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## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

519ST PLENARY SESSION OF THE EESC ON 21 AND 22 SEPTEMBER 2016

**Opinion of the European Economic and Social Committee on 'New measures for development-oriented governance and implementation — evaluation of the European Structural and Investment Funds and ensuing recommendations'****(Own-initiative opinion)**

(2016/C 487/01)

Rapporteur: **Etele BARÁTH**

Plenary Assembly decision	21/01/2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	08/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	171/1/4

**1. Conclusions and recommendations**

1.1. The EESC considers that coordinated European development-oriented governance needs to be put in place with the aim of helping to build a renewed, strong and peaceful Europe. Coordination should be stepped up, possibly by equipping governance with new organisational methods.

1.2. Dynamic economic development should be restored through coordinated steps, and the foundations of social well-being and democracy, coexistence between different cultures and exemplary respect for the environment should be consolidated.

1.3. The EESC emphasises that consistent application of the partnership principle is intended to facilitate stakeholder participation in planning and implementing investments from EU funds. Such participation will strengthen the collective commitment to investment and allow for greater use of expertise. It will make project implementation more efficient, increase transparency and help prevent fraud and abuse.

1.4. What we need is a simple, accessible strategy and objectives and a single, long-term project for Europe (EU 2030-50 strategy). Confirmation is needed that the creation of an innovative, viable and inclusive Europe remains a major strategic objective for the Union. To this end, the COP 21 objectives (SDGs) should also be included in the project.

1.5. Development programmes must be better coordinated. The design of short-, medium- and long-term programmes and tools must be based on a set of concise objectives. By 'tools' we mean all policy, legal, organisational and financial measures.

1.6. In order to improve coordination, the EESC urges that the conventional European Structural and Investment (ESI) Funds, as well as market-oriented projects that also mobilise private capital under the European Fund for Strategic Investment (EFSI), be harnessed to serve the common European objectives. To this end, it is important to coordinate the objectives and the rules regarding their implementation.

1.7. The EESC proposes that the main instrument for stronger central, development-oriented governance should be the European Semester, which is based on the annual growth survey and should in addition provide ways of exercising continuous influence over Project Europe and carefully monitoring its progress. The European Semester could at the same time perform the functions of systems designed to ensure a social environment that guarantees well-being.

1.8. If the essentially economic, GDP-based performance indicator already adopted were to be flanked by an additional, results-based indicator (gross domestic result), that reflects sustainability and includes primarily social and environmental factors, it could serve as a basis for monitoring the effectiveness of development-oriented governance.

1.9. Close coordination and the introduction of an open cooperation method between the Member States are necessary. It is necessary to make adjustments based on the experience gained to date in development processes.

1.10. Legal and financial instruments must be consolidated. The performance of development-oriented governance will depend on a dynamic economy, more capital being mobilised, a more efficient investment system, a better-qualified workforce and the degree of innovation displayed by businesses. Its main longer-term objective is, however, to generate well-being and a renewed society, and to ensure an enhanced, sustainable environment.

1.11. Shared, multilevel implementation is necessary. Legal and administrative instruments for development-oriented governance should be developed in parallel with ongoing reform (REFIT programme). In this regard, intermediate-level instruments — in other words, macroregional development coordination instruments — must be significantly strengthened. Moreover, the role of functional regions, cities, urban areas, conurbations, metropolitan districts and networks is becoming increasingly significant as part of Project Europe.

1.12. One of the key elements in long-term development-oriented governance is continuity. The conditions governing the cyclical nature of policies, programming processes and budgetary forward planning must be coordinated. Development work entails ongoing analysis, monitoring and correction.

1.13. It is vital to keep the public properly informed, to promote their involvement, to develop communication and political marketing, and to present practical results and weaknesses accurately.

1.14. The EESC has always argued in favour of stronger democratic participation. Regarding the open method of cooperation, the involvement of the economic and social partners and NGOs should be ensured at all levels; at European level, this must go hand in hand with a more important role for the EESC.

1.15. As already noted in its opinion of 2012<sup>(1)</sup>, the EESC supports the European Commission's initiative to establish a European Code of Conduct on Partnership (ECCP), with the aim of providing Member States with a partnership framework for planning and implementation. The partners' conception of Europe will help to define objectives and facilitate their identification, and will make implementation of plans more efficient.

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<sup>(1)</sup> EESC opinion on The partnership principle in the implementation of the Common Strategic Framework Funds — elements for a European Code of Conduct on Partnership (OJ C 44, 15.2.2013, p. 23).

1.16. The EESC points out that it is necessary to go beyond the partnership rules based on proposals and best practices and largely specifying the minimum requirements that the Member State authorities will have to meet, failing which they may face penalties.

1.17. The EESC recommends that the Member States be obliged to set up effective funding systems to build partners' capacity. Such systems must go beyond training courses and information alone, and extend to developing partnership networks and introducing tools for effective participation.

1.18. The EESC strongly urges the European Commission to step up cooperation with European partnership networks. The European Commission should set up a financing system that contributes to the operation of European NGO networks working in the area of regional policy, including in particular monitoring national processes and ensuring feedback.

## 2. For a renewed, strong Europe

### 2.1. *Background and current state of affairs*

2.1.1. The European Union is strong, but is still facing an ongoing multifaceted crisis, as clearly illustrated by Brexit. The economic crisis of 2008 dispelled the euphoria generated by enlargement in the early 2000s and has put the catching-up process in many countries into reverse.

2.1.2. The economic crisis, and especially the ensuing fall in investment, has shattered the previous growth-based unity between Member States and provoked worsening political, economic and social tensions. In spite of the Union's fundamental objectives, the development gaps between Member States are widening.

2.1.3. The pursuit of severe 'austerity policies' imposed on countries affected by high public and external debts and budget deficits is contributing to widening the gap between the most advanced countries and those affected by austerity. New policies are necessary to combine economic growth and budget deficit control with effective social inclusion policies.

2.1.4. Poverty, insecure employment and unemployment have reached an unacceptable level. The lack of future prospects for young people represents a significant obstacle to a renewable future for Europe.

2.1.5. The European Union has lost its status as an attractive destination for investors and has acquired a reputation for sluggishness. From the productive investment point of view, it is progressively losing ground to the United States and some of its own Member States, such as Germany and the United Kingdom. The countries that are lagging behind are holding up the ones that are more dynamic. The need for mutual interdependence is diminishing. In some countries, and in spite of a substantial budget surplus, the gap is widening due to the fall in productive investment, meaning that the poorest regions are falling even further behind. The reaction is slow and bound up in red tape.

2.1.6. The Union's fundamental achievements, such as the euro zone or the Schengen area, are today seen, against a backdrop marked by the migration crisis and terrorism, as factors for division rather than cohesion. In many countries, the EU is being used as a pretext in domestic political struggles.

2.1.7. Regional development levels are not converging. In GDP terms, the gap between the most advanced regions and those lagging behind is of 14 to 1. Some countries, including some of the greatest beneficiaries, are using the funds allocated to them instead of their state investment instruments and facilities, with their national contributions having fallen to minimal levels, well below the initial targets. The newly-created competitiveness boards could use their instruments to make a significant contribution to the convergence of regional development levels.

2.1.8. Ordinary people, economic and social actors and non-governmental organisations (NGOs) in Europe no longer have any vision of the future: they have distanced themselves from the political process and are increasingly turning inwards. They see the EU as a rigid, inflexible institution that is incapable of renewing itself.

2.1.9. Due mainly to its weak performance and institutional arrangements regarding development, the European Union is not in a position to mobilise the resources needed to achieve its aims, which are themselves fragmented.

2.1.10. There is no shared vision of the future, political will or governance capacity. The coordination method is and inadequate and obsolete, legal instruments have no impact or are difficult to use, participation by organisations and social support is weak, due in particular to poor communication.

2.1.11. The Union's long-term development strategy up to 2020 is no longer forward-looking enough and is no longer realistic, as well as being fragmented and incapable of guiding processes within existing methodological frameworks. In the meantime, consideration of the 17 main SDG objectives adopted relating to the sustainability of development has enabled the European Commission to embark on a review of the system and the tools for governance, as part of a complex, long-term strategy.

## 2.2. *New paths*

2.2.1. Against this backdrop, the new European Commission has, with the support of the European Parliament, launched a new model for economic development. The objectives set — creating jobs and promoting growth, completing the European single market, streamlining arrangements to regulate the economy, consolidating priority EU achievements, the energy market, supporting investment in the digital market and services, giving priority to intellectual and physical networks to connect Europe and boosting environmental responsibility — can give significant, fresh impetus to the economy.

2.2.2. The European Semester and its components together make up a system that goes beyond economic governance. The role of long-term socio-environmental objectives within the European Semester mechanism should be strengthened.

2.2.3. The priority programme aimed at fully consolidating the euro area's financial system is firstly unsatisfactory, and secondly is fuelling the real fear that the gap between European countries will widen still further. European-level development objectives could lessen the paralysis of a two-speed Europe.

2.2.4. At present, two major sets of objectives and economic-financial instruments that are very different, each with its own procedure, are shaping development processes. Complementarity between these two sets needs to be strengthened from the objective coordination stage onwards.

2.2.5. They are, firstly, the conventional European Structural and Investment Funds (ESI Funds), enshrined in the Treaties, whose purpose is to foster social, economic and territorial cohesion. They take the form of aid for investment and development, and are continuously modernised, while their nature remains unchanged. They are available thanks to redistribution of the Union budget, sourced from Member State contributions. In some cases, beneficiaries fail to appreciate the real value of these funds, arguing that they are 'entitled' to them. In order to facilitate the complementarity mentioned above, new rules should be adopted during the 'mid-term' review of the period up to 2020.

2.2.6. The second set of instruments is the European Fund for Strategic Investment (EFSI), intended to implement the new 'Juncker plan'. It is a new, market-oriented financial instrument, allowing risk capital to be supported and public, bank and private funds to be mobilised. Its amount can still be increased. The governance system put in place must become an integral part of development-oriented governance. These two funding systems must also be harmonised within each Member State.

2.2.7. Compared with these funding systems, the other financial instruments that function effectively are diverse and are suited to their missions, but are of limited volume and tied to their specific objectives. The Project Europe frameworks could be closely and systematically coordinated.

2.2.8. Direct means that could help to achieve the objectives, few and unconnected to each other, of the Europe 2020 strategy with a view to improving coordination, have not yet been put into practice. In the absence of such means, the question nevertheless arises as to whether the EU's development can be adequately coordinated. Planning interactions between the different instruments should therefore also be included among the aims of the new plan for the post-2020 period.



2.2.9. The eleven thematic objectives of the multiannual financial framework governing the ESI Funds, together with the ten main objectives of the Juncker plan — the latter only imprecisely matching the former — and their respective financial and regulatory rules ought to contribute as of now to completing the Europe 2020 strategy. The seventeen SDG sustainability criteria, which are crucial to the future, should be added. Missions under the programming process for the post-2020 period should focus on a small number of clear and concise objectives.

2.2.10. At present, the consequence of the different mechanisms linked to the objectives, the varying time-scales and start and end dates, is still that none of the objectives are transparent and comprehensible or can easily be monitored by economic and social and civil society stakeholders. The lack of synergies or interaction between the different objectives significantly reduces the effectiveness of the instruments and of investment. The synergies between the EFSI and a renewed Europe 2020 strategy should be enhanced by drawing up a new EU strategy for 2030-2050 (Project Europe).

2.2.11. While the Structural Funds are backed by highly bureaucratic mechanisms for preparing, implementing, monitoring and analysing, which are both centralised and decentralised, and a large number of agencies are in place at EU level to oversee implementation, the new governance mechanism of the recently-established EFSI lies outside the European Commission framework and its new organisational structure is based on needs arising from the financial and investment climate. Coordinating these two major structures requires the existence of a strategic instrument and a new governance system <sup>(2)</sup>.

2.2.12. Setting up a new development-oriented governance system could lead to closer coordination and open cooperation between the relevant partners.

2.2.13. The institutional structure of the partnership should be strengthened and opened up to all European citizens under the right of public participation, in order to improve the effectiveness and efficiency of the ESI Funds. EU citizens should be ensured access to relevant information and be able to take part in planning decisions and their implementation. They should also be able to express their opinions regarding draft programmes, calls for tender and evaluation reports.

### 3. Strengthening partnership

3.1. The EESC has already addressed the question of the partnership principle and drawn up detailed proposals on this issue in several opinions.

3.1.1. In its opinion adopted in 2010 <sup>(3)</sup>, the Committee pointed out that the rules in force left too great a margin for interpreting the concept of partnership at national level, and that the European Commission should therefore play a stronger, much more pro-active role as guardian of the partnership principle. It deemed it crucial for all operational programmes to provide partners with the necessary technical assistance resources in order to help strengthen their capacities. It argued in favour of a return to Community initiative programmes for social innovation and local development.

3.1.2. In its opinion of 2012 <sup>(4)</sup>, the EESC supported the European Commission's initiative to establish a European Code of Conduct on partnership. It shared the concerns of organised civil society regarding the non-respect of the principle of partnership and suggested introducing a partnership monitoring system to be managed by the partners themselves. It proposed making the signing of partnership agreements with Member States conditional on the proper implementation as set out in the Code of Conduct and, to this end, topping up resources to the operational programmes through financial incentives. It also confirmed its recommendations on strengthening the capacity of partners.

3.2. The legislation on cohesion policy provides for the establishment of a 'European Code of Conduct on Partnership' (ECCP), which includes guiding principles and best practices.

3.3. The experience gained in establishing the ECCP has revealed that certain countries pay only lip service to the provisions of the code in their national programming processes and the transformation of the official implementing structure.

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<sup>(2)</sup> Opinion of the CoR Commission for Territorial Cohesion Policy and EU Budget on the Simplification of ESIF from the perspective of Local and Regional Authorities, rapporteur: Petr Osvald (CZ/PES).

<sup>(3)</sup> EESC opinion on How to foster efficient partnership in the management of cohesion policy programmes, based on good practices from the 2007-2013 cycle (OJ C 44, 11.2.2011, p. 1).

<sup>(4)</sup> See footnote 1.

3.4. In several countries, the partners were not given enough time to formulate an opinion regarding the relevant documents. They have not been substantially involved in the main strategic decisions, such as those regarding the setting of priorities or financial allocations. No special mechanism or tool for communication and participation has been put in place to boost active participation.

3.5. Analyses by several NGOs <sup>(5)</sup> have shown that in a number of countries, the selection requirements for partners who are to sit on the monitoring committee have been complied with in formal terms, but that representativeness and coverage of subjects have not been ensured in all cases. Information swapping between management authorities and monitoring committee members is far from perfect.

3.6. As a result, authorities responsible for cross-cutting matters, such as environmental ministries, do not sit on several relevant monitoring committees. The management authorities put little effort into involving civil society partners who represent cross-cutting principles when planning calls for projects or evaluating proposals.

3.7. Steps aimed at boosting the partners' capacity are inadequate in some countries. They are often limited to training courses and reimbursement of travel expenses, while no action has been taken on several proposals from the ECCP relating, for example, to network development and coordination, or covering the expenses of experts needed to ensure effective partner participation.

3.8. The European Commission and the Member States have not paid sufficient attention to the use of community-led local development (CLLD) instruments during the first half of the budgetary period.

3.9. The EESC considers that a general assessment of partnership practices needs to be carried out. This examination must include an evaluation of the introduction of planning procedures and of the official implementing structure, and assess how far the current regulatory system is capable of producing an effective partnership. Partners should be actively involved in the evaluation process.

Brussels, 21 September 2016.

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

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<sup>(5)</sup> Analyses carried out by the CEE Bankwatch network and SF Team for Sustainable Future.

**Opinion of the European Economic and Social Committee on ‘The rights of live-in care workers’**

**(own-initiative opinion)**

(2016/C 487/02)

Rapporteur: **Adam ROGALEWSKI**

Plenary Assembly decision	21/01/2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	09/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	168/2/6

## 1. Recommendations

1.1. There is a need to start a discussion on the introduction of a common occupational definition of ‘live-in’ care work in Europe, recognised as a form of homecare provision. The definition of live-in care work should cover working arrangements for workers (employed or self-employed) living in private residences where their work primarily involves provision of care services to older and disabled people. Live-in care workers, regardless of their employment or self-employment status, should be treated as part of the system of long-term care (LTC) provision. The introduction of a common occupational definition aims at recognising the existence of live-in carers in the European labour market and improving the quality of the LTC services they deliver.

1.2. For the purpose of informing policymaking, Eurostat should gather adequate data on live-in care workers.

1.3. The EESC calls on the European Commission to conduct research on the situation of these workers, including their numbers, nationality, migration status, cross-border mobility, effective inclusion in labour and social protection, working and social conditions and qualifications, as well as their actual and potential contribution to European economies.

1.4. The EESC emphasises that live-in care workers should be treated in a similar way to other care workers. This means that they should enjoy similar protection, such as limits on working time (including stand-by) and protection against bogus self-employment. Employed live-in care workers must not be excluded from relevant EU and Member State employment-related regulations, including, among others: proper remuneration, health and safety protection, social security and the right to freedom of association and collective bargaining.

1.5. Supply shortages in LTC in Europe should be positively addressed by ensuring decent pay and working conditions, reversing the lack of investment, ensuring that free movement principles are observed, removing barriers that prevent workers from exercising their labour rights and creating pathways for migrants to access regular employment.

1.6. The EESC calls on the European Union to work closely with Member States to coordinate supply and mobility of live-in care workers as part of an approach to improve the overall capacity of the sector to deliver quality care. Specific measures should include:

- improving safeguards in the Employers' Sanctions Directive (2009/52/EC) to protect labour rights of undocumented workers in order to tackle irregular employment. The Victims' Rights Directive (2012/29/EU) must be rigorously applied to provide effective support for live-in care workers who are victims of exploitation, regardless of their migration status;
- bringing all relevant EU directives into line with International Labour Organisation (ILO) Convention No 189 providing rights for domestic workers;
- including the rights of live-in carers and their care recipients in future revisions or proposals of European and Member States' legislation;
- prioritising the reform of live-in care arrangements in the European Platform Against Undeclared Work, an initiative welcomed by the EESC;
- bringing care workers' rights into the European Semester and including them in 'New start for work-life balance' consultations;
- initiating a Europe-wide information campaign on the rights of live-in care workers addressed to care users and providers;
- promoting and supporting the establishment of organisations and cooperatives of live-in care workers;
- implementing processes for recognition, harmonisation and transferability of qualifications and experience acquired by live-in care workers, using instruments for the recognition of qualifications, including those newly introduced by the Agenda for new skills and jobs <sup>(1)</sup>;
- redirecting European funds to finance training courses for current and potential live-in care workers in order to improve the quality of care;
- monitoring and improving posting of live-in carers by implementing the principle of equal pay for equal work.

