road map for decommissioning white spots in that area, what will be crucial for efficient implementation of the mobility package.

1.14. The EESC calls on the European institutions and the Member States to ensure that the weekly rest and compensatory weekly rest periods have to be spent in adequate accommodation conditions, with access to individual sanitary facilities and food, while, on the other hand, ensuring investment in and the construction of high-quality road infrastructure. In this context the EESC particularly welcomes the recent ruling of the European Court of Justice (ECJ) of 20 December 2017, confirming that the weekly rest period has to be spent outside the vehicle. It also calls on the EC to clarify the financial responsibility for the driver's repatriation to his/her home, as this should not be at the expense of the driver.

1.15. The EESC considers the EU-wide application of rules on posting in road transport to be of key importance in retaining a level playing field for workers and businesses alike. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules while administrative burdens must be avoided at all costs.

1.16. The EESC recognises the highly mobile nature of road transport, but is of the opinion that, as it currently stands, the EC proposal on the posting of workers in international road transport will not altogether adequately address the problems. Clear and simple rules are needed both for transport operators and drivers. With regard to pure transit operations, the EESC calls on the legislator to clarify that the rules on posting do not apply. The EESC also requests clarification on the application of rules on posting to transport operators established in a third (non-EU) country.

1.17. The EESC fully agrees that, for cabotage, the Posting of Workers Directive should continue to be applicable from day one. However, it questions whether the new lighter administrative rules should apply to cabotage.

1.18. The EESC welcomes the adjustment of enforcement requirements to the specificities of the sector and considers that the administrative burden will be alleviated if a one-stop shop for notifications is introduced EU-wide.

However, the EESC must equally acknowledge that the temporary deployment of a driver from a low-income Member State in a Member State with a higher pay level when the conditions of posting are met, must, as far as pay is concerned, comply at least with the minimum pay levels of the host country, as set by law or practice.

1.19. The EESC recommends introducing EU-wide enforcement measures that are simple, clear, non-discriminatory and effective, without imposing administrative burden, including:

- moving from paper-based evidence towards smart digital technologies where enforcement is concerned;
- bringing forward the mandatory introduction of the 'smart' tachograph on all commercial vehicles concerned that are engaged in international transport, as the only means of effectively determining the duration and temporary nature of drivers' activity on the territory of any given Member State;
- introducing a European electronic posting declaration for each individual posted driver and an EU-wide one-stop shop notification system to which inspectorates will have real time access, as the only means of avoiding administrative burdens while ensuring that controls effective.

1.20. Furthermore, the EESC recommends making maximum use of national electronic registers (NERs) and ERRU for road transport undertakings by: 1) including in NERs data about drivers employed by undertakings; 2) giving road enforcement authorities real-time access to the data recorded in NERs and ERRU, including to the electronic posting declaration; and 3) extending the period of time allowed to be checked on the driver card from 28 days to several months, so as to enable the control authorities to determine easily the periods of temporary work undertaken by drivers in various Member States.

1.21. Finally, in order to ensure better cross-border enforcement of the EU rules applicable to road transport, the EESC calls for the EC to set up a European Road Transport Agency whose main competence would be improving the compliance culture in road transport and providing support for policy making in the sector at both EU and national level. However pending that, the EESC recommends that Member States should be active in existing European transport inspection services (EUROCONTROLE Route etc.), and invest in the training of national inspection authorities.

2. Background

2.1. At the start of their mandate, the EC committed to launching a legislative process to make EU rules applicable to road transport simpler, clearer and easier to enforce. This was prompted by numerous calls from Member States and from the European social partners in the road transport and logistics sector, the ETF and the IRU, sharing the view that current EU legislation is unclear on a number of points and poorly enforced.

2.2. In 2013, the ETF and IRU jointly proposed initiatives involving no further market openings on cabotage, more efficient enforcement, and a binding roadmap for fiscal, road safety and social harmonisation (see ETF-IRU joint policy opinion document).

2.3. Diverging conditions of competition, including different cost structures in different Member States have highlighted issues relating to market liberalisation, minimum wages, conditions relating to the posting of workers and their applicability to mobile labour. This, in conjunction with an unclear regulatory framework, has given rise to social dumping through the circumvention of regulations, including atypical employment arrangements and letterbox companies.

2.4. Emerging national regulations or practices have given rise to a number of infringement procedures and highlighted the need for appropriate measures at EU level to resolve the problems and ensure legal certainty for both market actors and employees.

2.5. In this context, the Juncker Commission taking office in 2014 openly declared its commitment to a fairer single market by fighting social dumping, as stated by EC President Jean-Claude Juncker in his first address to the EP. Ever since, the EC has systematically reiterated this commitment throughout the preparation of the mobility package while underscoring the importance of preserving the coherence of the internal market.

2.6. Furthermore, in September 2015, the EESC adopted exploratory opinion TEN/575 on the 'Internal market of international road freight: social dumping and cabotage'. In September 2016 the EP adopted an own initiative opinion on 'Social Dumping in the European Union'. Both opinions set out a number of valid proposals notably in the area of enforcement with a view to ensuring a fair and well-functioning internal market. In May 2017, the EP adopted a resolution on road transport in the EU in the same spirit.

2.7. As a result, on 31 May 2017, the EC presented a mobility package comprising an initial set of eight legislative initiatives focused on commercial freight and passenger road transport, a sector employing five million people in the EU. The aim of the package is to improve the functioning of the road haulage market and help improve workers' social and employment conditions. According to the Commission, this will be done by stepping up enforcement, fighting illicit employment practices, cutting the administrative burden for companies and bringing more clarity to existing rules, for instance concerning the application of national minimum wage laws.

2.8. The four pillars of the package include: 1) internal market, 2) fair competition and workers' rights, 3) decarbonisation and 4) digital technologies. This opinion is part of the fair competition and workers' rights pillar and covers proposed changes to the social legislation.

2.9. In order to address the above problems and to further improve road safety, the EC mobility package proposes changes to the driving and rest time rules (Regulation (EC) No 561/2006), the posting of workers (Directive 96/71/EC) and its enforcing legal act (Directive 2014/67/EU).

2.10. With regard to road transport working time (Directive 2002/15/EC), the mobility package comes with no proposal but rather, in line with the legal requirements set by Article 154 of the Treaty on the Functioning of the European Union, consults the social partners on the possible revision of the directive.

2.11. Ahead of the launch of the Mobility Package in April 2017, 27 trade union organisations from 20 European countries including Bulgaria, Czech Republic, Denmark, Hungary, Lithuania, Netherlands, Poland, Romania, Spain and the United Kingdom adopted the Warsaw Declaration calling for the European Commission to include concrete proposals in the Mobility Package, at whose core stay the full application of posting of workers to the road transport sector.

In reaction to the EC Mobility package proposal in October 2017 a mutual declaration against the application of the Posting of workers directive to the international transport operations was published, signed by the transport & logistics associations and chambers of commerce from Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and United Kingdom.

2.12. The EESC takes note of the recent position of the EPSCO Council, which is that the existing rules on posting of workers will continue to apply to road transport until the introduction of any new sector-specific rules. The EESC likewise takes note of the highly conflictual character of the issue of the applicability of the rules on posting of workers in the road transport sector which has provoked diverging positions both at political level and from stakeholders.

3. General comments

3.1. The EESC supports the objective of ensuring that the EU retains a leading position in clean, competitive and connected mobility, which is a driver of the EU economy, in the future. The essential tool to reach this end remains a well-functioning fully implemented single market in the transport sector, which is socially sustainable and minimises administrative burden.

3.2. The EESC welcomes the overarching goal of the initiative taken by the EC and notes that the initiative has generated different points of views among Member States, social partners, drivers and operators themselves. The EESC in its role as representative of civil society underscores the importance of the legislative process arriving at results that are acceptable to those concerned and that answer legitimate concerns. This is particularly the case with respect to the proposal concerning the application of the rules on posting of works to road transport, which has provoked serious and conflicting concerns among stakeholders. The EESC therefore underlines the importance of a balanced, clear and functional legislation that does not interfere with the good functioning of the internal market nor with the improvement of social standards in the industry.