Moreover, it should be noted that the Commission's proposal for the European Pillar of Social Rights (EPSR) does not contain any reference to the situation of live-in care workers. The inclusion of their social rights should be considered in the further preparation of the EPSR, on which the EESC is currently drawing up an opinion.

1.7. Member States should ensure that the rights of care recipients and workers, including live-in care workers are protected. Specific measures should include:

- ratifying and implementing ILO Convention No 189 <sup>(2)</sup> and regularising the status of undocumented live-in care workers;
- initiating support measures, including acting as intermediaries to assist care recipients in finding live-in care workers;

<sup>(1)</sup> COM(2010) 682 final: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0682&from=EN>

<sup>(2)</sup> ILO Convention No 189 entered into force on 5 September 2013 and has thus far been ratified by Belgium, Germany, Finland, Ireland, Italy, Portugal and Switzerland, in addition to 14 countries outside Europe.

- putting in place a comprehensive support system for recipients of care and their families, including fiscal incentives or subsidies;
- providing training programmes for live-in caregivers, who should benefit from paid leave in order to attend them;
- promoting freedom of association and collective bargaining in the sector, including by supporting the rights of live-in caregivers and their employers to join or form associations;
- tackling social dumping and exploitation;
- proactively regulating the long-term care sector, especially in relation to compliance with employment laws, to ensure care recipients as well as live-in care workers are protected. This must allow labour inspectorates and other relevant state and non-governmental organisations to access workplaces in private households.

1.8. The EESC stresses that financial support for care recipients relying on live-in care workers needs to be met through adequate long-term and sustainable public investment.

1.9. Trade unions, employers and civil society organisations need to be involved in policy planning at Member State and EU levels. Social and civil dialogue should be promoted with all stakeholders at all levels.

1.10. The EESC should play an active role in promoting the development of European policies aiming to support carers, care recipients and their families by, amongst other things, organising a conference on the future of live-in care work in Europe.

## 2. Background

2.1. Labour market shortages in the healthcare sector are a 'ticking bomb'. There is an ongoing crisis<sup>(3)</sup>, and labour shortages will increase unless appropriate policy responses are pursued. As early as 1994, care was defined as a strategic sector by the European Commission. In 2010, the European Commission warned that a supply shortage of two million healthcare workers would emerge by 2020 if urgent action was not taken to redress supply shortfalls of up to one million workers in LTC<sup>(4)</sup>.

2.2. Live-in care workers represent a numerically significant yet marginalised section of the LTC workforce. They are highly mobile and positioned at the bottom of the labour hierarchy within the sector. Live-in care workers are often excluded from LTC sector planning considerations at European and Member State levels.

2.3. The exact number of live-in care workers is uncertain due to a lack of data; they are often overlooked in data collection systems. In the context of a poorly recognised and remunerated care workforce, live-in care workers have for too long remained invisible to policymakers.

2.4. Live-in care workers are present across all Member States. Many are migrants from third countries while others are European citizens working in their home countries or abroad. Some work irregularly as undocumented migrants and some are engaged in circular or temporary migration. Many work in precarious labour conditions including bogus self-employment.

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<sup>(3)</sup> UNI Europa UNICARE (2016).

<sup>(4)</sup> European Commission (2013).

2.5. As there is currently no occupational definition of live-in care workers, their situation is equated to that of domestic workers<sup>(5)</sup>. According to the ILO, domestic work, including care work, accounts for between 5 % and 9 % of all employment in industrialised countries<sup>(6)</sup>.

2.6. Some Member States have moved forward with formalisation and inclusion of undocumented migrant care workers by signing ILO Convention No 189.

2.7. The EESC has already contributed to policymaking on long-term care by drawing up opinions on the labour rights of domestic workers<sup>(7)</sup>, on the need for social investment<sup>(8)</sup> and on long-term social care and deinstitutionalisation<sup>(9)</sup>. The present opinion builds on those positions, focusing on the distinctive situation of live-in care workers.

### 3. Labour shortages, austerity, migration and live-in care workers

3.1. Homecare is rapidly expanding, influenced by a growing preference for care in the home, the prohibitive costs of residential care for many people and the lack of adequate investment in care sector infrastructure.

3.2. Austerity measures undertaken in most Member States reduced existing limited infrastructure and labour supply of LTC. The EESC believes that investment in LTC needs to be embraced positively as an economic opportunity and as a priority area for job creation, social support for families and gender equality. Investment in the sector enhances workforce participation rates and provides a possible way out of the economic crisis<sup>(10)</sup>.

3.3. Workforce shortages are prevalent in care occupations in many Member States. Recruitment of both regular and undocumented live-in care workers alleviates shortages in LTC. Southern European care systems, in particular, rely heavily on live-in care workers. In Italy, migrant live-in care workers represent about three-quarters of the home care workforce<sup>(11)</sup>.

3.4. Central and Eastern European (CEE) countries are also affected by the labour shortages in the care sector as well as by rising demand for care in Western Europe. For instance, Poland supplies many live-in care workers to other countries, despite a depleted domestic care workforce. These shortages are met with the arrival in Poland of workers from the Ukraine and other countries outside the EU.

3.5. Despite growing awareness of the importance of the care sector for economic prosperity, the contribution of live-in care work to the European economy is unmeasured and should be addressed by Europe-wide research.

3.6. Many European women are trapped in the so-called 'sandwich' position, expected to look after their parents as well as their children. They increasingly rely on paid care to do this work. In a world of globalised care labour, the consequence is the rise of global care chains<sup>(12)</sup>. Migrant care workers who move for work reasons often need to find carers for their own family members and employ carers who are drawn from other, often poorer, contexts.

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<sup>(5)</sup> Domestic work as defined by Eurostat includes the activities of households as employers of domestic staff, such as maids, cooks, waiters, valets, laundresses, gardeners, caretakers, governesses, babysitters, tutors, secretaries, etc.

<sup>(6)</sup> International Labour Organisation (2012).

<sup>(7)</sup> OJ C 21, 21.1.2011, p. 39, OJ C 12, 15.1.2015, p. 16, OJ C 242, 23.7.2015, p. 9.

<sup>(8)</sup> OJ C 271, 19.09.2013, p. 91, OJ C 226, 16.7.2014, p. 21.

<sup>(9)</sup> OJ C 332, 8.10.2015, p. 1.

<sup>(10)</sup> OJ C 226, 16.7.2014, p. 21.

<sup>(11)</sup> European Parliamentary Research Service (2016).

<sup>(12)</sup> Hochschild, A. R. (2000) 'Global Care Chains and Emotional Surplus Value' in Hutton, W. and Giddens, A. (eds) *On The Edge: Living with Global Capitalism*, London.

#### 4. Working conditions of live-in care workers

4.1. The low status of live-in care workers is a product of gender assumptions that care work is low-skilled 'women's work'. It is also sustained by the structural marginalisation of migrant women. In various labour surveys, domestic workers are classed as low-skilled or unqualified. However, significant numbers of live-in care workers possess skills and qualifications resulting from years of experience or from unrecognised formal training and certification programmes. Live-in care workers are often required to demonstrate care experience and to have qualifications before they are hired, and yet their working conditions do not reflect these.

4.2. Many live-in care workers experience unregulated working arrangements and many work irregularly. They are often excluded from exercising their labour rights and face exploitation. Conditions can be similar to modern slavery: workers can be isolated, subjected to violence or abuse, forced to work 24/7 and not provided with basic living conditions such as private personal space. Others work as bogus self-employed people. In many cases, labour and other state inspectorates, as well as trade unions, have no access to care-givers in their workplaces (i.e. private homes).

4.3. Measures for the regularisation and legalisation of live-in care workers must be supported to ensure legal pathways into the care sector. Such an approach is not without precedent: in Spain and Italy, some 500 000 undocumented domestic workers have been regularised since 2002<sup>(13)</sup>. Labour migration policies that enable third-country nationals to work regularly in the care sector, with equal treatment and the right to change employer, must be developed.

4.4. Live-in care workers are one of the most highly mobile sections of the LTC workforce. Live-in care workers from CEE countries tend to be middle-aged women with family obligations of their own<sup>(14)</sup>. It is common for CEE care workers to work for up to three months at a time in Western European countries and then return to their home countries.

4.5. Migration of qualified live-in care workers to host countries represents a significant workforce drain for countries of origin. When the qualifications of workers are not recognised in the host countries, this constitutes a social and economic loss at a time of overall labour shortages in the European and global health care sectors.

4.6. All these conditions reflect the fact that the rights of live-in care workers are not adequately protected under the existing legal frameworks at European and Member State levels.

4.7. Live-in care workers should be encouraged and supported by Member States to avoid working irregularly.

#### 5. The role of care recipients and their families

5.1. Care recipients and their families face difficulties in finding care workers. In the majority of cases, recruitment of care workers occurs through informal networks of family or friends. There is often little guarantee of the quality of care delivered by carers recruited under such circumstances. Families are often faced with a situation of having no clear guidelines on how to employ carers legally.

5.2. Care recipients and their families should receive relevant support from the state. In the short-term this should include an information campaign and continuous support in matters regarding employment and welfare rights of live-in care workers. In the long-term, Member States should take steps to ensure supervision and the presence of an intermediary to assist care recipients in finding live-in care workers.

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<sup>(13)</sup> Platform for International Cooperation on Undocumented Migrants (2013).

<sup>(14)</sup> Testimony of a live-in care worker, Alina Badowska (2016), at the SOC/535 public hearing.



5.3. Care recipients and their families should be provided with a range of support services, according to the needs of the care recipient and the family, which can include home care services on a part-time or full time basis. All care arrangements must ensure decent conditions for those employed or self-employed.

5.4. Care recipients and their families should also be encouraged to be more aware of the needs of live-in care workers and to treat them as workers who deserve respect and rights. Care work is highly demanding, both physically and emotionally. Live-in care workers should be provided with proper accommodation and private space, and, in the case of employed carers, limits on their working time, including standby, must be respected.

5.5. At the same time, the rights of care recipients to adequate care should be respected. This is particularly the case with vulnerable groups and those with special needs, such as those with dementia.

## 6. The role of employers

6.1. A large number of small enterprises including labour hire agencies are increasingly active in the live-in care sector, operating alongside a highly unregulated informal sector.

6.2. The care sector can contribute to the creation of decent work in private households and growth in the European economy. Only quality jobs can guarantee the quality of the care service provided.

6.3. Lack of regulation relating to the cross-border employment of live-in care workers allows some enterprises to offer lower prices for the same work, which contributes to social dumping. This is particularly apparent in Polish or Slovak agencies sending live-in carers to Western Europe<sup>(15)</sup>. The persistence of this situation of unfair competition is detrimental to workers, employers and the European economy.

## 7. The role of civil society

7.1. Community-based organisations, faith groups<sup>(16)</sup> along with public and private employers play a pivotal role in delivering care at various levels. Many community-based organisations contributed to the regularisation of migrant live-in carers<sup>(17)</sup>.

7.2. However, in many Member States, support for care is inadequate. The recent economic crisis has resulted in underinvestment in care services across Europe, leading to negative trends such as deteriorating care quality and working conditions.

7.3. Organisations of care providers should be properly funded to meet the needs of growing demand for care. Given their experience, they need to be involved in a genuine social and civil dialogue resulting in a set of industry regulations on how care should be organised and delivered.

## 8. The role of Member States and the European Union

8.1. Sweden is a good example of quality care provision involving all stakeholders. This system relies on a high level of public support financed by taxation<sup>(18)</sup>. Voucher systems, such as those implemented in France and Belgium, have contributed to formalisation of domestic work, and, in some cases, have improved the working conditions of workers in household services. In the case of Belgium, care work is excluded from this system<sup>(19)</sup>.

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<sup>(15)</sup> Experiences from the DGB Fair Mobility Project: [www.faire-mobilitaet.de](http://www.faire-mobilitaet.de).

<sup>(16)</sup> In particular, in Germany *Caritas* and *Diakonie* play an important role in supporting live-in carers and care recipients.

<sup>(17)</sup> For instance: [www.gfambh.com](http://www.gfambh.com).

<sup>(18)</sup> Sweden.se (2016).

<sup>(19)</sup> International Labour Organisation (2013).



8.2. Austria has developed a system of self-employed live-in carers in order to meet the needs for long-term care and set legal requirements regarding quality and framework conditions for service provision. In 2015 further improvements in quality standards and transparency were adopted. This system is widely used by the Austrian population; it is however criticised by Austrian trade unions as undermining employment standards.

8.3. Since best practice models for quality care provision are not always fully transferable to all Member States, a holistic approach at all levels, which is inclusive of all stakeholders, should be coordinated at European level.

8.4. The EESC believes that the European Union should monitor the supply and mobility of live-in care workers within Europe, and promote approaches to improve the overall capacity of the sector to deliver quality care and create decent jobs.

8.5. Care labour supply shortfalls in Europe need to be placed at the top of the EU policy agenda. Attention needs to be drawn to live-in care workers who are largely overlooked in current policy paradigms.

Brussels, 21 September 2016.

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

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**Opinion of the European Economic and Social Committee on ‘The biodiversity policy of the EU’**

**(own initiative opinion)**

(2016/C 487/03)

Rapporteur: **Lutz RIBBE**

Plenary Assembly decision	21/01/2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	05/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	156/31/22

**1. Summary of the EESC’s conclusions and recommendations**

1.1. The EU’s biodiversity policy is a classic example of a policy of unkept promises at European and national level, despite the fact that the policy has correctly identified the problems and put in place the necessary tools.

1.2. The EESC draws particular attention to the Commission’s comments on the importance of protecting biodiversity, which it compares to climate protection. This is not just about conserving animal and plant species: it concerns the very conditions of human existence.

1.3. The EESC calls for consistent and immediate implementation of the Birds and Habitats Directives. The same goes for the Water Framework Directive, whose consistent and immediate implementation would in the EESC’s view make a considerable contribution to improving biodiversity protection.

1.4. The Member States must finally determine actual financial needs arising from the implementation of EU law, and the Commission must make the necessary funding available. Financing of Natura 2000 through Community funds and primarily the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD) can be considered to have failed in many respects, and the EESC therefore calls for a separate budget heading to be introduced under which financing for the Natura 2000 network must be made available.

1.5. The EESC calls for coherence to be ensured between all policy areas that have implications for biodiversity protection. In this connection, the EESC would hope that the mid-term review of the ‘ecological focus areas’ and a possible mid-term review of the CAP are already being used to ensure that the CAP is in future used in a more targeted way to achieve the biodiversity objectives. In the EESC’s view this would currently require a change in the scope and quality of the ecological focus areas.

1.6. The strengthening of Green Infrastructure is explicitly welcomed. Here, the Committee calls on the Commission and the Member States to develop and implement a consistent Green Infrastructure strategy. The EU should also make the trans-European networks for green infrastructure (TEN-G) an investment priority. Here too there is an urgent need for earmarked resources.

1.7. The inconsistencies in EU policies have been noted and criticised on numerous occasions by Commission departments, the Environment Council, the European Parliament, the CoR and the EESC, and there has been no substantial change in this respect in recent years. However, if the EU’s own proposals for solving biodiversity problems are not taken seriously and implemented, it is hardly surprising that a) the desired outcomes are not being achieved and b) disappointment is spreading among interested parties and in society.

1.8. In hindsight, the EU's various biodiversity strategies and biodiversity programmes from 1998, 2001, 2006 and 2010, each of which accurately described the problems and set out appropriate tools, must therefore be regarded as largely futile, since they were not able to deliver on the political promise and to end the biodiversity loss caused by society.

1.9. The EESC therefore observes once again — as in a large number of its previous opinions on EU biodiversity — that it is political will that is lacking, not legal foundations. No change in the current legal basis is needed.

## 2. Background: the timeline of EU biodiversity policy — and reactions of the EESC

2.1. After it was noted in the 1998 Biodiversity Strategy<sup>(1)</sup> that 'the rich biodiversity of the European Union has been subject to slow changes over the centuries, due to the impact of human activities' and that 'the scale of this impact has accelerated dramatically in the last few decades', in 2001 clear goals were set out in the Sustainable Development Strategy ('Gothenburg Agenda') adopted by the European Council, namely to halt the loss of biodiversity in the EU by 2010 and to take action to restore habitats and natural ecosystems.

2.2. To implement these goals a Biodiversity Action Plan<sup>(2)</sup> was issued in 2001, followed by a further Biodiversity Action Plan in May 2006<sup>(3)</sup>; however, in terms of content, the latter was barely distinguishable from the former.

2.3. In March 2010, the heads of state or government were forced to admit that they would not meet the commitment they had made in 2001, despite the various action plans which the EESC had deemed to be appropriate and constructive.

2.4. On the basis of the Commission Communication *Options for an EU vision and target for biodiversity beyond 2010*<sup>(4)</sup>, a further, new *EU biodiversity strategy to 2020*<sup>(5)</sup> was consequently adopted, which in turn essentially only restated the old recommendations and instruments of the previous action plans and postponed to 2020 the target originally set for 2010.

2.5. It was optimistically declared in that document that 'the EU 2020 biodiversity strategy ... [sets] the EU on the right track to meet its own biodiversity objectives and its global commitments'.

2.6. The EESC also expressed its views on the strategy<sup>(6)</sup> and criticised it: among other things, it expressed considerable concern that 'politicians have not yet found the strength or the will to implement measures which have been acknowledged to be necessary for years, although the communication repeatedly makes the point that society and the economy will benefit equally from a stringent biodiversity policy. Not even the EU's central nature conservation directives have been fully implemented by the Member States — 19 or even 32 years after their entry into force.'

2.7. At the time the EESC felt it was 'not clear how the lack of political will can be remedied'. The Committee concluded: 'In this sense the biodiversity strategy now submitted does not represent real progress. The debates on the communication which have so far taken place in the Council of Ministers show that we are still a long way from integrating biodiversity policy into other policy areas'.

2.8. The Committee already believed that it was of utmost importance to link the forthcoming policy reform processes (e.g. in fisheries, agricultural, transport, energy and cohesion policy) closely with the biodiversity strategy. However, it still identified large deficits in this area and therefore concluded that 'the Commission must take its own biodiversity strategy more seriously!'.

<sup>(1)</sup> COM(1998) 42 final.

<sup>(2)</sup> COM(2001) 162 final.

<sup>(3)</sup> COM(2006) 216 final.

<sup>(4)</sup> COM(2010) 4 final.

<sup>(5)</sup> COM(2011) 244 final.

<sup>(6)</sup> OJ C 24, 28.1.2012, p. 111.

2.9. After just four years, the claim set out in the new EU biodiversity strategy — about having identified the right track and finally halting biodiversity loss — has little credibility. This can be seen very clearly from the mid-term review of the Biodiversity Strategy <sup>(7)</sup>.