3.3. The EESC agrees with the EC impact assessment that unfair competition between road transport operators and social dumping are intrinsically connected (Driving change for business and people), having in view its definition in the EESC exploratory opinion TEN/575 ⁽¹⁾. The EESC notes that the impact assessment is partly based on qualitative and limited quantitative evidence.

3.4. The EESC equally shares the EC's argument that distortions of competition occur when non-compliant operators circumvent the law to gain competitive advantages. Loopholes in the EU's rules and diverging interpretation in different Member States may — in the EC's view — lead to the same effect. Furthermore, the EESC would add that low compliance-monitoring capacities feed into this situation. The EESC therefore shares the view set out in the EC's impact assessment that this is yet another reason for aiming at a clear-cut and easily enforceable regulatory framework.

3.5. The EESC further agrees with the EC's observation that exacerbated competition in road transport has left markets distorted by various developments that are unrelated to the social rules.

3.6. Against the critical backdrop of pricing in road transport, the EESC points out that it is of key importance for the mobility package to come up with clear and easily enforceable rules which can effectively guarantee a level playing field for all road transport operators, irrespective of their size, and for all mobile workers, without creating new barriers to the internal market or cutting back on social legislation. The internal market has to work for all stakeholders and in all Member States, both old and new.

⁽¹⁾ OJ C 13, 15.1.2016, p. 176.

3.7. A downward trend in pricing may render road transport socially, economically and environmentally unsustainable and may significantly limit the fair participation of other modes of transport in freight and passenger movements across the EU. Consequently, the EC risks undermining other political goals such as lowering emission targets and encouraging multimodality. To achieve the EC's agenda for a socially fair transition towards clean, competitive and connected mobility for all, the only option is to safeguard social rights, ensure both enforcement and enforceability of rules and guarantee fair competition while reducing burdensome procedures.

3.8. The EESC reiterates that there are a number of illegal practices whose victims are the companies that act legally and ultimately professional drivers in haulage transport.

3.9. The EESC regrets the fact that the mobility package, particularly when it comes to bus and coach passenger transport, brings more flexibility in organising rest times without any thorough assessment of passenger, driver or road safety. Hence, the EESC would welcome an EU-wide general study on driver fatigue to investigate its causes, including a mixture of driving and passenger assistance activities, the fact that drivers have to prepare their journeys, their vehicles, etc. during their daily rest period, and that working schedules include substantial waiting periods between journeys, in most cases spent in the vehicle and often in inappropriate conditions though the investment undertaken by transport operators to improve and modernise vehicle cabin features is acknowledged. The EESC stresses that any new provision should address and avoid this practice.

3.10. In terms of road safety, the EESC takes note of the fact that in 2010, the EU renewed its commitment to improving road safety and set a target of reducing road deaths by 50 % by 2020, compared to 2010 levels. However, since 2014, progress has virtually ground to a halt. 2016 was the third consecutive poor year for road safety, as shown by the European Transport Safety Council (ETSC). In 2015 alone around 4 000 people died in collisions involving lorries (Traffic Safety Basic Facts 2016 — HGVs and Buses, European Road Safety Observatory) without necessarily implying that the fault lies with those. Referring to accidents involving heavy goods vehicles, the ETSC stresses that 'because of their size and weight, crashes can be catastrophic with a much higher risk of death or serious injury', and recommends an exhaustive evaluation of the possible result of the same. Thus, the EESC takes note of the effort of the EC to address demands of the sector, but once again reiterates its doubts about new rules on flexibility without a thorough assessment.

3.11. The EESC is also strongly disappointed that the shortage of secured parking areas has not been dealt with, including a need to tackle issues such as cargo crime and drivers' conditions in parking areas. Member States should take tangible measures to meet the requirements arising from Regulation (EU) No 1315/2013 as an effective means to improve safety in road transport, tackle the risk of cargo theft, prevent access to dangerous goods and guarantee appropriate facilities for drivers to park vehicles in a network of secure parking spaces EU-wide and according to Article 39(2)(c) take appropriate measures to develop, on the core TEN-T network, rest areas on motorways approximately every 100 km in order to provide appropriate parking space for commercial road users with an appropriate level of safety and security. The EESC appeals the EC to provide a thorough verification of existing parking network in the Member States particularly in geographically peripheral roads and transport corridors, as well as to develop a road map for decommissioning white spots in that area, what will be crucial for efficient implementation of the mobility package. It is not excluded that new elaboration of the TEN funding rules and a new approach to related road infrastructure will be needed. The current limited availability of secure parking spaces with appropriate facilities for drivers, including accommodation, risk making an obligation to rest outside the cabin a dead letter.

3.12. As well as acknowledging the concern that parking infrastructure often fails to match demand, the EESC stresses the main purpose of parking areas, namely to provide professional drivers, car users and passengers with breaks from driving and with the opportunity to refresh themselves. Parking areas have not been planned, nor are they equipped, to accommodate truck drivers having to spend weekly rests in their truck on a regular and even permanent basis.

3.13. The EESC thus notes the EC's analysis of the state of play in the sector, but points out that the proposals on social legislation fall short of meeting the EC's policy objectives and of effectively addressing the problems in road transport.

4. Driving times and rest periods

4.1. Regulation (EC) No 561/2006 was adopted 11 years ago and its objective was threefold: a) to safeguard fair competition in the road transport; b) to improve working conditions in the sector; and c) to improve road safety.

4.2. In the past decade, however, conditions in road transport have substantially changed, particularly in terms of tighter delivery schedules and time pressure to meet these deadlines in the context of increased traffic congestion on European roads.

4.3. The *ex-post* evaluation study carried out by the EC on the driving and rest time regulation links these new circumstances to higher occupation health risks in road transport such as fatigue, stress and illness (Ex-post evaluation of social legislation in road transport and its enforcement). Guaranteeing road safety and occupational health and safety under these new circumstances is proving a much more difficult task for policy and decision makers, but the EESC is of the opinion that they must be given priority when considering the introduction of more flexible rules.

4.4. Fatigue caused by tiredness of the driver (including when the driver does not take sufficient breaks) is one of the major causes of accidents involving heavy road freight vehicles. Even momentary lapses of concentration can have catastrophic consequences. Road transport drivers are also prone to suffer health problems associated with long periods of driving with insufficient breaks, such as cardio-vascular conditions (typically heart attacks, strokes etc.); musculoskeletal conditions (back and neck spinal injuries); nervous complaints (stress and anxiety, depression etc.) and stomach/digestive disorders. Strictly enforced driving and working time limits and adequate rest periods are essential in order to minimise these effects (OSH in figures: Occupational safety and health in the transport sector — an overview).

4.5. The EC, via the mobility package, proposes a redistribution of the rest time periods across an increased reference period of four weeks (instead of two weeks). Under this scenario, the monthly permitted driving time can be accumulated in the first three weeks of a month, while the last week can be rest, which may result in as many as 18 consecutive days of working with only two days of rest in between.

4.6. The proposed extension of the reference period means drivers may be required to delay their regular weekly rest of 45 hours by a further two weeks. Although this delayed weekly rest must be lengthened by the cumulative compensated rest periods, the consequence is that the driver may have no weekly rest of longer than 24 hours for up to three weeks, during which time he/she would not be truly free to leave the vehicle but would have to take responsibility for it. The EESC is of the opinion that this proposal should be evaluated, bearing in mind the reduced ability for the driver to leave the vehicle and the potential effects on fatigue.

4.7. The EESC equally points out that the proposed flexibility of rest periods could actually lead to inconsistencies with the existing regime of maximum driving and working hours. In this respect, however, the EESC stresses that no proposal must lead in effect to longer driving hours, or to a reduction of the working time limitation, whose primary objective is guaranteeing occupational health and safety.

4.8. The EESC understands the EC's efforts to propose measures reflecting the reality of road transport and the needs of operators and drivers but expresses its concerns regarding possible implications on the fine balance between fair competition, driver health and safety and road safety.

4.9. The EESC asks the legislator also to consider allowing compensation for a reduced weekly rest period in connection with daily rest periods, as provided for in the current regulation. With respect to breaks, the EESC suggests considering an impact assessment on the possibility of leaving a more flexible distribution of the 45 minutes of break over 6 hours to the discretion of the driver. The impact assessment should focus on the driver's ability to use the break to rest and refresh in-between nine hours, respectively 10 hours, of driving.

4.10. Indeed, guaranteeing the safety of road users and of passengers remains an issue even in the context of the current, much stricter, rules. Severe collisions in recent years involving trucks and buses or coaches and resulting in a serious number of casualties (Traffic Safety Basic Facts 2016 — HGVs and Buses, ERSO) must be an alarm signal that Europe needs simple, enforceable and clear rules to create a fair climate for users, drivers and business, with safety at its core. It is necessary to ensure a better enforcement of such rules before thinking about creating more flexible ones.

4.11. From the viewpoint of enforcement, the EESC would question some aspects of the EC's proposal. Firstly, the extension of the reference period for the distribution of rest periods must not have a negative impact on a harmonised interpretation of the rules, not giving room for each Member State to come up with individual scenarios and calculations. In a cross-border activity such as road transport, individual interpretations of rules have an impact on the fluidity of an entire road journey or operation, and even on the activity as a whole.

4.12. In this respect the EESC points out that it took the EC and the Member States several years to finally agree on a common guide for the interpretation of driving times and rest periods as set by the current Regulation (EC) No 561/2006 (see the TRACE publication 'Transport Regulators Align Control Enforcement', 2012). The EESC therefore underlines the importance of establishing a network to support the implementation work of Member States and to reduce the risk of diverging interpretations.

4.13. Secondly, the EESC considers that the proposed changes to the driving and rest time regulation must not hinder their enforcement. It equally considers that the proposed changes will incur new costs for the Member States, e.g. in terms of replacing software used in road side and company checks, in terms of training of inspectors, etc. The EESC underlines the importance of making adequate resources available to ensure efficient compliance monitoring.

4.14. To conclude on enforcement, the EESC stresses the point that more effort must be made by the legislator with regard to smart and non-discriminatory enforcement methods. In this respect, the EESC salutes the EC's proposals relating to a better use of the risk rating systems. However, the EESC stresses the need for inspectors to access data in real-time and for facilities to be provided for a better exchange of information between Member States. In this context, Member States must make better use of national (NER) and European (ERRU) electronic registers required under Regulation (EC) No 1071/2009 on access to the occupation.

4.15. With regard to the conditions of weekly rest for drivers, the EESC welcomes the EC's intention to address the issue. However, the proposal leaves some uncertainties.

4.16. In concrete cases, 'nomadic' drivers who spend long periods away from home — and are thus directly affected by the new proposal — are recruited by road transport undertakings that operate in high-wage Member States, but are seeking to benefit from the lower labour costs or taxes in place in other Member States. It is of key importance that the practical issues related to long absence from home such as accommodation needs or repatriation costs are adequately addressed and solved, as this should not be at the expense of the driver.

4.17. Bearing in mind the high level of mobility of the drivers, the EESC supports the EC's intention to facilitate their return home and points out that the proposed changes in the driving- and rest-time rules should not lead to a reduced ability to spend time with the family at weekends and to have a decent social life. However, the potential scenario of three weeks of intense work with only two days of rest in between could have a negative impact on drivers' work-life balance.

4.18. As well as acknowledging the improvement and modernisation of vehicle cabin features in general, limitations remain concerning the availability of space and facilities in the cabin. Therefore, the EESC welcomes the EC's important clarification, confirmed by the recent ruling of the European Court of Justice (ECJ) of 20 December 2017, that weekly rest periods of 45 hours and more must be taken away from the vehicle, either in accommodation paid for by the employer, at home or in a place of the driver's own free choosing. The EESC, however, raises the issue that spending the regular weekly rest in private accommodation or the driver's home could create difficulties in documentation. Nonetheless, in order to satisfy the requirement that the driver must be able to 'freely dispose of his/her time' during a weekly rest, it is imperative that the driver is free to leave the vehicle and to have an uninterrupted period of time when he/she does not have to take responsibility for its safe keeping and security. The EESC equally points out that availability of safe parking and other facilities ensuring the sound application of the proposed measures is on the other hand needed.

5. Posting drivers in the road transport sector

5.1. In road transport, gaps between Member States in terms of driver pay remain substantial due to differing costs of living. A study by the Comité National Routier (CNR), also quoted by the EC in its impact assessment, points out that gross wage differentials can be as much as eleven times between Member States.

5.2. The EESC agrees with the EC that, with these wage differentials, rules need to be kept in place, in line with the EU values and principles defined by the Treaty on the Functioning of the European Union, with a view to:

- avoiding distortion of domestic markets, for both labour and transport;
- ruling out discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, in the context of freedom of movement;
- ensuring a fair competitive environment for business no matter where the latter are established, where they operate and where they recruit their workforce within the EU.

5.3. The Posting of Workers Directive (Directive 96/71/EC) is part of the above-mentioned rules. In December 2016, the EESC adopted a specific opinion (SOC/541)⁽²⁾, raising a number of concerns and proposals.

5.4. Under the current rules, when drivers work in an EU Member State other than their own on a temporary basis, they are covered by the Posting of Workers Directive if they perform cabotage. If they are engaged in international transport, they are posted only if the posting conditions defined by Article 1 of Directive 96/71/EC apply.

5.5. The EC is proposing, via the mobility package, a lapse of time before the rules on minimum pay and paid holidays apply to a driver engaged in international transport in the context of posting. The EESC is of the opinion that this has to respond to the EU political agenda — set by EC President Juncker and reiterated by the EU Member States in the 'Rome declaration' — to fight against social dumping and to respond to the goal set by the EC itself in the mobility package, namely to ensure a fair and competitive internal market for road transport. The proposal must make rules simpler, clearer or easier to enforce, avoiding the risks of fragmentation of EU legislation.

5.6. The EESC raises the unclear issue of how the proposal would apply to transport operators established in a third (non-EU) country and how the obligations will be enforced. It asks the EC for clarification.

⁽²⁾ OJ C 75, 10.3.2017, p. 81.

5.7. The EESC takes note of the concerns related to the enforcement of posting of workers rules in international transport, in particular by SMEs, notably a complex administrative challenge taking into account national differences in minimum pay and that an unwieldy cumulation of very short-term pay and paid holiday rights could generate considerable difficulties and costs. Therefore, the EESC stresses the need for more transparency concerning the terms and conditions of employment, including minimum rates of pay, in each Member State.

5.8. The EESC acknowledges the specific character of the road sector and its highly mobile workers. However, it is of the opinion that, as it stands, the EC's sector-specific proposal on the posting of workers in international road transport does not altogether adequately address the problems raised as pointed out in this section.

5.9. The EESC fully agrees that for cabotage the Posting of Workers Directive should continue to be applicable from day one. However, it questions the application of the new lighter administrative rules to cabotage. With regard to pure transit operations, in the absence of any legal certainty, the EESC calls on the EC to clarify that transit operations are exempted from the rules on posting.

5.10. The EESC notes the calls coming from the industry pointing out that the posting rules are not suitable for the mobile nature of road transport, as well as the concerns expressed by the business that the EC proposal will lead to considerable administrative burdens. Consequently, it welcomes the adjustment of enforcement requirements to the specificities of the sector such as lifting the obligation for road transport operators to designate a person in the host Member State to liaise with the authorities there. The EESC considers that the administrative burden could be alleviated if a one-stop shop for notifications were to be introduced EU-wide. Furthermore, it suggests that the driver should not be obliged to provide the salary slips of the last two months during road-side checks, unless they can be made available by electronic means. Control authorities should obtain them directly from the contact person and they should be made available by electronic means in the Member State of establishment.

5.11. However, the EESC must equally acknowledge that the temporary deployment of a driver from a low-income Member State in a Member State with a higher pay level, must as far as pay is concerned comply at least with the pay levels of the host country, as set by law or practice.

5.12. The EU-wide application of rules on posting in road transport is of key importance in retaining level playing field for workers and businesses alike. This would also help to prevent the wide-scale abuse and exploitation of low-income labour from other Member States that has become all too prevalent in international road transport and is a major cause of the downward spiral in wages and conditions for road transport drivers.