### 3. Mid-term review of the current biodiversity strategy

3.1. The strategy itself contains a total of six clearly defined targets and 20 measures. The mid-term review comments on the targets as follows:

3.1.1. Target 1 (Halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status ...): although some progress has been made, it has been too slow to meet the target. In particular, there has not been sufficient progress with completing the Natura 2000 network for marine areas, guaranteeing effective management of Natura 2000 sites, and providing the necessary funding to support the Natura 2000 network. And even if the Natura 2000 network for terrestrial habitats is now 'largely' complete, in 2012 only 58 % of Natura 2000 sites had management plans in place or in development.

3.1.2. Target 2 (By 2020, ecosystems and their services are maintained and enhanced by establishing green infrastructure and restoring at least 15 % of degraded ecosystem): the measures taken so far have 'not yet halted the trend of degradation of ecosystems and services'.

3.1.3. Target 3 (*Increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity*): there has been 'no significant overall progress'. And further: 'The continuing decline in the status of species and habitats of EU importance associated with agriculture indicates that greater efforts need to be made to conserve and enhance biodiversity in these areas. The common agricultural policy (CAP) has an essential role to play in this process in interaction with relevant environmental policies'. Although there are now a number of instruments in this area, these also need to be taken up by the Member States 'on a sufficient scale'. Only if these are deployed 'more broadly' will the EU still be able to reach its targets by 2020. Overall, 'much stronger efforts are needed'.

3.1.4. Target 4 (*Ensure the sustainable use of fisheries resources*): while 'significant progress has been made in setting the policy framework' ... 'policy implementation has been uneven across the EU and major challenges remain to ensure that the objectives are achieved according to schedule. Just over 50 % of MSY-assessed stocks were fished sustainably in 2013'. A negative trend can still be noted in all (!) European seas.

3.1.5. Target 5 (*Combat invasive alien species*): this is the only target for which the EU is 'on track' and expects that the 2020 target can be achieved.

3.1.6. Target 6 (*Help avert global biodiversity loss*): '... progress is insufficient in reducing the impacts of EU consumption patterns on global biodiversity' and '... existing efforts may not be sufficient to meet the Aichi Biodiversity Targets by the deadlines'.

3.2. This very sobering mid-term review was issued just at the time when the European Commission was considering substantially revising the most important EU directives on nature protection, namely the 1979 Birds Directive and the 1992 Habitats Directive.

3.3. The expert reports <sup>(8)</sup> accompanying the Fitness Check of the Birds and Habitats Directives confirm what the EESC has been repeating insistently for years: the legal framework is adequate and cannot be blamed for the failure to meet the biodiversity protection targets. Critical shortcomings are non-implementation of measures, the lack of a nature protection budget and the inconsistency of EU policy in this area.

<sup>(7)</sup> COM(2015) 478 final.

<sup>(8)</sup> Milieu, IEEP and ICF, *Evaluation Study to support the Fitness Check of the Birds and Habitats Directives*, March 2016.

#### 4. General comments

4.1. The EESC reiterates its point that in the EU, 'when it comes to maintaining biodiversity there is no shortage of laws, directives, programmes, model projects, political declarations or recommendations, but there is a lack of implementation and concerted action at all political levels'. This view is borne out not just by the evaluation study, but also by the conclusions of the Environment Council of 16 December 2015<sup>(9)</sup>, which did not differ fundamentally from those of the 2011 Environment Council. As long as the directives are not implemented fully, as long as sufficient financial resources are not made available or used, and as long as other EU policies are not consistently geared to biodiversity needs, it will not be possible to achieve the desired results.

4.2. New strategy papers or action plans and/or the review of the legal framework do not change this, rather they feign policy-making activity, which is bound to lead to nothing if the actual problems of non-implementation are not remedied.

4.3. In order to be successful in maintaining biodiversity, a number of approaches are necessary.

#### 4.4. Establishing the Natura 2000 network

4.4.1. The Natura 2000 network is absolutely crucial for 'traditional' nature conservation, such as the preservation of rare flora and fauna and unique biotopes (e.g. bogs, dry habitats, remains of semi-natural forest). It is based primarily on the 1992 Habitats Directive and the special protection areas for birds introduced under the 1979 Birds Directive.

4.4.2. With the adoption of the Habitats Directive in particular, both the Member States and the Commission made two pledges:

— to complete the Natura 2000 network within three years<sup>(10)</sup>; and

— to provide funding for this purpose, so as not to leave landowners or land users picking up the tab.

4.4.3. The network was supposed to have been completed in 1995, more than 20 years ago. The designation of most sites has now been carried out, with 18 % of the land area of the EU designated as Natura 2000 sites, however designation alone is not enough. Many sites still do not enjoy permanent legal protection and only slightly more than half have management plans. Yet until it is clear for the general public and administrations, and in particular for landowners and land users, what is now permitted or prohibited, there can be no successful nature conservation, nor will it be possible to guarantee compensation for any potential restrictions on use.

4.4.4. It is telling that the Council of Environment Ministers on 19 December 2011 encouraged the Member States — and thereby itself — 'to complete, in a timely manner, the establishment of the Natura 2000 network, develop and implement management plans or other equivalent instruments ... thereby establishing a solid basis for strategic planning with a view to subsequent implementation of the MFF 2014-2020'. What should actually have been finished twenty years ago was in 2011 once again called for in a 'timely manner' — and to this day has not been completed!

4.4.5. Thus, on 16 December 2015 the Environment Council again urged the Member States and thus in turn itself to 'complete the establishment of the Natura 2000 network'.

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<sup>(9)</sup> Council of the European Union, document No 15389/15.

<sup>(10)</sup> The three-year period (i.e. 1992-1995) concerned the notification of Natura sites by the Member States. This notification process is still not complete in some cases.

#### 4.5. *Measures outside protected areas*

4.5.1. The Commission, the Environment Council and the European Parliament<sup>(11)</sup> quite rightly emphasise that biodiversity policy is not only about the protection of animal and plant species and habitats, but also concerns people's production bases and livelihoods. Just one of many examples of this are pollination services provided by insects such as bees or butterflies, whose economic value — not only for agriculture — is immeasurable. However, the Commission had to concede that: 'Europe's ecosystem services are judged to be of mixed status or degraded — i.e. no longer able to deliver the optimal quality and quantity of basic services such as crop pollination, clean air and water ...'<sup>(12)</sup>.

4.5.2. Pollinators or decomposers, but also many other species, and their services, cannot be conserved by focusing solely on the designation of protected areas. The EU's biodiversity policy must therefore also establish requirements across the board, as well as for protected areas; and in this respect consistency with land-use policy plays a key role.

4.5.3. It is quite right for both the Commission and the Council to keep emphasising the significance of for example the agriculture sector, most recently in the mid-term review: The Council 'notes with concern that agriculture is one of the most prominent pressures on terrestrial ecosystems and that there has been no measurable improvement in the status of agriculture-related habitats and species covered by the Habitats Directive until 2012 and regrets the significant declines of farmland birds, grassland butterflies and pollination services, which underline continuing pressures from the agricultural sector mainly due to intensification and abandonment of agricultural land'<sup>(13)</sup>.

#### 4.6. *Inconsistency of EU policies*

4.6.1. In the EU Biodiversity Strategy to 2020, it was stressed the strategy is 'an integral part of the Europe 2020 Strategy'<sup>(14)</sup>; however, the concepts 'biodiversity', 'habitats', 'nature conservation' or 'protection of species', and 'protection of the diversity of genetic resources' or 'ecosystem', do not feature even once in the Europe 2020 Strategy. Only 'diversity of species' is touched on briefly in two places, under the theme of 'resource efficiency'. For the EESC it is therefore completely incomprehensible that the European Commission could make such a claim, and its actual policy also bears out the exact opposite.

4.6.2. And yet, given that the EU's 2001 Sustainable Development Strategy no longer plays any real role in policy terms, the Europe 2020 strategy would be precisely the right framework for addressing the problem. The EESC has frequently called on the economics and finance ministers to reflect on the economic significance of biodiversity loss<sup>(15)</sup>. This has still not happened.

4.6.3. As the objectives of the EU nature protection directives and the EU biodiversity strategy also reflect internationally agreed goals — e.g. the Aichi targets under the UN Convention on Biological Diversity (CBD) or the Sustainable Development Goals (SDGs) — there is an urgent need for biodiversity policy to be fully incorporated into the SDG implementation strategy or into a new EU sustainable development strategy.

4.6.4. However, so far biodiversity policy has continued to be viewed by many Commission departments and some EU Councils of Ministers more as a competing policy area that partially blocks or hampers economic development and also ties up funding.

4.6.5. But the fact is undeniable: there are conflicts between different types of resource use, and occasionally interference with the ecosystem is prohibited, for example by the nature protection directives. However, this is precisely the role of nature conservation, namely for government action to ensure that there is a balance between economic use and preservation of natural resources. In this sense, there is no difference between nature conservation and other policy areas where the free play of market forces is subject to regulatory measures.

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<sup>(11)</sup> See for example the European Parliament resolution of 2 February 2016 on the mid-term review of the EU's Biodiversity Strategy (2015/2137(INI)).

<sup>(12)</sup> COM(2010) 548 final, 8.10.2010, p. 3.

<sup>(13)</sup> Council of the European Union document No 15389/2015, point 36.

<sup>(14)</sup> COM(2011) 244 final, p. 2.

<sup>(15)</sup> OJ C 48, 15.2.2011, p. 150, point 2.3.

4.6.6. The absence of any real consistency between classical economic policy and environmental policies is nothing new. As far back as 2006, the EESC lamented ‘the huge gulf that has grown up between ideal and reality’ and the fact that public ‘planning decisions and support schemes are often instrumental in imperilling biodiversity still further’<sup>(16)</sup>.

4.6.7. A key reason for this trade-off is the tension between individual interests, in particular economic interests, and the public interest. The EU’s message to date has suggested a commitment to biodiversity protection in the public interest. In that case, the consistent course of action would be to determine, and enforce, constraints to contain economic interests that compromise biodiversity protection.

#### 4.7. *Agricultural policy/agriculture*

4.7.1. The EESC has already addressed the relationship between agriculture, the common agricultural policy and biodiversity on several occasions, noting that the gradual but large-scale and continuing decline in biodiversity is happening despite the fact that farmers are overwhelmingly complying with prevailing law. In other words, it is happening within the limits of the law, when employing supposedly good agricultural practice. This situation cannot be changed by reforming nature protection law, but only through changes in utilisation practices combined with a revised agricultural funding policy. The EESC refers here to its own-initiative opinion on *Reform of the common agricultural policy in 2013*<sup>(17)</sup>, which describes in detail the changes it deems necessary.

4.7.2. The Commission is very aware of the importance of farming, noting that ‘the Common Agricultural Policy (CAP) is the policy tool having the most significant impacts on biodiversity in rural areas. ... One of the setbacks as regards biodiversity was the abolition of compulsory set-aside’<sup>(18)</sup>. Thus agricultural policy still often conflicts with biodiversity policy, even though parts of the CAP, especially the agri-environmental programmes under the second pillar, demonstrate how these contradictions can be addressed.

4.7.3. Set-aside was introduced in the mid-1980s, not to improve the ecological stability of farmland but to reduce surpluses. With the CAP reform of 2013, the idea of farming some agricultural land less intensively was revisited. ‘Ecological focus areas’ became mandatory in the context of ‘greening’ the CAP. However, there was a heated debate surrounding a) the scope and b) what was to be understood by ecological focus.

4.7.4. Now, for example, the cultivation of leguminous plants or cash crops fall under the definition of ‘ecological focus’. While the increase in the number of areas where leguminous or cash crops are cultivated is in principle to be welcomed, these measures will not make any real contribution to improving biodiversity. And the fact that the use of pesticides is to some extent permitted in ecological focus areas is diametrically opposed to the intention of greening agricultural policy: pesticides do not help to increase biodiversity but rather limit it.

4.7.5. The Commission should carry out, as soon as possible, an initial assessment of the impact of the measures adopted, particularly since ‘greening’ has become one of the main justifications for maintaining agricultural payments from the EU budget.

4.7.6. Moreover, following these assumptions, the horizontal policies of the EU, in particular with regard to RDI, should also take account of and pay particular attention to the contribution that research, development and innovation applied to agriculture can make to improving biodiversity in the EU.

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<sup>(16)</sup> OJ C 195, 18.8.2006, p. 96.

<sup>(17)</sup> OJ C 354, 28.12.2010, p. 35.

<sup>(18)</sup> COM(2010) 548 final, p. 5.



#### 4.8. *Green infrastructure*

4.8.1. The Habitats Directive has a critical technical flaw: although its Article 10 explicitly refers to the importance of contiguity of landscape features, there is no binding mechanism that would lead to a consistent biotope network system in Europe. In its Communication on Green Infrastructure, the Commission outlines how these deficits can be rectified through appropriate investment in maintaining and restoring Green Infrastructure, on both a large and small scale. In view of this, it is very important that a consistent strategy for Green Infrastructure should be adopted and implemented. A central plank of this strategy should be a methodological framework and financing instrument for trans-European biodiversity networks (TEN-G). This applies for both large-scale measures and small-scale measures, e.g. in agricultural landscapes.

#### 4.9. *Comments on policy in the Member States and potential candidate countries*

4.9.1. In many Member States and candidate countries, serious destruction of nature is still taking place. To name but a few examples:

4.9.2. In Romania, the area covered by primeval forest at the time of EU accession was more than 2 000 km<sup>2</sup>. Almost all of this area consists of designated Natura 2000 sites. Since then, large-scale clear-felling in Romania's old-growth forests has been documented, causing irreplaceable loss of European natural heritage.

4.9.3. River ecosystems in the Balkans, and in particular in the Western Balkan countries, are by far the richest in Europe. Around one third of the rivers in the successor states to the former Yugoslavia and in Albania have a natural dynamic and may still be described as natural rivers. The documented plan for more than 2 700 (!) hydro-electric power plants, at least one third of them in protected areas, poses a serious threat to the biodiversity and the natural dynamic of all rivers in the Balkans. Public funding is being used to finance these projects. The biodiversity of almost all rivers has already been massively damaged in almost all the EU Member States, so that now considerable sums will have to be raised to renature them, including through implementation of the EU Water Framework Directive.

4.9.4. Numerous species of birds listed in Annex 1 of the Birds Directive and which are protected within the EU are being recklessly hunted in the candidate countries in the Balkans; bird hunting is also often an unresolved issue in many Member States. The shooting of Eurasian spoonbills, cranes, pygmy cormorants and ferruginous ducks, to name just a few species, will weaken the breeding population of these species in the EU.

#### 4.10. *Funding*

4.10.1. A further problem touched on in both the mid-term review and the Council conclusions is that of funding, including funding for the Natura 2000 network. A Commission Communication of 2004<sup>(19)</sup> addressed the issue of funding for the network, including a) the amount of resources required and b) the question of which funding source should be used to provide them. At that stage an estimated annual figure of EUR 6,1 billion was mentioned; it was decided not to set up a specific budget line or to expand the Life programme but instead to use mainly the second pillar of the CAP and other EU-funds.

4.10.2. The EESC had doubts about the amounts declared at the time and felt it was 'absolutely essential to present more precise cost calculations as quickly as possible'. It has doubts, 'for example, over whether the sums indicated in respect of the new Member States (EUR 0,3 billion, as opposed to EUR 5,8 billion for EU-15) will be sufficient'<sup>(20)</sup>.

4.10.3. Nothing has happened in this regard to date: the same amount is still under discussion. The Member States responsible and the Commission have so far failed to clarify the situation.

<sup>(19)</sup> COM(2004) 431 final.

<sup>(20)</sup> OJ C 221, 8.9.2005, p. 108, point 3.10.1.



4.10.4. At the time, the EESC pointed out the risk that financing Natura 2000 measures from the second pillar could lead to competition with other rural development measures <sup>(21)</sup>. This has been borne out in two respects: firstly, payments from the second pillar were reduced by 30 % in the 2007-2013 financing period compared with the previous financing period and, secondly, as the European Court of Auditors and the Environment Council quite rightly pointed out, 'Member States did not always recognise the European Regional Development Fund (ERDF) as a possible instrument for promoting biodiversity, while its potential for financing Natura 2000 was not sufficiently realised' <sup>(22)</sup>.

4.10.5. The European Commission <sup>(23)</sup> has therefore had to concede that the European Agricultural Fund for Rural Development remains the most important Community funding source for Natura 2000 and biodiversity in the EU, but that 'only 20 % of the total financing needs for managing protected areas including the Natura 2000 network in Europe are being met'.

4.10.6. Thus it is imperative that the exact financing need for implementing the EU nature protection directives be established and that the correct resources — specifically earmarked under a special budget heading (e.g. an extended LIFE budget) — be made available.

#### 4.11. *Participation and involvement*

4.11.1. The shortcomings in the implementation of the EU's biodiversity strategy, particularly Natura 2000, can in part be attributed to a lack of civil society involvement and participation in the various protected areas. The designation of protected areas should be regarded in the first instance as an administrative act, to be carried out in full compliance with the principles of the rule of law; however, the management plans should be developed and implemented with the close involvement of landowners, land users, conservation organisations and local authorities. In many cases things have not been done in this way, which has often led to mistrust and hostility towards EU biodiversity policy.

Brussels, 21 September 2016.

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

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<sup>(21)</sup> OJ C 221, 8.9.2005, p. 108, points 3.14.1. and 3.14.2.

<sup>(22)</sup> Environment Council of 16.12.15.

<sup>(23)</sup> COM(2010) 548 final, p. 13.

## APPENDIX

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

**Point 4.7.4** — Amend:

~~Now, for example, the cultivation of leguminous plants or cash crops fall under the definition of 'ecological focus'. While the The increase in the number of areas where leguminous or cash crops are cultivated is in principle to be welcomed, these measures will not make any. Enhancement of soil biota through symbiosis between rhizobia and leguminous plants, inter alia, can make a real contribution to improving biodiversity. And the fact that the The use of pesticidesplant protection products is to some extent permitted in ecological focus areas under strict European authorisation requirements and implementing rules; this allows the cultivation of protein plants in Europe to be promotedis diametrically opposed to the intention of greening agricultural policy: pesticides do not help to increase biodiversity but rather limit it.~~

**Reason**

This measure is only in its second year of implementation. There are still no meaningful analyses available on biodiversity. The targeted use of plant protection products can make sense in some cases, such as to protect young crops that are not very competitive against weed infestation. Under Article 46 of Regulation No 1307/2013, the Commission has to submit a report on the implementation of ecological focus areas by March 2017.

**Result of the vote**

For 69

Against 96

Abstentions 26

**Point 4.7.4** — Amend as follows:

~~Now, for example, the cultivation of leguminous plants or catch crops fall under the definition of 'ecological focus'. While the increase in the number of areas where leguminous or cash crops are cultivated is in principle to be welcomed, these measures will not make any real contribution to improving biodiversity. And the fact that the use of pesticides is to some extent permitted in ecological focus areas is diametrically opposed to the intention of greening agricultural policy: pesticides do not help to increase biodiversity but rather limit it. On the other hand there is a high deficit in EU-grown protein crops, and a general ban of pesticides on leguminous crops would make this deficit even more serious.~~

**Reason**

To be given orally.