5.13. Along the same lines, the EESC considers it essential to make further progress on upward economic and social convergence between Member States with different economic performance and at the same time to have harmonised posting rules applying in a uniform manner across the EU. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules. Administrative burden must be avoided at all cost. The EESC welcomes the simplified posting declaration that is provided for in this proposal. However, it considers that the covering of a period of maximum 6 months and a group of drivers could reduce the effectiveness of enforcement and control of posting rules.

5.14. In particular with respect to the posting of drivers, the smart tachograph is indisputably a far more effective tool than the Commission proposal on manual entries. In particular the manual entry of country codes is exposed to possible manipulation.

5.15. Finally, in order to ensure better cross-border enforcement of the EU rules applicable to road transport, the EESC calls for the EC to set up a European Road Transport Agency whose main competence would be improving the compliance culture in road transport and providing support for policy making in the sector at both EU and national level. In this regard, the EESC stresses that road transport is the only sector which does not have such an agency, while being fully liberalised and

thus heavily depending on close cooperation between Member States. Such an agency would be beneficial not only to better controls of posting and driving and rest time rules, but also to cabotage and access to the occupation. An agency is also the only way of moving towards a harmonised interpretation of rules. Nonetheless, the EESC recommends that Member States be active in existing European transport inspection services and invest in the training of national inspection authorities.

Brussels, 18 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

Appendix

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

Point 4.18

As well as acknowledging the improvement and modernisation of vehicle cabin features in general, limitations remain concerning the availability of space and facilities in the cabin. Therefore, the EESC welcomes the EC's important clarification that weekly rest periods of 45 hours and more must be taken away from the vehicle, either in accommodation paid for by the employer, at home or in a place of the driver's own free choosing. The EESC, however, raises the issue that spending the regular weekly rest in private accommodation or the driver's home could create difficulties in documentation. Nonetheless, in order to satisfy the requirement that the driver must be able to 'freely dispose of his/her time' during a weekly rest, it is imperative that the driver is free to leave the vehicle and to have an uninterrupted period of time when he/she does not have to take responsibility for its safe keeping and security. The EESC equally points out that availability of safe parking and other facilities ensuring the sound application of the proposed measures is on the other hand needed. The lack of safe parking and other facilities will in reality mean that a legal obligation to take the weekly rest period outside the cabin will confront drivers and operators with an impossible dilemma of risking cargo and vehicle or comply with the law. Enforcement authorities must give due consideration to this dilemma.

Votes in favour: 105

Votes against: 152

Abstentions: 22

Point 5.13

~~According to the EC, the EU-wide application of rules on posting in road transport is of key importance in retaining level playing field for workers and businesses alike. The EC argues that this proposal would also help to prevent the wide scale abuse and exploitation of low income labour from other Member States that has become all too prevalent in international road transport and is a major cause of the downward spiral in wages and conditions for road transport drivers. be key to creating a fair, safe, environmentally and socially sustainable road transport sector. The EESC condones these objectives. However, the EESC also underlines the importance of adapting posting provisions to the realities of the transport sector to make them work, as proposed by the EC. Therefore the EESC finds it necessary to question the added value of applying posting rules to international transport considering the complexity of the administrative work involved and the problems of control and enforcement.~~

Votes in favour: 105

Votes against: 157

Abstentions: 11

Point 5.14

Along the same lines, the EESC considers it essential to make further progress on upward economic and social convergence between Member States with different economic performance and at the same time to have harmonised posting rules applying in a uniform manner across the EU. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules. Administrative burden must be avoided at all cost. The EESC welcomes the simplified posting declaration that is provided for in this proposal. ~~However, it considers that the covering of a period of maximum 6 months and a group of drivers could reduce the effectiveness of enforcement and control of posting rules.~~

Votes in favour: 102

Votes against: 160

Abstentions: 12

Opinion of the European Economic and Social Committee on the

‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Aviation: Open and Connected Europe’

[COM(2017) 286 final]

and on the

‘Proposal for a Regulation of the European Parliament and of the Council on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004’

[COM(2017) 289 final – 2017/0116 (COD)]

(2018/C 197/09)

Rapporteur: **Jacek KRAWCZYK**

Consultation	European Commission, 5.7.2017 European Parliament, 15.6.2017 Council, 19.6.2017
Legal basis	Articles 100(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	4.1.2018
Adopted at plenary	17.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	115/1/4

1. Conclusions and recommendations

1.1. The European Economic and Social Committee reaffirms the position adopted in its Aviation Package I opinion ⁽¹⁾ that the overriding goal of the Aviation Strategy for Europe (EU Aviation Strategy), as presented by the European Commission in December 2015 should be to ‘improve the investment climate to encourage more European investment in the EU aviation industry, increase the competitiveness of the sector and its role for the economy, thus promoting overall economic growth and creation of new jobs’.

1.2. The EESC emphasises the crucial importance of the quality of implementation of the EU Aviation Strategy for the success of EU civil aviation. Rapidly changing internal and external conditions, the development of markets in multiple directions, growing pressure on people and companies, increasing competition inside and outside the EU, new disruptive technologies and swiftly advancing digitalisation: these are only a few of the challenges that must be addressed when implementing the EU Aviation Strategy. As the EESC predicted in its Aviation Package I opinion ⁽²⁾, the strategy has raised the political profile of civil aviation on the EU agenda and this position needs to be maintained. In this context, the EESC commends the Commission for its perseverance in promoting a globally accepted and implemented scheme to decarbonise aviation. Likewise, the need for effective sectoral social dialogue at both EU and national levels must be championed more than ever. The EESC refers again to its opinion on Social Dumping in Aviation ⁽³⁾ and urges the Commission to consider effective remedies to address the situation.

⁽¹⁾ OJ C 389, 21.10.2016, p. 86.

⁽²⁾ OJ C 389, 21.10.2016, p. 86.

⁽³⁾ OJ C 13, 15.1.2016, p. 110.

1.3. The EESC supports the Commission's dual approach to safeguarding fair international competition — on the one hand, giving more teeth to a unilateral instrument to protect EU community aviation interests (Proposal for a Regulation on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004, referred to henceforth the Commission proposal revising Regulation (EC) No 868/2004) and, on the other, seeking mandates to negotiate new market access agreements with third countries, combined with a consensus on how fair competition should be maintained. The EESC remains convinced that a level playing field can only be secured sustainably if third countries also respect the basic principles of labour protection as outlined in ILO standards as well as consumer protection and environmental standards. The Commission proposal revising Regulation (EC) No 868/2004 addresses several weaknesses in Regulation (EC) No 868/2004 in its current form; however, establishing a functioning social dialogue should become an integral element of a mutually agreed 'fair competition' clause in the European Union's international air service agreements. The EESC fully supports the Commission's efforts to secure further mandates to open new comprehensive aviation agreements and calls for swift and efficient completion of ongoing negotiations.

1.4. The interpretative guidelines for ownership and control provisions provide improved clarity regarding the relevant provisions of Regulation (EC) No 1008/2008 to help Member States and other stakeholders in their ongoing implementation. However, in the Committee's opinion, these guidelines do not give enough consideration to market changes taking place and the disruptive and structural challenges that European aviation will be facing in the short and medium term. If implementation of the EU Aviation Strategy is to be robust, the EESC recommends that an impact assessment be drafted based on a number of scenarios to pave the way for an informed consideration of the question of ownership and control.

1.5. The Committee endorses the proposed interpretative guidelines on the Public Service Obligation (PSO) contained in Regulation (EC) No 1008/2008, while noting that long-term market development — involving a growing need for greater connectivity of Member States at the periphery of the EU or with small domestic markets — will require further in-depth economic and societal analysis of how to better provide sustainable connections between their main airports and key destinations in the EU to better address passengers' demands. Further political discussions will be needed on this, also taking account of the Connectivity Index prepared by the Network Manager and now published on the European Commission's website.

1.6. The Committee believes that Regulation (EC) No 1008/2008 is in need of comprehensive revision. Given its fundamental importance for the sector, it is vital that the review process incorporates feedback from all stakeholders — including civil society representatives — and that it enables the long-term vision of EU civil aviation as set out by the EU Aviation Strategy to become a reality. With the proviso that the Commission conducts an extensive analysis, and that this is confirmed through public consultation, it would be in the best interests of the EU for the current Commission to propose a revision of Regulation (EC) No 1008/2008.

1.7. The EESC is of the view that at EU level the Network Manager⁽⁴⁾ has already initiated the process to mitigate ATM disruptions. Moreover, the social partners already have the tools to reduce any impact because they are mutually implemented. The EESC reaffirms that strikes are a fundamental workers' right and that the right to strike falls outside the scope of the EU treaties⁽⁵⁾. According to the principle of subsidiarity, it falls within the Member States' competence to determine how this right is exercised. Furthermore, the social partners have developed a set of measures which could be jointly implemented to reduce the risk of industrial conflict ('Toolbox'⁽⁶⁾). The EESC welcomes this initiative as an appropriate and effective approach to avoid as far as possible disruptions to air traffic. The passengers and citizens of Europe will be the ultimate beneficiaries of this approach.

⁽⁴⁾ The Network Manager is a directorate within Eurocontrol responsible for network capacity planning. It must ensure that air traffic capacity is made available and used in the best possible way in the pan-European network's daily operations. To this end it cooperates closely with its Member States and their national air navigation service providers.

⁽⁵⁾ Article 153(5) TFEU.

⁽⁶⁾ ATCEUC, CANSO and ETF (2016): Toolbox for successful social dialogue in air traffic management, available at: <http://www.etf-europe.org/files/extranet/-75/45567/Brochure%20ETF%20Toolbox%20March%202016.pdf>.

1.8. In order to provide for the efficient implementation of the EU Aviation Strategy, it is essential to inject into the political discussion the views of organised civil society concerning the political, social, economic and environmental consequences of these initiatives. The EESC, as it has already stated on several occasions, is prepared to actively participate in this process. It is also of utmost importance that further legislative work on the proposal revising Regulation (EC) No 868/2004 in the European Parliament and the Council proceeds promptly in order to effectively address distortions to international competition.

1.9. The EESC reiterates the position adopted in its Aviation Package I opinion⁽⁷⁾, recommending that: 'inclusion of stakeholders in the implementation of the Strategy should be accompanied by a structured and concrete explanation of the way in which the Strategy will be implemented'. A road map is still required to provide greater detail on 'how the Commission will reach out to the stakeholders to secure such crucial engagement. Mobilisation of all aviation stakeholders acting together on implementation of the Strategy is challenging but necessary'.

2. Introduction

2.1. Commission Communication COM (2017) 286 on Aviation: Open and Connected Europe (the Communication), published on 8 June 2017 follows the European Commission's launch in December 2015 of the Aviation Strategy for Europe⁽⁸⁾ (EU Aviation Strategy), which sets the agenda for a targeted discussion within the civil aviation community about the necessary key elements of a holistic aviation policy and how best to implement it.

2.1.1. The EU Aviation Strategy '(...) aims at boosting Europe's economy, strengthening its industrial base and reinforcing its global leadership position in aviation whilst addressing environmental and climate challenges, thus contributing directly to the Commission's strategic priorities'⁽⁹⁾. By taking the economic, legal, environmental, political and social aspects of aviation into consideration, the Commission is pursuing a holistic approach to aviation and has proposed objectives to address the challenges within the EU market as well as international aviation markets. The more concrete results of the implementation of the EU Aviation Strategy remain to be seen.

2.2. The EESC has been very actively involved in recent years in EU civil aviation policy development. It has held a large number of public hearings, conferences and bilateral and multilateral events to provide more civil society involvement in various policies concerning EU civil aviation. It has thus built up a strong network of EU civil society stakeholders in order to actively respond to forthcoming Commission proposals as well as to enable and empower civil society to engage in this highly important and sensitive dossier.

2.2.1. On 2 March 2015 the Commission decided to consult the Committee on an integrated EU aviation policy. Numerous recommendations contained in the EESC's opinion on the subject⁽¹⁰⁾ (September 2015) were included in the final Commission proposal. Subsequently, upon delivery of the EU Aviation Strategy, the Committee gave strong support to the Commission proposal in its Aviation Package I opinion⁽¹¹⁾ (February 2016).

2.3. The Commission's current Communication addresses highly complex issues, each of which has numerous political, legal and economic ramifications. The Commission had listed these issues — amongst others in the Annex⁽¹²⁾ to the Aviation Strategy — as integral elements of an 'action plan' to achieve the main strategic goals.

2.4. Of the four measures proposed in the Communication, one is a legislative proposal. The remaining three are guidelines of a non-binding legal nature. Together they are as follows:

— new Proposal for a Regulation on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004,

⁽⁷⁾ OJ C 389, 21.10.2016, p. 86.

⁽⁸⁾ COM(2015) 598 final.

⁽⁹⁾ COM(2017) 286 final, page 2.

⁽¹⁰⁾ OJ C 13, 15.1.2016, p. 169.

⁽¹¹⁾ OJ C 389, 21.10.2016, p. 86.

⁽¹²⁾ COM(2015) 598 final.

- Interpretative guidelines on Rules on Ownership and Control of EU air carriers contained in Regulation (EC) No 1008/2008,
- Interpretative guidelines on the Public Service Obligation rules contained in Regulation (EC) No 1008/2008, and
- Staff Working Document on Practices favouring Air Traffic Management Service Continuity ⁽¹³⁾.

3. Legislative proposal: a new Regulation replacing Regulation (EC) No 868/2004 (draft revision)

3.1. Documents published by the Commission along with the Communication argue a further need to better protect EU airlines from the practices of non-EU competitors that are considered to distort fair market competition. Major organisations in the EU airline sector have asked the Commission to take decisive action to address what they consider to be the absence of a proper approach to non-EU carriers from countries lacking proper rules on fair competition. The social partners have made similar demands based on lack of respect for comparable social and labour standards. The Commission has taken a correct stand on these strong calls by putting forward a new draft regulation.

3.2. In cases where EU connectivity and competition are put at risk, the Union must be able to act effectively to ensure that competition is not distorted in international aviation markets and EU aviation interests are not harmed and consumers rights and interests are ensured and enhanced according to EU legislation on consumers' and passengers' rights. Regulation (EC) No 868/2004 was intended to address these issues through unilateral EU action.

3.3. Regulation (EC) No 868/2004 has proved to have many serious weaknesses ⁽¹⁴⁾: it uses tools, procedures and criteria that stem from trade law, while the international aviation market is regulated by air service agreements. Regulation (EC) No 868/2004 has also been criticised because of its inadequate sanctions: it is considered a 'toothless tiger'.

3.4. The goal of revising or replacing Regulation (EC) No 868/2004 was shared by the Council and the Commission. The European Parliament also called for revision of this regulation.

3.5. Stakeholders were consulted on a proposal for improved protection against subsidisation and unfair pricing practices. They were also consulted as part of the public consultation for the drafting of the Commission EU Aviation Strategy. As a result of these consultations, an integrated approach was proposed by the Commission as the best means of addressing the problems identified. The inclusion of the three complementary building blocks (international negotiations, fair competition clauses in international agreements and the revision of Regulation (EC) No 868/2004) reinforce each other and creates synergies, making it possible to efficiently safeguard EU connectivity and support open fair competition between all air carriers.

3.6. This approach is also expected to bring economic benefits as it allows EU airlines to compete fairly with third country air carriers; it will also benefit EU airports and passengers through increased traffic and choice.

3.7. The Commission proposal revising Regulation (EC) No 868/2004 proposes empowering the Commission to act decisively as the lead EU institution, ensuring adherence to international obligations by third countries within well-established EU law and the principles of transparency, subsidiarity and proportionality. The proposed amendments simplify the process and encourage the parties concerned to resolve any conflict by having recourse to a mutual conflict settlement procedure wherever possible. The Commission proposal, if adopted, would therefore effectively address weaknesses in Regulation (EC) No 868/2004 currently in force.

⁽¹³⁾ SWD(2017) 207 final.

⁽¹⁴⁾ Study for the Commission in April 2013 268/2004 — 'A Case for Better Regulation'.

3.7.1. However, several issues remain unclear, in particular what measures the Commission could undertake to ensure compliance with international obligations by third countries ⁽¹⁵⁾.