**Result of the vote**

For 80

Against 105

Abstentions 11

**Point 1.5** — Delete text:

~~The EESC calls for coherence to be ensured between all policy areas that have implications for biodiversity protection. In this connection, the EESC would hope that the mid-term review of the 'ecological focus areas' and a possible mid-term review of the CAP are already being used to ensure that the CAP is in future used in a more targeted way to achieve the biodiversity objectives. In the EESC's view this would currently require a change in the scope and quality of the ecological focus areas.~~

**Reason**

The greening introduced in 2015 is now in only its second year of implementation. We therefore do not yet have any analyses that are reliable enough to allow sound conclusions to be drawn in this regard. Under Article 46 of Regulation (EC) No 1307/2013, the Commission has to present an evaluation report on the implementation of ecological focus areas by March 2017. The appropriate steps will then be determined on the basis of those evaluation results.

**Result of the vote**

For 57  
Against 120  
Abstentions 11

**Point 1.5** — Amend as follows:

*The EESC calls for coherence to be ensured between all policy areas that have implications for biodiversity protection. In this connection, the EESC would hope that the mid-term review of the 'ecological focus areas' and a possible mid-term review of the CAP are already being used to ensure that the CAP is in future used in a more targeted way to achieve the biodiversity objectives. In the EESC's view this would currently require a change in the scope and quality of the ecological focus areas, also ensuring that they can be better integrated into modern farming practices.*

**Reason**

To be given orally.

**Result of the vote**

For 75  
Against 118  
Abstentions 9

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**Opinion of the European Economic and Social Committee on ‘The road from Paris’**

**(own-initiative opinion)**

(2016/C 487/04)

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

Plenary Assembly decision	26.4.2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	5.9.2016
Adopted at plenary	21.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	129/0/0

### 1. Conclusions and recommendations

1.1. The Paris Agreement is a welcome global commitment to mitigate climate change. The task ahead is to ensure that the agreement is ratified, implemented and developed further. In this opinion the EESC sets out its views on the main approaches for the long-term path to a carbon-neutral world as called for by the Agreement.

1.2. The huge global challenges require a major shift in the European Union’s approach. Instead of focusing solely on its own greenhouse gas emissions, the EU should consider how it can contribute to achieving the greatest climate benefits from a global perspective. The EESC thus calls on the European Commission to put together a long-term strategy on how to grow and maximise the global ‘*carbon handprint*’<sup>(1)</sup> of the EU.

1.3. The EU should also be ambitious in striving for win-win-win solutions with regard to economic, social and environmental aspects. The EESC therefore urges the Commission to frame the climate strategy in a way that helps strengthen the EU economy and enhance the well-being of its citizens, while mitigating climate change.

1.4. Global commitment is essential to achieving meaningful climate impacts and avoiding carbon, investment and job leakage. The EESC calls on the Commission to continue engaging in active climate diplomacy, with the aim of enhancing broad implementation of the Agreement and encouraging major economies to raise their commitments to a similar level of ambition as the EU. The EESC also calls on the Commission to integrate climate considerations into all areas of external policy, notably in the areas of trade and investment, and development cooperation.

1.5. In terms of practical measures, the EU can most successfully contribute to combating climate change by exporting technologies and solutions for reducing emissions and increasing carbon sinks, and by producing world-market products with lower emissions than those of its competitors. The EESC therefore calls for a strong boost for innovation — from research to market entry — so as to place the EU at the global forefront of climate solutions. Particular attention should be paid to the potential of SMEs.

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<sup>(1)</sup> ‘*Handprint*’ is a measure of beneficial impacts on the environment or society, whereas ‘*footprint*’ measures the negative impacts in terms of e.g. emissions. (Norris 2015). Accordingly, ‘*carbon handprint*’ is a measure of the positive climate impact of decreasing emissions or increasing sinks. The carbon handprint of the EU is the sum of the positive impacts of the EU anywhere in the world.

1.6. Regarding the internal dimension of climate policy, the EU should aim to be a Climate Union that is action-oriented, effective and cohesive in its domestic measures.. Every effort must now be focused on implementing the decisions made so far, where both the Commission and the Member States have their own roles.

1.7. Furthermore, the EESC calls on the Commission to base the long-term strategy on an integrated approach. The path forward should be developed as part of related single market 'unions', particularly those in the area of energy, transport, digitalisation, industry, agriculture, capital and innovation. Special attention should also be paid to the challenges of sustainable food systems, and the role of carbon sinks.

1.8. In implementing the objectives set by the Paris Agreement, maximum use should be made of market mechanisms. A global pricing system for carbon emissions would be a neutral and effective way of bringing all market players on board. The EESC encourages the Commission to actively explore different routes and steps and to engage with other countries on moving towards global carbon pricing.

1.9. The road from Paris to a carbon-neutral economy is extremely challenging. To manage the transition in a just and controlled way, and to help businesses and citizens adapt to the changes and develop new solutions and skills, proper adjustment measures have to be introduced as part of the climate strategy.

1.10. It is civil society partners that will bring about the shift to a carbon-neutral economy through their action on the ground, while the role of political decision-makers is to provide them with an enabling environment and funding, including awareness-raising on all available funding opportunities. A multi-level governance approach has to be developed to facilitate civil society climate action and to remove obstacles to it. The EESC expects to be fully involved in the development of this multi-stakeholder infrastructure, as well as in the preparation of the EU's long-term climate strategy.

## 2. The EU as a strong global climate actor

2.1. The outcome of the Paris climate conference (COP21) was a global deal to put the world on track for limiting global warming to well below 2 °C and pursuing efforts to further limit the temperature increase to 1,5 °C above pre-industrial levels. This will require a huge decrease in global emissions and calls for radical change in societies.

2.2. The global challenges ahead require a radical shift in the EU's approach to mitigating climate change. It is critical that the EU mount considerable efforts to make an effective global impact. The EU should therefore strive to increase its 'carbon handprint' instead of just decreasing its 'carbon footprint'.

2.3. Global commitment is essential to solving the climate problem and avoiding carbon, investment and job leakage. The EU showed leadership ahead of and during the Paris conference, and it should continue in this spirit for the upcoming Conferences of the Parties. In its **climate diplomacy**, the EU should focus on the countries with the largest greenhouse gas emissions, but also on its toughest competitors and most promising partners from an economic perspective. Climate and economic diplomacy should thus go hand in hand.

2.4. The biggest emitters are China, the United States and the EU, accounting for over 25 %, about 15 % and about 10 % of world emissions respectively. The EU's share of emissions is projected to decrease to about 5 % by 2030. Therefore, in order to exert maximum influence on climate change mitigation, the EU must make every effort to encourage other parties to raise their ambition level.

2.5. On a practical front, the EU can most successfully contribute to global climate change mitigation by exporting **low-carbon solutions**, as well as by producing world-market products with lower emissions than those of its competitors.

2.6. Besides the USA, China and other rapidly developing countries have also become important suppliers of low-carbon technologies. Over the last five years, the EU has experienced a marked slump in some sectors in both export and domestic markets, while it has lost its previous position as a global leader in technology. Although the Juncker Commission has expressed the wish to lead the world in renewable energy, this goal is currently a distant prospect.

2.7. A new and additional boost is thus urgently needed to position the EU at the forefront of climate solutions once again. The global opportunities cover a wide range of technologies, products, services and expertise, as well as overall production and consumption models. The exportation of knowhow on carbon sinks, such as sustainable forest management and afforestation, should also be seen as an opportunity to make a global impact.

2.8. The EESC welcomes the fact that the Commission has joined the Mission Innovation Initiative of the world's leading economies, who have committed to doubling their funding for clean energy research and development over the next five years.

2.9. Effective **trade and investment policy** is an essential tool to deliver low-carbon solutions and promote progress towards a global carbon neutral economy. To ensure a positive outcome, climate issues must be an integral part of negotiations on trade and investment agreements. The aim should be to eliminate barriers to trade in climate-friendly products, technologies and solutions; the Environmental Goods Agreement would have a significant role to play here. Joint solutions are also needed to avoid trade distortions caused by differences in climate policies and requirements in different regions.

2.10. As for **development policy**, the current target of USD 100 billion per year pledged by developed countries for financing climate measures was extended at COP21 until 2025 and a practical roadmap was called for to achieve the target. Individual countries also made financial pledges. It is important that the promises be kept and funds used in an economically, environmentally and socially responsible way. Awareness-raising campaigns are needed to provide information on access to funding for civil society players, particularly in developing countries, as proposed by the EESC in the context of the EU-Africa Strategy.

2.11. Technological cooperation also has a role to play in development policy. Here, intellectual property rights (IPR) must be adequately protected as they are crucial for innovation. It is also important to ensure that the solutions provided reflect the conditions in developing countries and — in the spirit of partnership — help them adopt low-carbon growth without hindering their development. Moreover, capacity building is needed to assist developing countries in climate change mitigation and adaptation.

2.12. As a general rule, climate considerations should be mainstreamed in all external EU policies, with the aim of enhancing implementation of the Paris Agreement globally.

### 3. Towards a more effective Climate Union

3.1. To provide a solid basis for becoming a strong global actor, the EU should aim to be a Climate Union that is fully effective, cohesive and credible in its domestic measures. It must be first and foremost a union of action. Every effort must now be focused on implementing the decisions made so far, where both the Commission and the Member States have their own roles to play.

3.2. Because climate change mitigation applies to all sectors of the economy the Climate Union must rely on an integrated approach. Further climate measures should thus be developed as part of related 'unions' such as the Energy Union, the Single European Transport Area, the Single Market for Goods and Services, the Digital Single Market, European Industrial Policy, the Common Agricultural Policy, the Capital Markets Union and the Innovation Union. An optimal approach must also be found to link EU climate policy and national implementation.

3.3. The EU should fulfil its climate commitments in a way that strengthens its economy and enhances the well-being of citizens. Climate policy should not be seen as just balancing economic, social and environmental factors, but win-win-win solutions must be strived for. To this end, efforts are needed to boost low-carbon growth making full use of the opportunities provided by for instance digitisation, clean technologies, the bio-economy and the circular economy.

3.4. As well as globally, substantial low-carbon **investments** are also needed within the EU. Climate aspects need to inform the financing criteria of public investment programmes, including the use of EU funds. Public-private cooperation, as well as the role of the European Fund for Strategic Investments and the European Investment Bank, are of the utmost importance. The EESC welcomes the launch of the European Investment Project Portal and of the European Investment Advisory Hub, and stresses that the project thresholds must not exclude smaller projects.

3.5. As for the private sector, low-carbon investments have the same prerequisites as any investment. To be able to make full use of the opportunities and business potential provided by climate change mitigation, an encouraging, competitive and stable business environment is essential.

3.6. In order to position itself at the global forefront of climate technologies and solutions, the EU has to invest in an environment conducive to **innovation**, covering research, development, piloting, demonstration, and finally market entry and expansion internationally. Particular attention should be paid to the innovation potential and the international market entry of SMEs. To this end, it has to be ensured that access to finance does not pose an obstacle for SMEs.

3.7. Since most greenhouse gas emissions originate in energy production, **energy** lies at the heart of the transition. Key measures include replacing fossil fuels with low-carbon energy sources and improving energy efficiency in all sectors and activities. The increasing electrification of society — where fossil fuels are being replaced — can contribute remarkably to reducing emissions. One of the major challenges and opportunities is the development of electricity storage solutions.

3.8. With regard to the decarbonisation of **transport**, particularly road transport, a wide variety of measures needs to be introduced. Electricity and alternative energy sources, advanced biofuels, improved energy efficiency of vehicles and logistics, increased use of low-carbon transport modes, co-modality and public transport, as well as land-use planning, have a role to play in the transition. With regard to shipping and aviation, the EESC calls for ambitious global outcomes in the framework of the IMO and ICAO.

3.9. Success in decarbonisation also requires the development of **products and production** methods. The greatest opportunities lie in finding, innovative business models and developing new low-carbon products with the main focus on the service and function they provide. The potential of all sectors and players should be harnessed, and policy-makers should not 'pick winners', for example supporting certain sectors, techniques or products.

3.10. **Agriculture and forestry** are linked to climate change in several ways. As well as reducing emissions, sequestration of carbon dioxide plays an essential role in climate change mitigation. This highlights the significance of sustainable use of forest resources and proper soil management. On the other hand, agriculture and forestry face significant challenges in adapting to climate change. Intensive research and development work is therefore needed in relation to resilience and adaptation, and to the role of soil as a carbon sink.

3.11. The connection between climate change and food security is vitally important in a context of fast population growth. To respond to the vast challenges of both food security and climate change mitigation, more sustainable food systems are needed, while preventing carbon and job leakage.



3.12. **Digitalisation** is a cross-cutting element of de-carbonising society. Automation, robotics and the internet of things make industrial processes and logistics more efficient. Smart energy grids, smart mobility, smart buildings and smart communities involve citizens in decarbonisation and enable consumers to become 'prosumers', while digital platforms provide an option for sharing products and services.

3.13. All in all, citizens have a vital role to play in the transition to a carbon-neutral economy. More sustainable **consumption** patterns and lifestyle changes, e.g. in relation to diet, shopping, mobility and hobbies, can bring about remarkable results. Awareness-raising, product information and education are tools that can be used to help citizens make enlightened choices.

3.14. Regarding more specific measures for moving towards a carbon-neutral future in the abovementioned key areas, the EESC has issued several relevant opinions during the past few years <sup>(2)</sup>.

3.15. The transition towards a carbon-neutral economy inevitably means that there will be winners and losers. It is therefore imperative to manage the transition in a just and controlled way. Proper measures are needed to assist businesses and citizens in **adjusting** to the new situation. Increasing costs and skills shortfalls are the main threats to be tackled. Targeted financial assistance, based on identification of the most vulnerable sectors and groups of people, is a relevant option here. Efforts should in the main, however, be focused on seeking new solutions and developing skills.

#### 4. Making full use of pricing mechanisms

4.1. Market mechanisms should be utilised as far as possible when implementing measures to achieve the goals and objectives set by political decision-makers under the Paris Agreement. In order to boost climate action in a neutral and efficient way, it is important to strive for global pricing of greenhouse gas emissions. Accordingly, to enable the pricing system to work properly, contradictory or overlapping energy subsidies should be phased out.

4.2. Different kinds of carbon pricing systems, mainly carbon taxation and emissions allowance cap- and trade schemes are already in use in several countries and regions. Measures to link the various systems are also being considered.

4.3. As for the EU emissions trading scheme, the price of emissions allowances has stayed unexpectedly low, because the supply of allowances has clearly exceeded demand, and overlapping subsidies have affected the market. The emissions cap ensures that the emissions reduction target is met but the system does not provide an incentive to invest in low-carbon energy. This would require an increase in the price of carbon, while ensuring that measures are taken to avoid carbon leakage.

4.4. A well-functioning and fair global carbon-pricing system would level the playing field for export businesses in world markets and thus decrease the risk of investment and job leakage. In addition, it would eliminate the competitive advantage of imported goods that are cheaper due to lower climate requirements. Furthermore, it would direct financial flows to developing countries. Significant efforts should therefore be made to establish an appropriate global regime. The Committee points out that it has also advocated — essentially as an interim solution — a 'border carbon adjustment' mechanism until such a global regime is in place <sup>(3)</sup>. However, due attention should be paid to the challenges and risks of such mechanisms.

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<sup>(2)</sup> See for example EESC Opinions: on *The impact of the conclusions of COP21 on European transport policy* (OJ C 303, 19.8.2016, p. 10); on the *State of the Energy Union 2015* (OJ C 264, 20.7.2016, p. 117); on the circular economy (OJ C 264, 20.7.2016, p. 98); on the integrated SET Plan (OJ C 133, 14.4.2016, p. 25); on a new energy market design (OJ C 82, 3.3.2016, p. 13); on energy efficiency labelling (OJ C 82, 3.3.2016, p. 6); on *Delivering a New Deal for Energy Consumers* (OJ C 82, 3.3.2016, p. 22); on the revision of the ETS (OJ C 71, 24.2.2016, p. 57); on *The Paris Protocol* (OJ C 383, 17.11.2015, p. 74); on the *Implications of climate and energy policy on agricultural and forestry sectors* (OJ C 291, 4.9.2015, p. 1); on *A policy framework for climate and energy in the period from 2020 to 2030* (OJ C 424, 26.11.2014, p. 39); on *Market-based instruments* (OJ C 226, 16.7.2014, p. 1).

<sup>(3)</sup> See *Market-based instruments*, points 3.5.1 and 3.5.2 (OJ C 226, 16.7.2014, p. 1).



4.5. In order to explore the prerequisites for and consequences of a proper pricing system, different options should be carefully assessed. The following routes and steps should, as a minimum, be explored:

- linking existing regional pricing and trading systems with those of other regions,
- establishing sector-wide international emissions trading schemes for the most relevant sectors.

The EESC calls on the Commission to actively explore different routes and steps, share its experiences, and engage with other countries on moving towards a global carbon pricing system.

## 5. The multiple roles of civil society

5.1. Civil society has a major role to play at global, European, national and local levels in the transition towards a carbon-neutral world. Businesses, workers, consumers and citizens are the ones who actually bring about change through their own action on the ground, while the policymakers should provide them with an enabling and encouraging operating environment.

5.2. A lot of progress is being made in markets: A growing number of private and institutional investors are taking 'carbon risk' of their investment targets into account, and climate-related private capital funds have been established. Many companies are renewing and developing their operations and product portfolios to respond to the climate-conscious demands of customers and shareholders. New business ecosystems are being built across sectors and between big companies and SMEs.

5.3. At COP21 a significant strand of activities highlighted the role of sub-national authorities, the private sector and other civil society players in achieving climate objectives and driving new partnerships. The Global Climate Action Agenda needs to maintain momentum and further boost this kind of activity.

5.4. As proposed by the EESC <sup>(4)</sup>, a coalition of policymakers, administration and civil society should be established, to stimulate and increase awareness of non-state climate action at various levels, to provide a forum for structured dialogue, and to remove obstacles standing in the way of action. The EESC expects to be fully involved in developing this kind of coherent multi-stakeholder infrastructure.

5.5. As for civil society cooperation with other regions, in particular the African, Caribbean and Pacific Group of States (ACP) <sup>(5)</sup> and the Mediterranean, the climate issue — in conjunction with the food security challenge — is high on the EESC agenda.

5.6. The EESC is also keen to partner with the Commission in preparing the EU's long-term climate strategy on how to move towards a carbon-neutral world.

Brussels, 21 September 2016.