3.7.2. A further concern raised by stakeholders is the absence of action provided for in cases where a third party fails to abide by basic principles of labour protection as outlined in ILO standards or where consumer protection and/or environmental standards are not respected. In view of the holistic approach pursued by the Commission, it is important to underline that a balanced approach must be ensured between a WTO-like free-market access and sustainable international competition in the interests of employees and consumers.

3.7.3. The Commission proposal revising Regulation (EC) No 868/2004 provides for a second avenue to remedy distortions. By addressing unfair market practices which cause injury to individual EU airlines, the Commission could intervene, should prima facie evidence be provided that such unfair practices exist and have a causal and detrimental effect on one or several EU airlines. Member States and airlines can also file a complaint.

3.7.4. For the Commission proposal revising Regulation (EC) No 868/2004 to act as a catalyst for voluntary conflict resolution, it is essential that any sanctions imposed are meaningful for the third party. The Commission proposal thus provides measures such as the suspension of concessions of services or other rights of the third country, provided this does not lead to the violation of Air Service Agreements with the third country or other international obligations ⁽¹⁶⁾.

3.8. It can therefore be argued that the Commission's proposal in its current version effectively addresses the key reservations voiced against Regulation (EC) No 868/2004; for the Commission proposal revising Regulation (EC) No 868/2004 to achieve the desired effect of acting as a deterrent to third countries or third country carriers to undermining competition in international aviation, further clarification may appear necessary on the measures which the Commission could deploy to this end and on the broader approach which should be contemplated when defining the notion of 'unfair' competition.

3.9. Nevertheless, while supporting the Commission's approach, some details could be tightened up to ensure the revised regulation is effective: the duration of an investigation should be reduced and it should not be possible to halt investigations without sufficient cause — such as agreement with the parties about remedial measures and implementation of such measures. There should also be an instrument for temporary relief.

3.10. In order to safeguard the EU aviation industry from unfair competition by third country operators, the EESC insists that a new Regulation revising the one currently in force must go beyond consideration of improved protection against subsidisation and unfair pricing practices and identify the need to address in an appropriate international form the issue of labour conditions which breach ILO Conventions.

4. Non-legislative proposals

4.1. Interpretative guidelines on the ownership and control rules

4.1.1. In its latest opinion on the EU Aviation Strategy ⁽¹⁷⁾, the EESC agreed that the strategy's overriding goal should be to support overall economic growth and the creation of new jobs. In order to grow, European airlines need access to investment — including foreign investment. Consideration needs to be given, however, to the fact that some non-EU governments are using investments as a strategic tool in a manner which is potentially incompatible with the spirit and wording of Regulation (EC) No 1008/2008.

⁽¹⁵⁾ An example of such an unfair practice could be a situation in which an important third country economic power *de facto* refuses EU carriers access to commercially important slots at its main airports.

⁽¹⁶⁾ COM(2017) 289, Article 13.

⁽¹⁷⁾ OJ C 389, 21.10.2016, p. 86.

4.1.2. Under the current EU investment rules for foreign airlines, investment may not exceed 49 % ownership⁽¹⁸⁾. Additionally, the effective control of the company needs to remain with Member States of the European Union or their nationals⁽¹⁹⁾. In recent years, this rule has given rise to reviews of several foreign investments by Member State licensing authorities and by the Commission⁽²⁰⁾.

4.1.3. The interpretative guidelines on ownership and control do not change the existing rules on these two matters; they do, however, explain various important procedural aspects. In addition, they lay out which investment schemes are acceptable if airlines are still to operate with their EU licenses.

4.1.4. Several cases of strategic minority acquisitions by non-EU airlines have given rise to a rather controversial debate about whether these infringe the ownership and control provisions in Regulation (EC) No 1008/2008. They are indicative of the fundamental changes taking place in international aviation⁽²¹⁾. Although the EESC welcomes the proposed interpretative guidelines on ownership and control, it thinks it is important not just to consider how to interpret the current provisions, but rather to evaluate whether these might now require revision in the light of current and foreseeable market trends. In this context, granting investment opportunities based upon reciprocity is one of the most important avenues to pursue. In order to evaluate the impact of market developments on European competitiveness in the medium and long term, the EESC recommends that an impact assessment be drafted based on a number of scenarios. This would pave the way for an informed consideration of the question of ownership and control.

4.2. Interpretative guidelines on the Public Service Obligation rules (PSO Guidelines)

4.2.1. There is recognition in the EU of the need to address cases where, on certain routes and due to specific conditions, insufficient demand or market failure prevents enough flights being provided to serve the needs of local communities. In such cases, Public Service Obligations (PSOs) — allowed under very specific conditions set out in Regulation (EC) No 1008/2008 — can guarantee that peripheral or developing regions are well-connected to the rest of Europe.

4.2.2. PSOs have generally been used by Member States to secure connections within their country to and from underserved regions. PSOs are subject to an assessment of necessity that takes account of proportionality requirements⁽²²⁾, recourse to other modes of transport, airfares and conditions, as well as the combined effect of air carriers operating or intending to operate on the route⁽²³⁾.

4.2.3. Existing rules concerning PSOs have not always been implemented in a consistent manner, which may have distorted both connectivity and competition on some routes. Questions have been raised by Member States on the content of procedural provisions of PSO Guidelines.

4.2.4. PSO Guidelines outline the proposed methodology to be followed by the Commission when assessing any PSO. They concern everything from the establishment of a PSO and related procedures to explanations as to the exclusive service concessions and compensation (in relation to state aid rules).

4.2.5. The PSO Guidelines will contribute to more transparent and more consistent implementation and enforcement of the existing provisions of Regulation (EC) No 1008/2008. However, the EESC asks the Commission to take careful note of its opinion on Application of the Decision on public compensation for the provision of services of general economic interest (2012/21/EU)⁽²⁴⁾, which urges a less burdensome requirement on national and local governments when complying with and reporting on their PSO awards, especially where the need for public intervention to support socially necessary but

⁽¹⁸⁾ Regulation (EC) No 1008/2008, Article 4(f) (OJ L 293, 31.10.2008, p. 3).

⁽¹⁹⁾ Regulation (EC) No 1008/2008, Article 4(f) (OJ L 293, 31.10.2008, p. 3).

⁽²⁰⁾ SWD(2017) 207 final, p. 4.

⁽²¹⁾ Example: minority acquisition of Air Berlin by Etihad Airways as part of a strategy to create a strong partnership between several European airlines and Etihad Airways.

⁽²²⁾ The obligation vis-à-vis economic development needs of the region.

⁽²³⁾ Regulation (EC) No 1008/2008, Article 16(3) (OJ L 293, 31.10.2008, p. 3).

⁽²⁴⁾ OJ C 345, 13.10.2017, p. 45.

commercially unviable airline services is readily apparent (e.g., to achieve connectivity to remote areas, islands etc.). At the same time, respect of social standards should become a consideration when granting public support.

4.2.6. Member States on the periphery of the EU or with small domestic markets experience increasing difficulties not only in securing domestic connections, but connections between their main airport and key destinations in the EU and beyond. The issue is therefore not only one of regulatory clarity, but economically and politically how to ensure sufficient connectivity to peripheral destinations in Europe, thus better respond to passengers' needs. The Member States concerned are interested in sustainable and reliable air services to secure long-term planning stability irrespective of possible opportunity costs arising for the operating carrier.

4.2.7. The Connectivity Index should provide insight into whether such broader approaches to PSOs, possibly securing more economic growth, would be justified. In the long term, one could dispute whether the provisions in the PSO Guidelines can remain relevant and effective in a fast-changing aviation market.

4.3. Air Traffic Management continuity

4.3.1. Air navigation services have a crucial role in ensuring reliable air connectivity, guaranteeing the safe performance of air traffic flows. In the busiest periods of the year, the European Air Traffic Management system (ATM) has to manage more than 30 000 flights per day. The workforce has an essential role in delivering such ATM services. In Europe as a whole the sector employs 56 300 people: 17 370 controllers and 38 930 other staff working in air navigation services. Working in this sector not only requires state of the art technology but also very high professional and personal skills. The efficiency and resilience of the ATM system have recently noticeably improved and it was able to absorb a traffic increase of 68 % in 20 years, from 5,8 million flights in 1995 to 9,74 million in 2014. This improvement in efficiency, while maintaining the highest safety standards, has only been possible thanks to the strong commitment of all stakeholders in the aviation value chain to the European Single Aviation Area.