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

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<sup>(4)</sup> Opinion on *Coalition to deliver commitments of the Paris Agreement*, adopted on 14 July 2016 (OJ C 389, 21.10.2016, p. 20).

<sup>(5)</sup> See the Resolution of the EU-Africa Network of Economic and Social Stakeholders, July 2016, Nairobi.

**Opinion of the European Economic and Social Committee on ‘The position of the EESC on specific key issues of the Transatlantic Trade and Investment Partnership (TTIP) negotiations’**

**(own-initiative opinion)**

(2016/C 487/05)

Rapporteur: **Philippe DE BUCK**

Co-rapporteur: **Tanja BUZEK**

Plenary Assembly decision	21.1.2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	REX
Adopted in section	19.7.2016
Adopted at plenary	21.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	213/23/17

## **1. Conclusions and recommendations**

1.1. The Transatlantic Trade and Investment Partnership (TTIP) negotiations are entering a critical year in 2016. The EU and US chief negotiators stated their commitment to accelerating the talks with the aim of reaching an ambitious and comprehensive political agreement that identifies the possible ‘landing zones’ in all areas before the end of the current US administration. The European Economic and Social Committee (EESC) therefore decided to draw up an own-initiative opinion on specific key issues of the TTIP.

1.2. This opinion does not comment on the possible final agreement that will result from the negotiations between the EU and the US. It is nevertheless important to assess to what extent the positions of European organised civil society, as expressed in particular in previous EESC opinions, have been taken into account in the EU proposals currently available to the public. This will allow the basis for a strengthened partnership between the European Commission and European civil society in developing EU trade policy to be established.

1.3. The EESC, stressing its institutional role, therefore makes the following recommendations.

### **1.4. Regulatory cooperation**

1.4.1. The TTIP negotiations are creating new momentum for increased regulatory cooperation with higher expectations. Therefore the Committee notes with satisfaction that the proposed Chapter includes the pursuit of public policy objectives and a high level of protection in a number of identified fields. The EESC also welcomes the explicit clarification that the function and purpose of the institutional structure for regulatory cooperation is to provide support and advice to decision-makers under democratic control and that it will neither have the power to adopt legal acts nor will replace any domestic regulatory procedures.

1.4.2. However the Committee asks for a clearer definition of ‘burdensome’ regulations and stresses that regulations that safeguard consumer, labour and environmental rights should not be considered as ‘burdensome’ per se.

1.4.3. The EESC also calls for the Chapter on good regulatory practices not to limit parties' right to regulate or introduce procedures equivalent to the US notice-and-comment process.

1.4.4. In addition, the EESC asks the European Commission to clarify the arrangements for representative stakeholders' involvement, in particular the social partners and civil society representatives.

### 1.5. *TBT and SPS*

1.5.1. The EESC considers that the proposals on standardisation, technical regulations, marking and labelling must be considered as important offensive interests of the European Union. It takes note of the important provisions regarding transparency. However, it calls for:

- the concerns of the EU standardisation bodies CEN/Cenelec regarding the risk of mutual recognition of voluntary standards to be taken into account,
  
- more detailed work in the field of marking and labelling requirements.

1.5.2. Regarding the SPS Chapter, the EESC takes note that it is based on the WTO SPS Agreement, which includes the precautionary principle. However, the EESC calls for further reassurances that EU food legislation will not be changed and that the EU will keep its restrictions on hormones, growth promoters and genetically modified organisms.

### 1.6. *Customs and trade facilitation*

1.6.1. The EESC recognises the importance of trade facilitation, in particular for small firms, and welcomes the European Commission's proposed Chapter. It calls, however, for further simplification of customs procedures and for clarification of the rules regarding penalties and responsibility for breach of customs legislation.

### 1.7. *Services*

1.7.1. The EESC welcomes the meaningful commitments made by the EU in the Chapter on services and reiterates its calls for increased market access at federal and state level, for enhanced regulatory cooperation — in the recognition that market access depends also on it — and its request to preserve public services in accordance with the TFEU. The EESC also reiterates that audio-visual services are not part of the mandate and should therefore not be included in any commitments. It also supports the European Commission's decision to put negotiations on financial services market access on hold until US negotiators clearly agree to launch discussions on regulatory cooperation, aiming at increasing levels of protection and financial stability in that sector. The EESC also calls for explicit and detailed wording on a broadly defined public services exemption to ensure that all public services that are subject to outsourcing or are funded by state, private for-profit, or non-profit organisations, would be excluded from the deal.

### 1.8. *Trade and sustainable development*

1.8.1. The EESC welcomes the comprehensive and detailed scope of the Commission proposal on trade and sustainable development. It recalls, however, that the actual value of these provisions depends primarily on the possibility of effectively enforcing them. The EESC calls for an effective enforcement mechanism and a strong monitoring mechanism via civil society. The EESC is not able to comment on the enforcement measures for the sustainable development chapter of TTIP as the textual proposals for enforcement have been delayed. It is important that the Commission engages with civil society and social partners over these proposals in order to ensure they are designed in a way that is effective in practice. The EESC reserves the option of commenting on these elements when they are made publicly available.

## 1.9. Investment protection

1.9.1. The EESC welcomes the proposal aiming to reform the investment protection system and the objective of establishing a permanent multilateral investment court that replaces private arbitration tribunals. However, the EESC still sees some critical points of concern as listed in point 8.8 that should be addressed. It also asks the European Commission to draw up an impact assessment covering both the cost and the functioning of the new investment court system.

## 2. Background

2.1. Since the launch of the TTIP negotiations in June 2013, the EESC has played an important role in formulating the positions of organised EU civil society by drawing up opinions on specific aspects of the TTIP negotiations<sup>(1)</sup>, on investment protection and investor-to-state dispute settlement (ISDS)<sup>(2)</sup> and on the impact of the TTIP on SMEs<sup>(3)</sup>. In the meantime, the Commission has published its important Communication 'Trade for All'<sup>(4)</sup> that provides the conditions for the upcoming trade and investment treaties. The EESC has supported the approach outlined in the Communication in its opinion<sup>(5)</sup>. The Committee is also striving, in cooperation with the other EU institutions, to contribute to an informed civil society debate on the TTIP through a number of TTIP-related activities. These include the organisation of hearings and visits of EESC members to the United States.

2.2. The EESC takes note that the TTIP negotiations are being conducted in a more transparent way than previous trade and investment negotiations: they are the first for which the mandate of the Council and the EU's positions and several textual proposals have been published. An Advisory Group was set up that brings together experts representing a broad range of interests — consumers, trade unions, business, environment and public health — to provide EU trade negotiators with high quality advice in the areas being negotiated. However, the EESC regrets, due to its institutional role, not to have been formally included in this specific TTIP Advisory Group<sup>(6)</sup>. The European Commission has created a TTIP-dedicated webpage that includes factsheets and reading guides, EU position papers (which set out and describe the European Union's general approach to a topic), EU textual proposals (which are the European Union's initial proposals for legal texts on topics in the TTIP), and the EU offer for market access in relation to services. The EESC appreciates the proposal of the European Commission to create a Civil Society Forum which will be composed of representatives of independent civil society organisations, including participants in the domestic advisory groups to conduct a dialogue on the implementation and application of the agreement.

2.3. The present opinion builds on the findings of the previous opinions calling for the benefits of the TTIP to be evenly spread among the business community (including SMEs), workers, consumers and citizens, and making safeguarding the high standards in force in the EU a precondition for the agreement to be accepted. The EESC considers it important to comment on already published EU positions and textual proposals for a selected number of chapters in order to examine to what extent they are in line with those preconditions, and to identify the main points of interest and concern for European civil society. In particular, the EESC has chosen to focus its analysis on the proposals for regulatory cooperation, including good regulatory practices (made publicly available on 21 March 2016), technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) (both made publicly available in January 2015), customs and trade facilitation (made available in January 2015 and amended in March 2016), services (made public in July 2015), sustainable development (made public in November 2015) and investment (made public in November 2015). This opinion considers documents published by 14 July 2016.

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<sup>(1)</sup> See EESC own-initiative opinion on *Transatlantic trade relations and the EESC's views on an enhanced cooperation and eventual EU-USA FTA* (OJ C 424, 26.11.2014, p. 9).

<sup>(2)</sup> See EESC own-initiative opinion on *Investor protection and investor to state dispute settlement in EU trade and investment agreements with third countries* (OJ C 332, 8.10.2015, p. 45).

<sup>(3)</sup> See EESC own-initiative opinion on *The TTIP and its impact on SMEs* (OJ C 383, 17.11.2015, p. 34).

<sup>(4)</sup> European Commission Communication 'Trade for All — Towards a more responsible trade and investment policy' (COM(2015) 497 final).

<sup>(5)</sup> See EESC opinion on *Trade for All — Towards a more responsible trade and investment policy* (OJ C 264, 20.7.2016, p. 123).

<sup>(6)</sup> See footnote 5.

2.4. It should be noted that the European Commission published on 14 July 2016 a proposal on the institutional set up of the agreement<sup>(7)</sup>, which includes the creation of Domestic advisory groups (DAGs), composed of civil society representatives and competent to advise the parties on the application of the agreement. The Committee welcomes the fact that the mandate of DAGs is widened to cover any issue of interest under the agreement, but regrets however that the joint meeting of the two DAGs to be convened on their own initiative is not explicitly mentioned in the EU proposal and that the Civil Society Forum can only be convened by the Joint Committee. The meetings of the Civil Society Forum shall allow the members of the two DAGs to work on joint recommendations to the Parties.

2.5. In this respect, the EESC deeply regrets that when negotiations are eventually conducted on the basis of consolidated texts, the high level of transparency achieved so far will be seriously undermined, unless the US agrees to make these texts available to the public or at least to the EU Advisory Group. Therefore the EESC calls on the Commission to continue to make its best efforts to raise this matter with its counterpart.

### 3. Regulatory cooperation

3.1. Regulatory cooperation is one of three pillars of the TTIP — the others being market access and rules — and is comprised of four elements: horizontal aspects (which includes a section on ‘regulatory coherence’ or ‘good regulatory practices’ on the one hand, and a section on ‘regulatory cooperation’ among regulators on the other hand), technical barriers to trade (TBTs), food safety and animal and plant health (SPS), and sectoral annexes. The objective of this section is to comment on the first of these elements — horizontal aspects — while the following section will address TBTs and SPS.

3.2. Regulatory cooperation has been identified as one of the TTIP’s core objectives, as it could play an important role in facilitating trade and investment as well as improving the competitiveness of small firms in particular. Small and medium-sized enterprises, in particular, expect new opportunities to open up, given that they do not possess the resources to navigate different regulatory environments on both sides of the Atlantic, unlike large firms. At the same time, greater compatibility of regulatory regimes would create opportunities for large enterprises to take advantage of economies of scale between Europe and the US.

3.3. Efforts towards regulatory cooperation are not new<sup>(8)</sup>. The TTIP negotiations are creating new momentum for increased regulatory cooperation with higher expectations. The EESC considers that it is not easy to estimate the benefits deriving from increased regulatory cooperation, mainly because they will vary depending on the degree of cooperation to be agreed upon during negotiations. The draft interim technical report prepared by the European Commission on sustainability impact assessment estimates that 76 % of the TTIP’s impact will result from regulatory cooperation, whereas 24 % of its total effect will come from tariff reduction<sup>(9)</sup>.

3.4. However, the EESC considers it important that protection is put in place to ensure that the process of regulatory cooperation is not used to undermine social, labour, consumer and environmental standards, but rather aims to improve them. If those conditions are met, benefits would not only be economic but might also facilitate the regulators’ task in achieving public policy objectives.

3.5. Safeguarding the EU’s high levels of protection was a fundamental point for the EESC. The current proposal of Article x1b of the Chapter on regulatory cooperation covers the pursuit of public policy objectives and a high level of protection of, inter alia, public health; human, animal and plant life and health; health and safety; working conditions; animal welfare; the environment; consumers; social protection and social security; personal data and cybersecurity; cultural diversity; and financial stability.

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<sup>(7)</sup> See [http://trade.ec.europa.eu/doclib/docs/2016/july/tradoc\\_154802.pdf](http://trade.ec.europa.eu/doclib/docs/2016/july/tradoc_154802.pdf).

<sup>(8)</sup> E.g. the Transatlantic Economic Council (TEC) set up in 2007; the High Level Cooperation Forum; the High Level Regulatory Cooperation Forum.

<sup>(9)</sup> Ecorys, *Trade SIA on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA — Draft Interim Technical Report*, p. 18 (<http://www.trade-sia.com/ttip/wp-content/uploads/sites/6/2014/02/TSIA-TTIP-draft-Interim-Technical-Report.pdf>).

3.6. However, the EESC is concerned this may be undermined by Article x1d which states an objective to 'reduce unnecessarily burdensome [...] regulatory requirements' <sup>(10)</sup>. The EESC is concerned that such language might be interpreted as considering regulations that safeguard consumer, labour and environmental rights to be 'burdensome' per se.

3.7. Therefore, the EESC wants to strongly reaffirm the statements that safeguarding existing high standards is a fundamental requirement and that besides the aim of enhancing trade opportunities, regulatory cooperation should also improve safety, health and the economic and social well-being of people on both sides of the Atlantic. Therefore this commitment should be reaffirmed in very clear and detailed language in the final agreement. The EESC is concerned about the EU proposal on good regulatory practices. Regulatory cooperation should be about improving the dialogue between regulators, not influencing each other's rule-making processes. The EESC asks the European Commission to clarify the good regulatory practices section of its proposal.

3.8. In this sense, the EESC considers that the current proposal for the Chapter on good regulatory practices, which notes that parties will be required to examine 'non-regulatory alternatives (including the option of not regulating) [...] that would achieve the objective of the regulatory act', should not be considered as limiting the parties' right to regulate. For the sake of greater certainty, the text of the agreement should clarify that this provision shall not limit the parties' right to regulate. It also notes that Article 6 of the proposal on stakeholders' consultations should not be considered equivalent to the US notice-and-comment process.

3.9. For the EESC, the development of trade must therefore retain its status of being a central objective. It is important that the TTIP negotiations support the removal of unnecessary barriers to trade <sup>(11)</sup>.

3.10. The EESC welcomes the fact that the current Commission proposal explicitly clarifies that the function and purpose of the institutional structure aims to provide support and advice to decision-makers under the democratic control of the European Parliament and the Council of the EU <sup>(12)</sup>. The ordinary law-making process must not be undermined and delays or regulatory chill must be prevented. The EESC welcomes the proposed Article 1, which reaffirms the right both to regulate and to set the levels of protection. However, it is crucial the proposal defines the composition and the rules of proceedings of the different committees and groups. The EESC calls on the European Commission to ensure coherence and consistency between the horizontal regulatory cooperation chapters, the TBT, SPS chapters and the sectoral annexes.

3.11. Dialogue that takes place at the beginning of the regulatory process increases the chance of identifying policy solutions that include cross-border considerations, and shall be provided for. Stakeholders' involvement via a transparent process, which is a core principle of a good rule-making process within the European Union, must be clearly detailed in the Commission proposal. In order for regulatory cooperation to achieve inclusive outcomes and proposals for regulators, there shall be a structured and balanced engagement of stakeholders, and in particular, businesses, consumers, environmental interest groups, and workers.

3.12. In order for specific progress to materialise, early consultations on regulatory activity between the EU and US regulators shall be provided. Discussions at an early stage in the policy-making process are expected to increase the potential for delivering interoperable rules in the future and allowing market participants to comply with both regimes simultaneously. However, regulators must consider the dialogue and the reply to comments from their counterparts or interested persons as voluntary, in order to avoid any regulatory chill effect.

3.13. The EESC asks the European Commission to clarify the arrangements for both the abovementioned dialogue and for representative stakeholders' involvement, in particular the social partners and civil society representatives. There must be a clear guarantee that relevant stakeholders will be able to contribute to a transparent dialogue by means of a well-defined procedure that mandates equal treatment and avoids delays in the regulatory process. On the EU side, the transparency register should be considered when it comes to defining the relevance and representativeness of stakeholders.

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<sup>(10)</sup> Revised EU textual proposal on regulatory cooperation, made public on 21 March 2016 (<http://trade.ec.europa.eu/doclib/html/154377.htm>).

<sup>(11)</sup> Sociaal-Economische Raad (SER), Advisory Report 16/04E on TTIP (<https://www.ser.nl/~media/files/internet/talen/engels/2016/ttip.ashx>).

<sup>(12)</sup> See the opinion of the Conseil économique social et environnemental français, 'Les enjeux de la négociation du projet de Partenariat transatlantique pour le commerce et l'investissement (PTCI)' ([http://www.lecese.fr/sites/default/files/pdf/Avis/2016/2016\\_01\\_projet\\_partenariat\\_transatlantique.pdf](http://www.lecese.fr/sites/default/files/pdf/Avis/2016/2016_01_projet_partenariat_transatlantique.pdf)).



#### 4. TBT and SPS issues

4.1. The EESC is pleased that the WTO agreement on TBTs is integrated as it stands in the proposal. Furthermore, the proposed TBT Chapter addresses technical requirements (technical regulations and standards) and conformity assessment requirements. The EESC is of the view that the proposals on standardisation, technical regulations, marking and labelling must be considered as important offensive interests of the European Union. It is important that these proposals are not used to question regulations necessary for health and safety as well as social protection.

4.2. The EESC takes note of the important provisions on transparency: it reiterates the obligation to notify measures to the WTO, provide information to the other party, offer an opportunity for written comments and provide replies to such comments. It also provides for the publication of all applicable technical regulations, new or existing, by means of a registry, as well as of standards referenced in technical regulations (as the vast majority of standards are used by the industry but are not 'referenced' — used — by regulators in technical regulations).

4.3. Concerning standardisation, the EESC welcomes the cooperation between the standardisation bodies as well as the limited mutual acceptance principles. However the EESC has taken note of the concerns expressed by CEN/Cenelec on the risks of mutual recognition of voluntary standards in the TTIP. The EESC asks the Commission to consider the proposals of the EU standards bodies and to make sure that EU interests are safeguarded. Even the guarantee that all relevant stakeholders could contribute to the development of new standards is important.

4.4. The US and EU standardisation systems are very different from one another. In particular, the principle 'one product, one standard, accepted everywhere' that represents a pillar of the EU single market is not found in the United States. In Europe, when a new standard is adopted, conflicting national standards are withdrawn; in the US, different standards coexist on the market making it difficult for SMEs to understand which one would best suit their product lines. To increase transparency and facilitate small companies, it is essential that a helpdesk is established on the US side that would provide a support service to EU companies willing to export to the US market. These are often small companies with limited resources but with a high level of specialisation in a niche market that is the basis of their competitiveness.

4.5. The EESC regrets that key areas like electrical safety, electromagnetic compatibility, machinery and telecommunications, where the EU has a clear offensive interest, are identified as priority areas for future consideration: these areas should feature among the referenced specific outcomes on conformity assessment resulting from the negotiations.

4.6. The EESC likewise regrets that in the section on marking and labelling, no priority areas are identified for future work and there are no placeholders either for the timeline of the future review of marking and labelling requirements or for including the outcomes resulting from negotiations in particular sectors.

4.7. The proposed SPS Chapter builds on the WTO Agreement on SPS and comments on the EU textual proposal tabled for discussion with the US in the negotiating round of 29 September-3 October 2014 and made public on 7 January 2015.

4.8. The WTO SPS Agreement, which covers the application of food safety, animal and plant health regulations, includes the Precautionary Principle (Article 5(7)), which is now also enshrined in the Lisbon Treaty. This must not be up for negotiation and should therefore not be part of the agreement. The EESC thus strongly welcomes the assurances given by the EU that the TTIP will not change existing food legislation; that the EU will keep its restrictions on hormones and growth promoters in meat; and that the TTIP will not change EU law on genetically modified organisms.

#### 5. Customs and trade facilitation

5.1. As trade in goods covers a large portion of transatlantic trade, any effort to improve customs procedures will have a strong impact on bilateral trade, in particular for small firms.

5.2. The EESC welcomes the additional proposals aiming at facilitating customs procedures, in particular: the establishment of a single window on both sides of the Atlantic, enhanced coordination on international standards, and the development of a trade facilitation partnership programme; data harmonisation and alignment, committing to an assessment of what data should be aligned; expanding the responsibilities of the Joint Customs Cooperation Committee to act as the 'Specialised Customs Committee' in a number of areas still to be defined and advance rulings.

5.3. The EESC calls on the European Commission to clarify the elements that are particularly important to EU firms and that are not yet clear in the available text, such as the *de minimis* value, the removal of all additional fees, and the issue of penalties and responsibility for breaches of customs legislation.

## 6. Services

6.1. In its service offer, the EU offers meaningful commitments in sectors that are key to fostering Europe's competitiveness and growth (digital and telecom), accelerating the integration of global value chains (transport, courier services, business services, and professional services) or touch on key economic sectors (construction, retail, energy).

6.2. The EESC also notes with satisfaction that the EU proposal puts forward a framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the parties and sets out the general conditions for the negotiation of mutual recognition agreements, which are of major importance to secure better market access for EU service providers.

6.3. The EESC reiterates three main aspects connected to services: the need to increase market access both at the federal and state level; the recognition that market access depends also on enhanced regulatory cooperation; the request to preserve the specificity of public services in accordance with the TFEU.

6.4. The EESC underlines that the Commission should ensure that, in terms of services, the TTIP goes beyond existing agreements such as GATS and TISA and that specific agreements should be concluded to eliminate many discriminatory barriers that exist in the USA.

6.5. The EESC stresses a particular issue that the Commission should take into account and that concerns unbalanced market access: US companies can benefit from the EU single market whereas EU companies face a fragmented US market as a large number of service sectors are regulated at state level. The EESC draws the attention to the fact that the continued visa requirement imposed by the United States on nationals of some EU Member States, when US citizens do not require a visa to travel to the EU, represents a discriminatory treatment of EU citizens that is detrimental to the bilateral relationship.

6.6. On specific sectors, the EESC wants to make the following comments:

- audio-visual services are not part of the mandate and should therefore not be included in any commitments,
- financial services market access should be put on hold until US negotiators clearly agree to launch discussions on regulatory cooperation. Such regulatory cooperation should have the objective of increasing levels of protection and financial stability,
- public services should be fully protected as they ensure the existing high standards in the provision of essential and sensitive services to citizens. To this end, clear and broadly defined exemptions should be put in place.

6.7. Concerning public services, the EESC opinion 'Trade for All' stated that protection of public services in trade agreements 'can best be done by the use of a positive list with regard to both market access and national treatment'. However, the current EU offer on services in the TTIP adopts an unprecedented 'hybrid' approach to listing services, which could leave substantial uncertainty.



6.8. In Annex III on market access, a positive list is provided with the same wording as in the EU's GATS Schedule where 'public utilities exist in sectors such as related scientific and technical consulting services, R & D services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific listing is not practical' <sup>(13)</sup>. However, the public utility clause, enabling to keep monopolistic structures, has several shortcomings, including the fact that the scope does not cover limitations such as economic needs tests or quotas. The EESC wants to stress that the public utilities exemption must apply to all modes of supply.

6.9. The EESC calls for explicit and detailed wording on the public utilities exemption in Annex III to ensure that all public services that are subject to outsourcing or are funded by state, private for-profit or non-profit organisations would be excluded from the deal.

6.10. Although the standstill and ratchet clauses do not apply to Annex II, the EESC is concerned that negotiations may result in the EU's reservations currently listed in this Annex being moved to Annex I, therefore preventing liberalisation from being rolled back. In this respect, the EESC supports the statement of the advisory report of the Dutch Social and Economic Council that 'Governments must remain free to declare certain services — according to their own preferences — to be "of general public interest"' <sup>(14)</sup>.

6.11. The EESC is also concerned that government regulation in any service not listed adequately in Annex I and Annex II will be exposed to potential challenges by the US government through state-to-state dispute proceedings for breaches of national treatment or most favoured nation commitments, or through the investment court system.

6.12. The EESC regrets that compared to other chapters, services market access is neglected and calls on the Commission to step up its efforts to remove the remaining market access barriers in the US. The United States continues to impose a total ban in terms of shipping. There are equity caps such as 25 % in aviation transport and 20 % in telecoms, and significant behind the border barriers such as in telecoms and satellites. There is a very long list of citizenship requirements e.g. in banking, insurance and accounting. Residency requirements exist for legal, accounting, engineering, and insurance services. Local presence requirements exist, for instance, for legal, accounting, and insurance, as well as a legal form requirement in insurance, etc.

## 7. Sustainable development

7.1. The TTIP offers the parties an opportunity to foster sustainability through trade and to go beyond any other trade agreement concluded by either party with regard to sustainability objectives. In its opinions REX/390 and REX/449 <sup>(15)</sup>, the EESC called for the inclusion of a robust trade and sustainable development Chapter, defined as an essential component of the agreement, and therefore welcomes the comprehensive and detailed scope of the Commission proposal. However, the EESC believes that the actual value of these provisions depends primarily on the possibility of eventually and effectively enforcing them.

7.2. The opinion REX/390 stated that a strong joint civil society monitoring mechanism must be an essential component of any agreement. The EESC therefore fully supports the statement of Commissioner Malmström that effective enforcement mechanisms are needed in the sustainable development Chapter <sup>(16)</sup>. The EESC equally supports the recommendations of the advisory report of the Social and Economic Council of the Netherlands and the French Economic and Social Council on 'the ability to impose effective sanctions on the parties where necessary' <sup>(17)</sup>.

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<sup>(13)</sup> Services and Investment offer of the European Union ([http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153670.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153670.pdf)).

<sup>(14)</sup> See footnote 11.

<sup>(15)</sup> See footnote 5.

<sup>(16)</sup> Statement of Commissioner Malmström, 17 November 2015 ([http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc\\_153968.pdf](http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153968.pdf)).

<sup>(17)</sup> See footnotes 11 and 12.

7.3. The EESC commends the European Commission's far-reaching commitment to high labour and environmental standards. The EESC welcomes that the right to regulate and to set high levels of protection has been reaffirmed in the preamble of the agreement and in a stand-alone article in the sustainable development Chapter.

7.4. The EESC had called for a reaffirmation of the parties' commitment to effectively implementing and enforcing their labour legislation, and of their obligations arising from their membership in the ILO. The EESC therefore welcomes the inclusion of binding provisions on the protection of core labour standards such as freedom of association and the right to collective bargaining by forming and joining trade unions, the elimination of forced or compulsory labour, the effective abolition of child labour, and equality and non-discrimination in respect of employment and occupation. Moreover, the EESC welcomes the additional inclusion of the parties' commitment to ensure decent working conditions, and health and safety at work. In order to make these sustainable development provisions binding, a 'three step approach' needs to be implemented with government consultations, domestic advisory groups and expert panels involving the ILO and the general dispute settlement provision of the agreement.

7.5. As regards environmental aspects, the inclusion of a provision on trade in connection with the environmentally sound management of chemicals and waste aligns well with the concerns of civil society. The EESC therefore approves the inclusion in the agreement of provisions aiming to prevent or minimise adverse effects on human health and the environment in relation to chemicals and waste. Likewise the EESC welcomes the parties' commitment to sustainable forest management and the mutual recognition of the significant negative impact of illegal, unreported and unregulated fishing.

7.6. Cooperation between the parties on trade-related aspects of labour and environmental policies is a welcome provision in the proposal. The EESC supports the recognition of the importance of cooperation in promoting decent work in global supply chains and in elaborating strategies and policies to promote the contribution of trade to resource efficiency, the green economy and the circular economy<sup>(18)</sup>.

7.7. The objective of protecting labour rights and the environment through a code of conduct, standard schemes, labelling, certification, verification and other related corporate policies is supported by the EESC.

7.8. Responsible business conduct such as corporate social responsibility can further strengthen sustainability objectives. The EESC supports the inclusion in the sustainability Chapter of explicit references to the OECD Guidelines for Multinational Enterprises, the UN Global Compact, ISO 26000, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), and the UN Guiding Principles on Business and Human Rights.

7.9. The EESC takes note that the EU textual proposal does not include elements related to dispute settlement, which will be developed at a later stage, and reserves the option of commenting on these elements when they are made publicly available.

7.10. To support the implementation of the parties' commitment to promoting international trade in such a way as to contribute to the objective of pursuing sustainable development, the EESC favours an enforcement mechanism built on social dialogue. The EESC welcomes the Commission's proposals for the establishment of domestic advisory groups comprising a balanced representation of civil society groups representing a balance of business, worker, consumer, environment and public health interests that can submit views or recommendations on the implementation of TTIP<sup>(19)</sup>. Experience with agreements in force shows that to ensure the effectiveness of such monitoring mechanisms, it is important that the recommendations delivered by the monitoring bodies result in investigation by EU institutions and are linked with a process of enforcement.

## 8. Investment

8.1. The EESC takes note that the Commission has tabled a textual proposal for an investment court system that introduces a procedural reform that establishes a new system to replace the ISDS. It is comprised of two parts, the substantive investment protection provisions and the functioning of the system that settles disputes between investors and states. It also includes an introductory section that provides definitions specific to investment protection.

<sup>(18)</sup> See EESC own-initiative opinion on *Decent work in global supply chains* (OJ C 303, 19.8.2016, p. 17).

<sup>(19)</sup> See footnote 7.

8.2. As requested in opinion REX/390, more detailed definitions are provided on the 'right to regulate', 'indirect expropriation' and 'fair and equitable treatment'. These are the conditions that need to be met in order to regulate a dispute settlement procedure between a state and an investor. These clarifications serve the party's right to regulate in the public interest over the protection of the investor.

8.3. The EESC stresses that the definitions in the agreement, in particular the right to regulate, should be clear and should guarantee the right of the state to maintain and introduce high standards, in particular for social, environmental and consumer protection while guaranteeing an adequate and legitimate protection of investors from protectionism and discrimination. The EESC welcomes that a stand-alone article has been included in the body of the agreement in addition to its preamble. The right to regulate in the area of social protection should explicitly mention collective agreements, including tripartite and/or generalised (*erga omnes*) agreements, in order to exclude them from being made subject to interpretation as a breach of an investor's legitimate expectation. Working and wage conditions set in the context of collective agreements may not be considered as a non-tariff barrier to trade.

8.4. The EESC acknowledges, however, that the most significant changes have been made to the procedural aspects of dispute settlement. The arbitration system has been transformed into a judicial system with a tribunal where ad hoc arbitrators appointed by the disputing parties are replaced by judges from a permanent roster that will be appointed by the parties to the Agreement. These changes make it a more institutionalised system. The EESC calls on the parties to make sure that as soon as the treaty is ratified the investment court system is fully operational and that the judges enjoy democratic legitimacy and are appointed in a way that eliminates the risk of a politicised court system, as well as the risk of conflicts of interest.

8.5. The EESC is pleased to underline that a strict code of conduct is introduced to ensure impartiality and to prevent conflicts of interests. An 'appeal tribunal' is also set up to judge the tribunal's awards, addressing what were legitimate criticisms of ISDS. Furthermore, transparency is ensured as UNCITRAL rules would apply to disputes.

8.6. While the EESC welcomes the improvements that have been made with the aim of reforming the system, the EESC still sees critical points of concern that need to be addressed.

8.7. The EESC acknowledges, moreover, that concerns regarding the implementation of the new system remain, and vary according to the stakeholders. The EESC asks the Commission to further consider these concerns in its continuous efforts to improve the system for resolving investment disputes.

8.8. Some of these concerns can be summarised as follows:

- the need to strike the right balance between legitimate public policies and investment protection standards in terms of 'fair and equitable treatment' and 'protection against indirect expropriation', based on clear definitions that reduce the risk of broad interpretation,
- a very limited list of legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or promotion and protection of cultural diversity which are linked to the right to regulate,
- no explicit exclusion of regulations applying to the organisation or provision of public services,
- the total exclusion of loss of profit when calculating compensation for investments that have been made,
- implementation of the 'loser pays principle' may prevent a company, and in particular a SME, from using the system,
- the need for references to investor obligations under the ILO Multinational Enterprises Declaration, UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises,

- some lack of clarity on how awards will be recognised and executed by the domestic courts and what the relationship is with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the relevant ICSID rules. This should be made clear as investors are already confronted in the current system with enforcement problems,
- the need to carefully assess the compatibility of the ICS with the EU legal framework,
- the lack of real independence of judges as, in the new proposal, they are still allowed in some cases to work as corporate lawyers,
- the need to consider the recommendation of the SIA draft interim technical report on the TTIP to exclude the possibility of public services being challenged under the ICS <sup>(20)</sup>.

The EESC calls for the Commission to engage civil society and the European legal community to address these concerns.

8.9. In addition, some stakeholders question the need for a separate investment arbitration system in properly functioning and highly developed domestic legal systems <sup>(21)</sup>.

8.10. In conclusion, the EESC considers that the European Commission's proposal for the ICS is a step in the right direction but must be further improved in a number of areas in order to function as an independent international judicial body. The Committee regrets that the system was proposed without a full and proper consultation process and prior to an impact assessment covering both the costs of the system and its functioning, and calls upon the Commission to draw up such an impact assessment.

Brussels, 21 September 2016.

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

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<sup>(20)</sup> Ecorys, *Trade SIA on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA — Draft Interim Technical Report*, p. 144 (<http://www.trade-sia.com/ttip/wp-content/uploads/sites/6/2014/02/TSIA-TTIP-draft-Interim-Technical-Report.pdf>).

<sup>(21)</sup> E.g. ETUC Position on Commission's proposal for an Investment Court System in TTIP and CETA (<https://www.etuc.org/documents/etuc-position-commissions-proposal-investment-court-system-ttip-and-ceta#.V2xn19KNhHg>).

**Opinion of the European Economic and Social Committee on ‘Sustainable development: a mapping of the EU’s internal and external policies’**

**(exploratory opinion)**

(2016/C 487/06)

Rapporteur: **Ioannis VARDAKASTANIS**

Co-rapporteur: **Jarmila DUBRAVSKÁ**

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## 1. Conclusions and recommendations

1.1. The adoption of the UN 2030 agenda for sustainable development marks a historic shift towards a new paradigm by addressing economic, social and environmental disparities in a universal and integrated way. All countries need to translate and implement the agenda, regardless of their income level. This unique agenda fully reflects the European values of social justice, democratic governance and the social market economy, as well as environmental protection. It is therefore a great opportunity for the EU to leverage those values and approach implementation of the agenda in an overarching way. The EESC calls on the EU to lead by example in this very challenging process worldwide.

1.2. The EESC welcomes the European Union’s commitment to implementing the sustainable development goals (SDGs). However, the EESC is concerned that a year has passed since the adoption of the UN 2030 agenda without the EU having taken concrete and forward-looking measures to mainstream the SDGs in its policies and programmes, and without having initiated a wider consultation with civil society.

1.3. The EU faces crucial political, social, economic and structural challenges in all areas of the economy and society. Inequalities, unemployment — especially youth unemployment — social exclusion and poverty, gender inequalities, discrimination and marginalisation of vulnerable groups in European societies are eroding the foundations of the EU itself. In many Member States the financial crisis has further exacerbated the problem, which is becoming a human and social rights crisis.

1.4. The UN 2030 agenda should be turned into a proactive, transformational and positive narrative for Europe, and that process must be driven by a strong political will and determination to shape a sustainable European Union by shifting our economies towards resilient and competitive, resource-efficient, low-carbon and socially inclusive development. This forward-looking narrative would also help overcome the unprecedented lack of trust of EU citizens in the EU project and in particular win young people’s support for it. The EU should use the UN 2030 agenda in this way to present EU citizens with a new vision for Europe: the social contract of the 21st century.

1.5. The EESC calls for an overarching and integrated strategy for a sustainable Europe 2030 and beyond, providing the necessary long-term time horizon, policy coordination and coherence for implementation of the UN 2030 agenda. This strategy should be based on an interinstitutional agreement between the Commission, the Council and Parliament in order

to create a robust basis for further political action. Current European strategies, such as the Europe 2020 strategy, which pushed aside the EU sustainable development strategy from 2001 as the previous overarching strategy, and President Juncker's 10 priorities do not — in the EESC's view — provide a way of fully addressing the challenge of SDG implementation in the EU.

1.6. The aforementioned overarching strategy must include specific targets for SDG implementation, review and monitoring mechanisms, as well as action plans with the necessary legislative and policy instruments, awareness-raising activities — e.g. a Eurobarometer survey on the SDGs — and a plan for mobilising financial resources. The process leading to this strategy should be launched by the Commission with its forthcoming communication, and the design phase of the strategy should provide for broad consultation of civil society, governments, parliaments and local authorities. The EESC is available to support this process as a facilitator.

1.7. The Commission's exercise to map the EU's internal and external policies against the 17 SDGs is a necessary step. The EESC calls on the Commission to complement this with a detailed gap analysis with respect to the 17 SDGs in order to identify areas where the EU should undertake prior and immediate action.

1.8. The EESC has identified the following key policy areas for transformational change towards sustainable development and recommends that the Commission establish appropriate flagship initiatives, including transparent action plans and milestones, taking into account the recommendations in 4.3 of this opinion:

- a just transition to a low-carbon, circular and collaborative economy,
- transition towards a socially inclusive society and economy — decent work and human rights,
- transition to sustainable food production and consumption,
- investing in innovation and long-term infrastructure modernisation and encouraging sustainable businesses,
- making trade work for global sustainable development.