4.3.2. In the course of the public hearing 'Air Traffic Management continuity in an Open and Connected Europe' organised by the EESC, the Network Manager outlined the process which has been put in place to minimise the impact of all types of disruption in Europe. These measures require the participation of Air Navigation Services Providers (ANSPs), airlines and Member States. They have proved to be a very efficient means of reducing the impact of disruptions on passengers.

4.3.3. One of the possible causes of disruption is industrial action in the aviation sector. Strikes are a fundamental workers' right and the right to strike falls outside the scope of the EU treaties⁽²⁵⁾. It is therefore incumbent upon the Member States to determine how the right to strike can be exercised, and the majority of Member States have specific laws or regulations setting out the conditions for exercising the right to strike in ATM and any other part of the EU aviation value chain.

4.3.4. The Toolbox for successful social dialogue in ATM⁽²⁶⁾, agreed between the social partners, is a good example of an efficient approach to establishing mechanisms which minimise the risk of disruption. These measures are implemented on the basis of mutual consent. The EESC welcomes the proposal by the social partners to extend the scope of the signatories and is open to participate in such an initiative.

5. Other proposals

5.1. To combat practices negatively affecting competition, and in addition to its proposal for a new Regulation 868, the Commission is encouraging the inclusion of far-reaching competition rules in comprehensive aviation agreements with third countries⁽²⁷⁾. It is urging the Council to give it new mandates to open negotiations on further agreements of this kind with Bahrain, China, Kuwait, Mexico, Oman and Saudi Arabia. The Commission is also insisting — rightly so — on the immediate signing of the EU Comprehensive Aviation Agreement with Ukraine.

⁽²⁵⁾ Article 153(5) TFEU.

⁽²⁶⁾ <http://www.etf-europe.org/files/extranet/-75/45567/Brochure%20ETF%20Toolbox%20March%202016.pdf>.

⁽²⁷⁾ SWD (2017) 182 final, 3.4.4.

5.2. The first comprehensive agreement of its kind (Air Transport Agreement — ATA) concluded between the EU and the United States (2007) with respect to unfair competition establishes cooperation between competition regulators, creating a framework for coordination. Article 14 of the ATA addresses action with regard to state subsidies and support⁽²⁸⁾ and also contains provisions granting the ATA Joint Committee the right to resolve potential disputes — including by having recourse to a neutral arbitration procedure. The main added value of such comprehensive agreements lies in the regulatory convergence of many key areas (safety standards, certificates and licenses, as well as the sensitive area of security). It also relates in this context to state aid and state support.

5.3. To date, a comprehensive aviation agreement has been concluded with Canada. The agreement with Brazil is currently under renegotiation and the EU has concluded negotiations with Israel, Jordan, Morocco, Moldova and Georgia. Negotiations are ongoing with Australia and New Zealand. After the granting of Council mandates in 2016, negotiations have been started with the Association of Southeast Asian Nations, Qatar, the United Arab Emirates and Turkey. In each case, the issue of fair competition clauses has formed part of the negotiations⁽²⁹⁾.

5.4. Subject to the Commission successfully completing the ATAs currently mandated, the EESC takes note of the Commission's efforts to secure further mandates to open new comprehensive aviation agreements and urges the swift and efficient negotiation of those already begun. However, the labour practices of certain countries and their airlines are a source of concern and could negatively impact fair competition on the international aviation market. The EESC therefore urges the Commission to ensure that European operators are fairly treated and a level playing field is secured. The EESC recommends that the Council and the Commission acknowledge the need to negotiate appropriate binding social clauses in all EU aviation agreements with third countries.

Brussels, 17 January 2018.

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

⁽²⁸⁾ EU — US Air Transport Agreement signed on 25 and 30 April 2007, Article 14.

⁽²⁹⁾ SWD (2017) 182 final, 2.2.1.3.

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on rail passengers’ rights and obligations (recast)’

[COM(2017) 548 final — 2017/0237 (COD)]

(2018/C 197/10)

Rapporteur: **Jan SIMONS** (NL-I)

Consultation	European Parliament, 5.10.2017
	Council of the European Union, 10.10.2017
Legal basis	Article 91 TFEU
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	4.1.2018
Adopted at plenary	18.1.2018
Plenary session No	531
Outcome of vote	164/1/4
(for/against/abstentions)	

1. Conclusions

1.1. The Committee can endorse the Commission’s proposals. In particular, it endorses the proposals to further clarify the current rules, provide better information to passengers, and, by removing national exemptions, promote the uniform application of passenger rights throughout the EU. In addition, the introduction of a *force majeure* clause as such is warranted, in order to align rail with the other modes of transport.

1.2. But a new provision (Article 22(4) about assistance in stations concerning persons with disabilities and persons with reduced mobility) may be problematic. The EESC firmly advise therefore to add to Article 22(4): ‘with the exception of unstaffed stations, which are covered by paragraph 3’.

1.3. The Committee also has a number of proposals for tightening up the draft text; they are also set out in section 4.3, which we refer to here for the sake of brevity.

2. Introduction

2.1. The protection of passenger rights in all types of transport, and thus including rail, emerged as an EU objective back in the 2001 White Paper on Transport. A rail regulation to that end was adopted in 2007⁽¹⁾ and came into force in 2009.

2.2. This regulation provides passengers with minimum protection when travelling by train. The regulation obliges Member States, their respective authorities and railway undertakings to implement these provisions in their practice to safeguard passenger rights. In this context, Regulation (EC) No 1371/2007 is an important harmonisation tool which should ensure that all passengers travelling by train in the EU have the same rights.

2.3. A 2011 European Commission communication on a European vision for passengers ‘Communication on passenger rights in all transport modes’⁽²⁾ states that passenger rights are based on three cornerstones: non-discrimination; accurate, timely and accessible information; and immediate and proportionate assistance.

⁽¹⁾ Regulation (EC) No 1371/2007.

⁽²⁾ COM(2011) 898 final.

2.3.1. It also enumerates ten core EU passenger rights applicable to all modes of transport:

1. the right to non-discrimination in access to transport,
2. the right to mobility,
3. the right to information,
4. the right to renounce travelling (reimbursement of the full cost of the ticket),
5. the right to the fulfilment of the transport contract in case of disruption,
6. the right to assistance,
7. the right to compensation,
8. the right to carrier liability towards passengers and their baggage,
9. the right to a quick and accessible system of complaint handling, and
10. the right to full application and effective enforcement of EU law.

2.3.2. The rights applicable to train passengers included in the 2007 regulation reflect the above mentioned 10 core passenger rights applicable to all modes of transport already.

2.3.3. However, the regulation provides Member States with very wide discretion towards the application of its provisions. Member States can grant broad exemptions from the application of the regulation. Although these exemptions are granted temporarily, not exceeding a maximum period of 15 years, they have a considerable impact on uniform application of the regulation.

2.3.4. Currently, only four Member States apply the regulation without any exemption, while the remaining 24 Member States have granted numerous exemptions for their domestic, urban, suburban or regional train services. The extensive application of these exemptions, despite being permitted legally, impairs the uniform application and enforcement of Regulation (EC) No 1371/2007. Train passengers thus have different rights in different Member States.

2.3.5. In its 2013 report on the application of the regulation ⁽³⁾, the Commission highlighted certain problematic areas, which were confirmed by an impact assessment in 2016/2017 ⁽⁴⁾.

2.4. In 2013, the Court of Justice of the European Union ruled (Case C 509/11 ÖBB-Personenverkehr) that the current Article 17 of the regulation does not allow for railway undertakings to be exempted from compensating passengers for delays caused by *force majeure*. This distinguishes rail from other transport modes.

2.5. Finally, it should be noted that this proposal concerns only railway undertakings that are licensed under Directive 95/18/EC; thus it does not apply to trams and metros. Furthermore, the proposal is underpinned by the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV).