1.9. The EESC calls on the Commission to mainstream the SDGs in all relevant policies. The mid-term reviews to be undertaken in 2014-2020 should be used for that purpose. Future MFF periods will provide an excellent opportunity to fully mainstream the SDGs in EU spending programmes.

1.10. It is particularly important to mainstream the UN 2030 agenda in the external action of the European Union. The Commission should fully adapt areas of key significance — such as trade and development policies, global environmental policies and climate action, humanitarian aid, disaster risk reduction, technology transfer and human rights promotion — so as to proactively push implementation of the UN 2030 agenda. The EESC also calls on the Commission to fully integrate and apply the UN 2030 agenda in the European Consensus for Development and regrets that this has not been sufficiently incorporated into the EU global strategy on foreign and security policy.

1.11. The EESC asks the Commission to assess and improve horizontal and vertical policy coordination for an effective implementation of the UN 2030 agenda. Better governance is a key enabler of sustainable development. The European Semester should be developed into an appropriate governance framework for vertical coordination of SDG implementation with the Member States. The EESC underlines that participation, transparency, monitoring and review, accountability and citizen ownership should be among the main features and characteristics of better governance.

1.12. Eurostat should draw up and apply a set of indicators and benchmarks, as developed by the UN, in order to facilitate the review, monitoring, accountability and transparency of the SDG implementation process and to provide the EU institutions, the Member States and all stakeholders with hard statistical data broken down by individual SDG and by target.



1.13. The EESC notes with appreciation that four EU Member States were amongst the 22 countries presenting the first voluntary reviews on SDG implementation at the UN High-Level Political Forum on Sustainable Development in 2016. The EESC calls on the EU to lead by example and be the first region to present a voluntary review at the HLPF in 2017. The EESC would be available to organise the contribution from civil society.

1.14. The EU should move to a multi-stakeholder-led approach in SDG implementation, by including all actors and civil society organisations based on the principles of participation, accountability and partnership. The EESC itself has already presented a specific initiative for the multi-stakeholder European Sustainable Development Civil Society Forum. The Commission should proactively explore and develop an SDG Charter Initiative to foster the creation of strong partnerships at national, EU and international level.

## 2. Introduction

2.1. In September 2015 world leaders adopted the UN agenda *Transforming our world: The 2030 Agenda for Sustainable Development*, establishing a set of sustainable development goals (SDGs) to end poverty, protect the planet, ensure protection of human rights and guarantee prosperity for all. Each goal has specific targets to be achieved over the next 15 years.

2.2. The EU will have a key role in the implementation of the SDGs in Europe. In its work programme for 2016 the Commission has announced a new initiative, *Next steps for a sustainable European future*, with the aim of implementing the SDGs in the EU's internal and external policies <sup>(1)</sup>.

2.3. As an initial step the Commission is carrying out an internal 'mapping' exercise in order to identify which existing EU policies already address the challenges set by the SDGs. The Commission has asked the Committee to contribute to that process with the present exploratory opinion. In order to take on board the broader debate in European civil society, the Committee has taken into account the results of two major conferences on SDG implementation held at the EESC in 2016, as well as other major conferences <sup>(2)</sup>.

## 3. Turning SDGs into a European 2030 agenda: towards a Sustainable Development Union

3.1. The Committee welcomes the *Next steps for a sustainable European future initiative in the Commission's work programme for 2016* as a new approach to ensure Europe's economic development and social and environmental sustainability beyond the 2020 timeframe and to implement the SDGs in EU internal and external policies in an integrated manner <sup>(3)</sup>. However, there are concerns that there might be a lack of political will and commitment, since so far not much has been done to put the agenda into action.

3.2. In a situation where the EU project is under pressure and many citizens are losing faith in it, the EU should use the SDGs to develop a positive transformational narrative for a sustainable Europe, connecting the long-term perspective with specific political measures in the short- and mid-term. Sustainability is a 'European brand' <sup>(4)</sup>: the UN 2030 agenda reflects European values and the European model of social justice and democratic governance. It therefore offers an excellent opportunity to define a new positive and convincing narrative and vision for the EU.

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<sup>(1)</sup> COM(2015) 610 final.

<sup>(2)</sup> Conference *How to make the SDGs Europe's business*, 30 and 31 May 2016, co-organised by the Dutch Presidency, the EESC, the Sustainable Development Solutions Network (SDSN) and the Dutch SDG Charter; EESC conference *Next steps for a sustainable European future*, 7 July 2016; IDDRI conference *Sustainable development: it's time!*, Paris, 10 and 11 May 2016; IASS conference *Jump-starting the SDGs in Germany*, 1-3 May 2016.

<sup>(3)</sup> EESC opinion on *A European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73).

<sup>(4)</sup> *Sustainability now!* EPSC Strategic Notes, Issue 18, 20 July 2016.



3.3. The UN 2030 agenda has been endorsed by all EU Member States and the EU as a whole. It is time now for a clear political commitment at the highest political level affirming that the EU has embraced this new agenda as a vision and overarching framework for moving towards a Sustainable Development Union <sup>(5)</sup>.

3.4. Implementing the SDGs is not just about development or the environment. The SDGs address the main challenges of transforming our economies and societies, also in the developed world. Their implementation in the EU requires a new model of development that is economically more sustainable, socially more inclusive and environmentally more viable over the long term, and that ensures that the resources of our planet will be shared fairly with a growing world population. There is a need to turn our economies around <sup>(6)</sup>. The new concept of development should imply a new definition of prosperity for the EU and a new set of indicators. The SDGs should be used as levers to enable and accelerate the long-term transition to a resilient and competitive, resource-efficient and socially inclusive EU economy.

3.5. The launching by the Commission of a roadmap for the renewal of the European Consensus on Development gives the impression that the Commission intends to first focus on the implementation of the new agenda in development policies. This kind of prioritisation is not in line with the integrated approach of SDGs that requires overarching and integrated implementation strategies covering external and internal policies.

3.6. In order to set up a governance framework for implementing the SDGs the EU will have to extend its planning horizon far beyond 2020. An overarching and long-term strategy for a sustainable Europe with a time horizon of 2030 and beyond <sup>(7)</sup> should translate the SDGs into EU internal and external policies, addressing specifically European challenges and combined with transparent roadmaps and action plans for legislative and policy initiatives and a detailed timeline up to 2030. The European Parliament has called for a similar approach <sup>(8)</sup>.

## 4. Mapping the EU's internal and external policies

### 4.1. *The mapping exercise must be combined with a policy gap analysis*

4.1.1. Defining an EU political strategy and roadmap for achieving the SDGs requires more than just mapping of existing EU policies. Mapping current EU policies to individual SDGs does not allow an assessment of whether the SDGs can be achieved in the EU without further action. Existing policies might not be effective, they might be undermined by other policies or there might be other obstacles. **Mapping of policies must therefore be combined with a gap analysis** identifying the real gaps in EU policy with respect to the 17 goals of the UN 2030 agenda and related targets.

4.1.2. In this context, the EESC welcomes the Strategic Notes on 'Sustainability Now!' drawn up under the aegis of Karl Falkenberg, former director-general of DG Environment, which set out in no uncertain terms the reforms that the EU needs to make under the UN 2030 agenda, using examples from just a few policy areas.

4.1.3. A comprehensive SDG gap analysis for the EU is still lacking. However, a recently published SDG Index and Dashboard and other assessments carried out in EU Member States demonstrate that the SDGs are an ambitious agenda also for high-income countries <sup>(9)</sup>, mainly due to the way those countries produce, deliver and consume products and services and the resulting negative impact on the environment. The key challenges for EU countries are SDG 12 on responsible

<sup>(5)</sup> Op. cit.

<sup>(6)</sup> Speech given by Commission Vice-President Frans Timmermans at the UN summit on 27 September 2015.

<sup>(7)</sup> Point 4.3.3 of EESC opinion on *Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth* (OJ C 12, 15.1.2015, p. 105); EESC opinion on *A European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73).

<sup>(8)</sup> European Parliament Resolution 2016/2696 (RSP).

<sup>(9)</sup> SDSN, Bertelsmann Stiftung, SDG Index & Dashboard, July 2016; Niestroy, *How are we getting ready?* DIE discussion paper, 9/2016.

consumption and production, SDG 13 on climate action, SDG 14 and SDG 15 on ecosystem conservation, the targets for sustainable agriculture and nutrition in SDG 2, as well as SDG 9 on industry, innovation and infrastructure, where an investment gap has been identified.

4.1.4. The other challenges are the 'people-centred' SDGs, in particular SDG 10 on reducing inequalities, SDG 8 on decent work and employment and SDG 1 on poverty, as well as SDG 5 on gender equality and SDG 4 on education.

4.1.5. Many OECD countries are failing to achieve the SDG 17 target on financial contributions to development cooperation.

4.1.6. As a universal agenda, the SDGs also aim to reduce the detrimental social and environmental impacts of high-income country economies in third countries. There has been less measurement of this aspect to date, but it is an important challenge for EU countries.

## 4.2. Contribution of current European strategies to SDG implementation

4.2.1. The Committee believes that mapping of EU policies should look first at the policy tools that are of strategic importance for EU policy-making and implementation. Initial assessments indicate that these tools do not measure up to the challenge of SDG implementation in the EU<sup>(10)</sup>. None of these strategies has the time horizon of the UN 2030 agenda.

4.2.2. Under the Barroso Commission, the **EU 2020 strategy** was declared to be the EU's overarching strategy, thus superseding the EU sustainable development strategy. While it does, in principle, cover the three dimensions of sustainable development, it is a relatively short-term strategy with a clear European focus. It does not address the international perspective; nor does it describe the impacts of EU domestic policies on other parts of the world and its external policies, including development cooperation. It has therefore never been up to the challenge of replacing the former sustainable development strategy. Two SDGs are not covered: SDG 2 on food and agriculture and SDG 16 on governance, and others are only partially covered, e.g. SDG 6 on (water) and SDG 11 on cities.

4.2.3. Among **President Juncker's 10 priorities**, two SDGs do not feature at all, namely SDG 14 on oceans and SDG 15 on biodiversity, while others are only partially covered, e.g. SDG 4 on education, SDG 6 on water, SDG 11 on cities and SDG 12 on sustainable consumption and production.

4.2.4. A narrower set of priorities was chosen in the **Five Presidents' Report**, which focuses on economic, financial, monetary and fiscal issues, and includes governance as a fifth topic. The report contains some references to SDG areas, such as energy, employment, social inclusion and health systems.

4.2.5. The **European Fund for Strategic Investments (EFSI)** has attracted projects in sectors that seem to align with certain SDG implementation challenges: energy (40 %), environment and resource efficiency (12 %), social infrastructure (3 %) <sup>(11)</sup>.

4.2.6. A number of SDGs — in particular SDG 3 on health, SDG 5 on gender, SDG 10 on inequality and SDG 11 on cities — are inadequately addressed under the thematic investment priorities of the **European Structural and Investment Funds (ESIF)**.

<sup>(10)</sup> As basis for the assessment in paragraph 4.2.2-4.2.7 see Niestroy (2016), pp. 38-45; European Commission, DG for Research and Innovation (2015). *The role of science, technology and innovation policies to foster the implementation of the SDGs*.

<sup>(11)</sup> COM(2016) 359 final.

4.2.7. With the brand new **EU global strategy on foreign and security policy**, the EU has a wider framework through which to embrace the UN 2030 agenda in areas such as trade, development, democracy, human rights, humanitarian aid, disaster risk reduction, technology transfer and climate action. The strategy does, to a certain extent, address the SDGs that relate to the need to ensure that prosperity is shared globally. It also states that the SDGs will inform the future post-Cotonou Agreement, and that they are a driver for the review of the European Consensus for Development.

### 4.3. *Key policy areas for transformational change*

4.3.1. Based on an analysis of the real gaps and trends in the EU's performance towards the goals and targets, the Commission should identify policy areas of key importance for the transformational changes required. Policy action should focus on these key areas, with appropriate flagship initiatives, including transparent action plans and milestones. The EESC, also taking into consideration its previous work in these fields, regards the following key policy areas as essential.

#### 4.3.2. *Just transition to a low-carbon, circular and collaborative economy* (SDGs 7, 8, 9, 11, 12 and 13)

4.3.2.1. One of the key objectives of SDGs is to keep development paths within the planet's limits, be that in relation to climate, resource consumption, air and water quality or terrestrial and marine biodiversity protection. This requires developed regions such as Europe to fundamentally reduce the environmental footprint of the economy based on a shift in production, consumption and society towards a low-carbon and circular economy. The transition is an opportunity for the EU to modernise its economy — thus increasing its competitiveness and resilience — and for it to improve the quality of life and well-being of its citizens.

4.3.2.2. Roadmaps have been introduced with the seventh environmental action programme, the 2030 climate and energy framework and the action plan for the circular economy. However, progress on the ground clearly has to be accelerated<sup>(12)</sup>. Consistency with other policy areas must be improved and the implementation gaps in many Member States addressed by fully integrating the low-carbon and circular economy transition into the European semester<sup>(13)</sup>. The seventh EAP and the circular economy action plan need strong implementation mechanisms and active coordination with other policy areas within the Commission in order to ensure an effective outcome<sup>(14)</sup>. Improved dialogue and alliances with civil society, including businesses and trade unions, are necessary to move forward. Active employment policies must provide for a just transition<sup>(15)</sup>. Climate policy has to be based on the principle of 'climate justice', ensuring that the burdens and benefits of climate change — in terms of its impacts on human rights, poverty and equality — are shared fairly and that it is not the most vulnerable groups who suffer.

4.3.2.3. It has to be ensured that markets support the economic transition and prices reflect the true external costs of climate emissions and natural resource use<sup>(16)</sup>. Existing commitments to remove environmental harmful subsidies have to be put into practice and environmental tax reform promoted more vigorously. New designs for decentralised clean energy markets where consumers also become producers have to be scaled up. Similarly, a decentralised sharing economy enables consumers to move towards the circular economy model. The emerging collaborative economy entails a conceptual shift

<sup>(12)</sup> EESC opinion on *The Paris Protocol — A blueprint for tackling global climate change beyond 2020* (OJ C 383, 17.11.2015, p. 74); EESC opinion on *Market-based instruments* (OJ C 226, 16.7.2014, p. 1).

<sup>(13)</sup> EESC opinion on *Market-based instruments* (OJ C 226, 16.7.2014, p. 1).

<sup>(14)</sup> EESC opinion on *Circular economy* (OJ C 264, 20.7.2016, p. 98).

<sup>(15)</sup> EESC opinion on *Coalition to deliver commitments of the Paris Agreement*, adopted on 14 July 2016, not yet published in the OJ.

<sup>(16)</sup> EESC opinion on *Market-based instrument* (OJ C 226, 16.7.2014, p. 1); EESC opinion on *A new energy market design* (OJ C 82, 3.3.2016, p. 13); EESC opinion on *Delivering a New Deal for Energy Consumers* (OJ C 82, 3.3.2016, p. 22).

with respect to labour and will be a major source of jobs. Consumers' and workers' rights and fair competition in this new sector will have to be ensured<sup>(17)</sup>.

#### 4.3.3. *Transition towards a socially inclusive society and economy — decent work and human rights* (SDGs 1, 3, 4, 5, 8 and 10)

4.3.3.1. The core concerns of the SDGs are ending poverty and ensuring that everybody can fulfil their potential in dignity and equality. In this, the SDGs reflect Europe's values and social model. However, the gap between the rich and the poor in Europe has been widening in the past decades, and the last 8 years of recession and financial crisis, austerity policies and, in certain areas, the lack of structural reforms have raised more unemployment and poverty rates, exacerbated additional inequalities and put more pressure on social protection, affecting the most vulnerable groups in particular.

4.3.3.2. Achieving the SDGs requires the EU to shift the economic paradigm towards a more inclusive model of development which distributes existing wealth more fairly and also increases economic and financial resilience<sup>(18)</sup>. In order to create employment and economic development the EU has to create a favourable investment environment, combined with a well-functioning internal market, international competitiveness and increased domestic demand.

4.3.3.3. The SDGs should be a reason to reaffirm the Europe 2020 strategy targets on poverty reduction, employment and education, and to think about more efficient ways of achieving them. Key social objectives — such as decent employment, poverty eradication, inequality reduction and social investment — must be put on an equal footing with macroeconomic considerations in the European Semester<sup>(19)</sup>. The first Commission proposal of the European Pillar of Social Rights contained no reference at all to the SDGs. Integration of SDGs should be considered in the further preparation of the European Pillar of Social Rights. The Committee is currently drawing up an opinion on the Pillar in which its view will be authentically expressed.

4.3.3.4. The EU should invest in a more coherent and systematic approach to combating social exclusion, marginalisation and poverty — one which focuses on vulnerable groups, whose approach is based on human rights and which also addresses gender discrimination. The Directive on equal treatment needs to be adopted<sup>(20)</sup>.

4.3.3.5. In addition to the challenges of unemployment and the ageing population welfare systems must be adapted to new challenges, in particular those caused by new forms of employment, which offer new employment opportunities but can lead to precarious work and in-work poverty. The job creation potential of key economic transitions — such as the digital, the low-carbon and the circular economy — has to be tapped<sup>(21)</sup>. Employment standards and a European minimum income will help to ensure territorial and social cohesion, and redistribution of wealth and income in a fair way<sup>(22)</sup> taking into account the competences of the Member States and the EU in these issues. The huge employment potential of social investment should be mobilised by both public and private actors<sup>(23)</sup>. In order to 'leave no one behind', it is necessary to invest in qualitative and inclusive education, and in high-quality, affordable and integrated services to support individuals in need.

4.3.3.6. Social enterprises support labour market integration while supplying affordable products and services for societal purposes, e.g. services in a decentralised low-carbon and circular economy. They should be supported with incentives for start-ups in the social economy and by an enabling regulatory environment<sup>(24)</sup>.

<sup>(17)</sup> EESC opinion on *Collaborative or participatory consumption, a sustainability model for the 21st century* (OJ C 177, 11.6.2014, p. 1); EESC opinion on *The sharing economy and self-regulation* (OJ C 303, 19.8.2016, p. 36).

<sup>(18)</sup> EESC opinion on *The impact of social investment on employment and public budget* (OJ C 226, 16.7.2014, p. 21); *Principles for effective and reliable welfare provision systems* (OJ C 13, 15.1.2016, p. 40).

<sup>(19)</sup> EESC opinion on *The impact of social investment on employment and public budgets* (OJ C 226, 16.7.2014, p. 21); EESC opinion on *Fighting poverty* (OJ C 133, 14.4.2016, p. 9).

<sup>(20)</sup> COM(2008) 426 final.

<sup>(21)</sup> EESC opinion on Green Action Plan for SMEs/Green Employment Initiative (OJ C 230, 14.7.2015, p. 99); EESC opinion on Digital society: access, education, training, employment, tools for equality (OJ C 451, 16.12.2014, p. 25); EESC opinion on Towards a thriving data-driven economy (OJ C 242, 23.7.2015, p. 61).