3. Summary of the Commission proposal

3.1. The proposed recasting strikes a balance between strengthening rail passenger rights and reducing the burden on railway undertakings.

3.2. The exemptions for long-distance domestic services are to be abolished by 2020. For services operated outside the EU, Member States are to be required to grant exemptions only if they can prove that passengers are adequately protected on their territory. To ensure legal certainty in cross-border regions, the regulation will apply in full to urban, suburban and regional services that operate across borders.

⁽³⁾ COM(2013) 0587 final.

⁽⁴⁾ SWD(2017) 317 final.

3.3. The proposal strengthens the rights of **people with disabilities and people with reduced mobility**, in compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Member States can no longer exempt the provision of assistance and compensation for damaged mobility equipment ⁽⁵⁾. Information must be provided in accessible formats in line with the requirements proposed in the European Accessibility Act ⁽⁶⁾. Rail staff will have to be trained accordingly.

3.4. Passengers are to be given **basic information** on their rights at the time of booking. Notices informing passengers of their rights have to be placed in prominent positions in stations and on board.

3.5. In line with the *Interpretative Guidelines* of 2015 ⁽⁷⁾ and the 4th railway package of 2016 ⁽⁸⁾, railway undertakings and ticket vendors have to make efforts to offer through-tickets, but they can also prove that they informed passengers where their passenger rights do not apply to the whole journey.

3.6. The proposal specifies the responsibilities of national enforcement bodies, including in cross-border cases, and requires them to cooperate effectively.

3.7. The proposal introduces a general clause prohibiting any form of **discrimination**, aligning rail with other modes of transport.

3.8. To reduce the burden on railway undertakings, the proposal obliges station and infrastructure managers to also have contingency plans.

3.9. Railway undertakings are to get the right to redress, if delays were caused by a third party's fault or negligence. This measure aligns rail passenger rights with air passenger rights ⁽⁹⁾.

3.10. To prevent railway undertakings having to pay compensation in situations that they did not cause and could not prevent, the proposal introduces a *force majeure* clause that applies only in very exceptional situations caused by severe weather conditions and natural disasters ⁽¹⁰⁾.

3.11. The regulation will be listed in the Annex to the revised Consumer Protection Cooperation Regulation ⁽¹¹⁾.

3.12. The proposal includes references to the COTIF (the CIV Uniform Rules), thus extending its rules to domestic rail transport in the EU.

4. Comments

4.1. In general terms, the Committee can endorse the Commission's proposals. In particular, it endorses the proposals to further clarify the current rules, provide better information to passengers, and, by removing national exemptions, promote the uniform application of passenger rights throughout the EU. In addition, the introduction of a *force majeure* clause as such is warranted, in order to align rail with the other modes of transport.

4.2. Recasting 'starting from the existing legal instrument' ⁽¹²⁾ must not be a hard and fast rule. Sometimes, particularly where it emerges that a directive is being interpreted and applied differently by individual Member States, it is best to opt for a different legal instrument, in this case a regulation. Here, however, it is already a regulation; the recasting should therefore now lead to clear rules, which are not subject to multiple interpretations, but are uniformly applied, and backed up by new findings, which is largely the case. With regard to the remaining, less precise parts of the document, the EESC would like to make the following comments.

⁽⁵⁾ COM(2017) 548 final — 2017/0237 (COD).

⁽⁶⁾ COM/2015/0615 final — 2015/0278 (COD).

⁽⁷⁾ OJ C 220, 4.7.2015, p. 1.

⁽⁸⁾ OJ L 352, 23.12.2016, p. 1.

⁽⁹⁾ OJ L 46, 17.2.2004, p. 1.

⁽¹⁰⁾ SWD(2017) 318 final.

⁽¹¹⁾ COM(2016) 283.

⁽¹²⁾ COM(2017) 548 final — 2017/0237 (COD).

4.3. *Proposals*

4.3.1. It can sometimes be difficult for train staff to identify passengers with disabilities, and will be all the more so now that it is proposed to include mental and psychological disability in the definition of persons with reduced mobility. In the case of suspected fraud, this might lead to critical situations and operational difficulties. This issue should be given due attention in staff training (Article 26).

4.3.2. The remaining exemptions to **national long-distance services** should continue to be phased out gradually by 2024 in line with the existing regulation's requirement. Ending the exemption earlier, in 2020, as proposed by the Commission, could be too early for certain Member States. In that case, an appropriate solution should be found on a case-by-case basis, to enable a smooth transition.

4.3.3. The minimum compensations (Article 17(1)) are subject to a minimum of 60 minutes' delay. However, in current practice, shorter minimum delays have been known to apply. That possibility should be maintained by expressly mentioning this in the article.

4.3.4. With regard to the travel information to be provided, it should be added that where the minimum delay for compensation will almost certainly be reached or exceeded, this must be communicated to the passengers and, where possible, the relevant application forms for compensation actually made available.

4.3.5. Article 22 governs assistance at railway stations. Paragraph 3 sets out special arrangements for unstaffed stations. The proposed new paragraph 4 then fails to take due account of this. The Committee recommends adding 'with the exception of unstaffed stations, which are covered by paragraph 3' after the last word in paragraph 4 ('operate').

Brussels, 18 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

*Appendix***to the Opinion of the European Economic and Social Committee**

The following points of the section opinion were rejected in favour of amendments adopted by the assembly but received at least one-quarter of the votes cast in favour of retention of the section opinion texts (Rule 54(4) of the Rules of Procedure):

4.3.6. Some of the provisions in the proposal may be problematic, misleading and/or confusing and one is even contradictory.

Outcome of the vote on the amendment:

Votes in favour: 73

Votes against: 50

Abstentions: 24

4.3.6.1. For instance the right (Article 10(5)) to buy tickets on board at no extra cost can be questioned in the cases where no tickets on board are sold to anyone and information is provided at departure stations about ticket purchase as already foreseen in Articles 10(2), 10(3) and 10(4).

Outcome of the vote on the amendment:

Votes in favour: 80

Votes against: 51

Abstentions: 13

4.3.6.2. Also the provision (Article 23(4)) that assistance should be available on board trains at all times when rail services operate might be a problem in cases where trains are running without on board staff generally, a situation already regulated by Article 23(2).

Outcome of the vote on the amendment:

Votes in favour: 91

Votes against: 48

Abstentions: 12

4.3.6.3. To avoid unnecessary disputes and unreasonable obligations the EESC advise firmly to delete both Article 10(5) and Article 23(4).

Outcome of the vote on the amendment:

Votes in favour: 90

Votes against: 48

Abstentions: 14

The following point was modified to reflect the amendments adopted by the assembly.

1.2. But some of the new provisions (proposed Article 10(5) about buying tickets on board; Article 22(4) about assistance in stations and Article 23(4) about the same on board the trains, all concerning persons with disabilities and persons with reduced mobility) may be problematic, misleading and/or confusing and even one is contradictory in relation with their foregoing paragraphs of the just mentioned articles, where these refer to unstaffed stations and trains. The EESC firmly advise therefore to delete Articles 10(5) and 23(4) and to add to 22(4): 'with the exception of unstaffed stations, which are covered by paragraph 3'.

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 726/2004 as regards the location of the seat of the European Medicines Agency’

(COM(2017) 735 *final* — 2017/0328 (COD))

(2018/C 197/11)

Consultation	European Parliament, 11.12.2017 Council, 14.12.2017
Legal basis	Articles 114, 168(4)(c) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in plenary	17.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	167/0/0

Since the Committee endorses the contents of the proposal and feels that it requires no comment on its part, it decided, at its 531st plenary session, held on 17 and 18 January 2018 (meeting of 17 January), unanimously to issue an opinion endorsing the proposed text.

Brussels, 17 January 2018.

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 1093/2010 as regards the location of the seat of the European Banking Authority’

(COM(2017) 734 *final* — 2017/0326 (COD))

(2018/C 197/12)

Consultation	Council of the European Union, 14.12.2017 European Parliament, 11.12.2017
Legal basis	Articles 114 and 304 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	17.1.2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	167/0/1

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided unanimously not to hold a general discussion and to put the opinion straight to the vote (Rule 50(4) and 56(3)).

Brussels, 17 January 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

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