<sup>(22)</sup> EESC opinion on European minimum income and poverty indicators (OJ C 170, 5.6.2014, p. 23).

<sup>(23)</sup> EESC opinion on *The impact of social investment on employment and public budgets* (OJ C 226, 16.7.2014, p. 21).

<sup>(24)</sup> EESC opinion on *Building a financial eco-system for social enterprises* (OJ C 13, 15.1.2016, p. 152).

#### 4.3.4. *Transition to sustainable food production and consumption*

(SDGs 2, 12 and 15)

4.3.4.1. Food — the way it is grown, produced, consumed, traded, transported, stored and marketed — represents the fundamental connection between people and the planet, and is the path to inclusive and sustainable economic growth<sup>(25)</sup>. The SDGs, in particular goals 2 and 12, provide a crucial framework for joint action to feed the world sustainably by 2030. A transition is greatly needed to more sustainable food systems encompassing all stages from production to consumption. Producers need to grow more food with less environmental impact, while consumers must be encouraged to shift to nutritious and healthy diets with a lower carbon footprint.

4.3.4.2. The reform of the CAP has introduced a combination of measures, which can be considered as a step in the right direction<sup>(26)</sup>. A transition to sustainable food systems requires a comprehensive food policy integrated with a broad-based bio-economy strategy, not just an agricultural policy. Based on recognising the interdependence of food production and consumption, a suitable European policy approach has to be developed charting a course towards sustainability, health and resilience<sup>(27)</sup>.

4.3.4.3. In this context, an answer needs to be found, inter alia, to the question raised in the Falkenberg report of whether, for example, European agriculture's orientation towards exports is compatible with the objective of strengthening food production in developing countries.

4.3.4.4. The EU will have a key role to play in the delivery of target 12.3 of halving per capita global food waste. While close to 800 million people around the globe are hungry, figures show that a third of food produced for human consumption is lost or wasted globally — 100 million tonnes in the EU alone<sup>(28)</sup>. The EESC welcomes the Commission's plan to create a stakeholder platform to help frame the necessary measures and to share best practice on food waste prevention and reduction<sup>(29)</sup>.

#### 4.3.5. *Investing in innovation and long-term infrastructure modernisation and encouraging sustainable businesses*

(SDGs 7, 8, 9 and 13)

4.3.5.1. Transforming the economy into a more sustainable model will require a major shift in investment. It is estimated that achieving the SDGs globally would require around USD 3 trillion<sup>(30)</sup> of investment from both public and private sources. A holistic plan is needed for mobilising financial resources at EU and Member State level. The various EU funding programmes and initiatives need to be brought together.

4.3.5.2. The EU must gear public investment in developing countries more efficiently towards achieving integrated sustainable development and must integrate SDG indicators in the public funding of development projects. Even more importantly, the EU must encourage and scale up private sector investment in these areas.

4.3.5.3. But also within the EU the SDGs require significant investment in modernisation of infrastructure and sustainable businesses. First assessments on SDG implementation in the EU show serious gaps in investment in industry, innovation and infrastructure<sup>(31)</sup>.

<sup>(25)</sup> FAO and the 17 sustainable development goals: <http://www.fao.org/3/a-i4997e.pdf>

<sup>(26)</sup> EESC opinion on More sustainable food systems (OJ C 303, 19.8.2016, p. 64).

<sup>(27)</sup> Op cit.

<sup>(28)</sup> FUSIONS (2016). *Estimates of European food waste levels*; <http://www.eu-fusions.org/phocadownload/Publications/Estimates%20of%20European%20food%20waste%20levels.pdf>

<sup>(29)</sup> See footnote 26.

<sup>(30)</sup> IDDRI, 2015 Issue Brief: <http://www.iddri.org/Publications/Three-commitments-governments-should-take-on-to-make-Sustainable-Development-Goals-the-drivers-of-a-major-transformation>

<sup>(31)</sup> Niestroy (2016), p. 28.

4.3.5.4. There is a clear business case for sustainability. To make full use of this opportunity, the EU should create a favourable business environment that encourages innovation, entrepreneurship and sustainable investment. Some businesses have already started, but upscaling and replication of successful sustainable business experiences are paramount. Voluntary approaches such as Corporate Social Responsibility can contribute positively to this transition. They must be complemented by additional measures, such as measures increasing transparency, developing competences, facilitating partnerships and guiding the reporting of companies. The Commission should assess whether multi-stakeholder alliances with the private sector would be a useful instrument at EU level.

4.3.5.5. EU funding programmes must be aligned with the SDGs. Initiatives such as the Juncker Plan, as well as financial institutions and public investment banks, will play a decisive role. The challenge here is to reallocate capital. The Capital Market Union offers a window of opportunity to promote sustainable investment<sup>(32)</sup>. The mid-term review of the MFF will be an opportunity to mainstream SDGs in the major EU funds. Long-term investment has to be incentivised and obstacles removed<sup>(33)</sup>.

#### 4.3.6. *Making trade work for global sustainable development* (SDGs 12 and 17)

4.3.6.1. In a globalised economy, trade has a crucial impact on sustainable development within the EU and worldwide. Across various SDGs trade is therefore regarded as an important means of implementing the UN 2030 agenda. With its 'Trade for All' communication, the Commission has launched an ambitious action plan for more responsible trade and investment to safeguard social and environmental standards in trade and promote sustainable development<sup>(34)</sup>. Implementation of the SDGs will have to be systematically and effectively linked to that action plan and the results monitored.

4.3.6.2. Ambitious chapters on trade and sustainable development should be included in all EU trade and investment agreements and effectively implemented and enforced. The sustainable development dimension in the WTO framework needs to be strengthened<sup>(35)</sup>. The best way of securing social, labour and environmental standards in free trade agreements is to ensure much greater involvement of civil society throughout negotiations and the process of implementation and monitoring<sup>(36)</sup>.

4.3.6.3. The Commission should adopt a strategy promoting decent work in global supply chains<sup>(37)</sup>. Support must be provided for multi-stakeholder initiatives to promote due diligence in global supply chains.

#### 4.4. *Better governance for sustainable development*

4.4.1. In support of activities in key policy areas, the EU needs to assess and improve horizontal and vertical policy coordination for effective implementation of the UN 2030 agenda. Better governance is a key enabler of sustainable development<sup>(38)</sup>, and better coordination is a key approach to achieving policy coherence.

4.4.2. The EU needs to improve the coherence of its policies and consistently gear them to balanced sustainable development. The existing 'policy coherence for development' mechanism for mainstreaming development policy considerations in other areas should be scrutinised, strengthened and reconceptualised into an instrument providing 'policy coherence for sustainable development' and linked with other horizontal coordination efforts.

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<sup>(32)</sup> UNEP Inquiry, Building a sustainable Financial System in the European Union, p. 5: <http://web.unep.org/inquiry>

<sup>(33)</sup> EESC opinion on *Long-term financing* (OJ C 327, 12.11.2013, p. 11).

<sup>(34)</sup> COM(2015) 497 final.

<sup>(35)</sup> EESC opinion on *Trade, growth and development* (OJ C 351, 15.11.2012, p. 77); EESC opinion on *Financing development — the position of civil society* (OJ C 383, 17.11.2015, p. 49).

<sup>(36)</sup> EESC opinion on *Trade for All* (OJ C 264, 20.7.2016, p. 123).

<sup>(37)</sup> EESC opinion on *Decent work in global supply chains* (OJ C 303, 19.8.2016, p. 17).

<sup>(38)</sup> 'Ultimately, it's all about governance', Commissioner Timmermans' speech at the UN summit, 27 September 2015.



4.4.3. The Commission should also consider how the 'better regulation' tools can be used to contribute to achievement of the SDGs. The impact assessment guidelines should be reviewed accordingly, e.g. by introducing a sustainability criterion into impact assessments for new legislation.

4.4.4. In order to mainstream SDGs in all relevant policy sectors, the Commission should use the guiding principles of the UN 2030 agenda as a framework for reviewing EU legislation and policy-making, in particular with reference to a human-rights-based approach and the principle of 'leaving no one behind'.

4.4.5. Based on the global SDG indicators and complemented by appropriate European indicators, the EU must establish a system of SDG monitoring and review which is coordinated with monitoring in EU Member States and links up to global monitoring at HLPF level.

4.4.6. SDG indicators should also be introduced in existing processes of policy monitoring and evaluation. This applies in particular to the European Semester as the central EU governance mechanism, which has to be adapted to SDG implementation.

4.4.7. Strengthening the role of sustainability indicators in the legislative budget allocation process would be an important lever in the implementation of sustainable development. Conditionality criteria in the European Structural and Investment Funds should be adapted to SDG implementation.

4.4.8. Support should be provided for the initiative of the European Sustainable Development Network (ESDN) to establish a peer-learning platform between Member States.

4.4.9. The EU itself should take the initiative and present a voluntary review to the 2017 session of the HLPF, as the first regional organisation to do so. In addition, the EU should issue annual reports setting out how EU internal and external action contributes to SDG implementation in the annual thematic focus area of the HLPF<sup>(39)</sup>. Civil society should be fully included in the preparation and presentation of the voluntary review and the thematic reports via the European Sustainable Development Forum.

## 5. Civil society as a driving force

5.1. The UN 2030 agenda requires a shift **to a multi-stakeholder governance model**, with a greater role for civil society. SDGs can only be implemented if civil society and other stakeholders take an active role and acquire ownership. Civil society must be involved from local, regional and national level to EU and HLPF level, at every stage through to implementation.

5.2. For **the EU and its Member States**, the EESC suggests setting up a **European Sustainable Development Forum** to get a broad range of civil society organisations and stakeholders involved in implementation of the SDGs in the EU, and in its ongoing monitoring and review<sup>(40)</sup>. A first task of this forum should be to facilitate civil society dialogue in the process, leading to an overarching EU strategy for sustainable development.

5.3. The Commission should put in place a specific programme and funding line to support the capacity-building of civil society organisations so that they can participate fully in this process. Existing capacity-building programmes need to be more explicitly opened to CSOs working on domestic issues that are doing 'bridging' work in relation to the internal and external components, in SDG mainstreaming and in governance issues.

Brussels, 21 September 2016.

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

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<sup>(39)</sup> EESC opinion on The 2030 agenda — European Union committed to sustainable development goals globally, not yet published on the OJ.

<sup>(40)</sup> EESC opinion on A *European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73).



**Opinion of the European Economic and Social Committee on 'Future proof legislation'****(exploratory opinion)**

(2016/C 487/07)

Rapporteur: **Christian MOOS**Co-rapporteur: **Denis MEYNENT**

Referral	Slovak presidency, 14.3.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Subcommittee on Future proof legislation
Adoption by the subcommittee	7.9.2016
Adopted at plenary	21.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	213/2/5

**1. Conclusions and recommendations**

1.1. The Slovak presidency has asked the EESC to give its opinion on 'future proof legislation'. This new concept comes in the wake of other specific requests addressed to the Commission and the co-legislators with the aim of ensuring that legislation is more in line, in particular, with EU competitiveness and takes account of the specific nature of SMEs and micro-enterprises, aspects that the EESC has commented on several times before.

1.2. The EESC notes that efforts are being made to improve the quality of European legislation and that these efforts should be stepped up.

1.3. The EESC believes that high-quality, simple, comprehensible and consistent legislation 'is an essential factor in integration, not a burden or cost to be reduced', as it is key to generating sustainable economic growth, boosting innovation, making companies — including SMEs — more competitive and creating more high-quality jobs.

1.4. The 'innovation principle', as defined in chapter 2, is also in line with the thinking behind the REFIT programme. The EESC recalls the tenets of the 'Better regulation' programme, which have already been defined and applied, and stresses that this new principle must not take precedence over them; it must be applied intelligently and carefully, particularly with regard to social protection and the environment, health and consumer protection.

1.5. The EESC suggests that the potential of the 'innovation principle' should continue to be studied by sharing best practices.

1.6. Innovation is one of the conditions required for sustainable growth in Europe. A legislative framework favourable to innovation is needed, although there is no straightforward relationship between innovation and the regulatory framework; administrative measures, tax measures, an investment plan and other such initiatives are needed in addition to legislative measures in order to support and develop innovation.

1.7. European legislation should always aim to create a legal framework that enables businesses and citizens to benefit from the advantages of the internal market and to avoid unnecessary administrative burdens. European legislation is future proof if it is proactive and forward-looking; the EESC is in favour of legislation that can adapt. It considers that future proof legislation must be based on the Community method.

1.8. It is essential to avoid needless regulatory costs. Regulatory costs must be proportional to the benefits they generate.

1.9. The EESC believes that all legislation must be the outcome of public political discussions. The role of civil society and of the social partners is very important here, and an appropriate framework for quality social and civic dialogue is needed, with due regard given to the views expressed.

1.10. The EESC notes that it is not only the content of legislation but the legislative process itself that must be future proof, so as to meet the needs of businesses and citizens.

1.11. Each piece of future proof legislation must remain true to its original objective — always in compliance with the objectives set out in the Treaties — and be able to be enacted flexibly in national legislation. It should not go into too much detail, instead limiting itself to providing a framework, which should be properly transposed at national level in a timely manner, after consulting the social partners and representative civil society organisations and giving due regard to their positions. The use of sunset clauses should be further analysed.

1.12. The EESC is in favour of clarifying the principles of subsidiarity and proportionality which are sometimes used as arguments by opponents of legislative initiatives, without sufficient substantiation of their underlying reasoning.

1.13. Civil society should serve as a sounding board for future proof legislation. The EESC is well placed to act as intermediary between the legislator and civil society organisations and the social partners.

1.14. The EESC stresses the importance at national and European levels of impact assessments, including the SME test, for all legislative or non-legislative measures, so that political decisions are informed and based on specific data. Impact assessments are there to help political decision-making: they cannot replace it.

1.15. The EESC asks that it be consulted when the Commission, the Parliament and the Council come to an agreement on the withdrawal of legislative proposals as it is important to assess the material and immaterial consequences of such withdrawals.

1.16. The EESC is of the view that the Council must become more transparent and that a future reform of the treaties should attempt to improve the consistency of the Council's decisions. The rights of the Parliament must be strengthened.

1.17. The EESC considers it necessary to make more use of enhanced cooperation while not allowing this to weaken the institutions.

1.18. The EESC stresses the importance of its participation in the consultative processes that need to accompany the deepening of the EMU. The European Parliament, as well as the consultative bodies, need to be better integrated into the European Semester cycle.

1.19. The EESC supports a trilogue fast-track legislative procedure in emergencies only.

## 2. General comments

2.1. The Slovak presidency has asked the EESC to give its opinion on future proof legislation and to consider how the EU can improve legislation so that it is better tailored to the needs of the economy and society at this time of rapid change. The presidency asked how regulatory costs for businesses could be kept at a reasonable level without neglecting the objectives of the treaties.

2.2. European legislation is future proof if it is proactive and forward-looking and provides the maximum legal clarity and certainty. The EESC is therefore in favour of legislation that can adapt and that is also able to look ahead.

2.3. Regulations are also necessary if the political objectives of the treaties are to be met. The European Union is a social market economy and some rules therefore entail costs for businesses, such as in the field of health and safety at work. Social peace in Europe is safeguarded by striking a balance between economic and social objectives. Future proof legislation must respect this balance and promote economic, social and territorial cohesion, as well as solidarity among Member States.

2.4. The EESC supports and emphasises the need to strengthen the legitimacy of European legislation through better regulation, but it stresses that understanding what is future proof must not lead to a depoliticisation of the legislative process. It believes that all legislation must be the outcome of political discussions. In this regard, the major role of civil society and the social partners within the social dialogue must be taken into account.

2.5. European legislation is future proof if citizens see it as legitimate. It must be founded in representation, consensus and participation and be able to bring outcomes or solutions to collective problems.

2.6. So that European policies can deliver better results, the EESC believes that the European legislative process should be reviewed within the framework of the Treaty of Lisbon and, if necessary, as part of a new treaty. It is indeed precisely this aspect of future proof legislation that the EESC wishes to highlight, namely its quality, legitimacy, transparency and inclusiveness.

2.7. The EESC notes that it is not only the content of legislation but the legislative process itself that must be future proof, so as to meet the needs of businesses and citizens. In other words, it boils down to the question of democracy at European level.

2.8. The political will of elected representatives and the choices they make are therefore crucial. Each piece of legislation can be analysed in the light of its capacity to translate this political will into reality and can be judged on its democratic integrity. The EESC therefore suggests studying not only the content of legislation but also the legislative process.

2.9. This new concept of 'future proof legislation' is linked to other initiatives that aim to improve legislation. The EESC has expressed its views on the 'Better regulation' programme and the REFIT programme <sup>(1)</sup> in several opinions <sup>(2)</sup>. It wishes to mention once again its opinion on a proactive approach to legislation <sup>(3)</sup>.

2.10. The implementation of the 'Better regulation' and REFIT programmes — REFIT having been launched by the European Commission in 2012 in order to measure the administrative burden of regulatory provisions in force and, where applicable, to eliminate them — are key priorities of the presidency trio (the Netherlands, Slovakia and Malta) from January 2016 to June 2017. Obviously the idea of future proof legislation falls naturally within the scope of these programmes.

2.11. The EESC notes that efforts are being made to improve the quality of European legislation and emphasises the need for these efforts to be stepped up. The EESC has noted the Commission's communication of 19 May 2015 <sup>(4)</sup> and the Interinstitutional Agreement on Better Law-Making of 13 April 2016 <sup>(5)</sup>, while observing that it was not involved with the latter.

2.12. The EESC believes that high quality, simple, comprehensible and consistent legislation, guaranteed by the Commission, Parliament and the Council, is a vital precondition for generating sustainable economic growth and stimulating innovation, the competitiveness of businesses — including SMEs and microenterprises — and the creation of good quality jobs. It is also important to fully implement the Small Business Act in all areas.

2.13. European legislation 'is an essential factor in integration, not a burden or cost to be reduced. On the contrary, when proportionate it is an important guarantee of protection, promotion and legal certainty for all European stakeholders and citizens' <sup>(6)</sup>.

2.14. The EESC recalls the importance of the principles that have already been established in order to ensure appropriate legislation. These include the principles of correct implementation within deadlines, subsidiarity and proportionality, the precautionary principle, predictability, 'think small first', the external dimension of competitiveness and the internal market test.

2.15. Currently, a new aspect of legislation — the innovation principle — seems to be becoming a priority for the Council. This principle, which entails taking into account the impact on research and innovation in the process of developing and reviewing regulation, is one of the many criteria for evaluating Commission legislative proposals in technical, technological and scientific domains. It should however be applied intelligently and carefully, particularly in the areas of social and environmental protection, health and consumer protection.

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<sup>(1)</sup> OJ C 230, 14.7.2015, p. 66 and OJ C 303, 19.8.2016, p. 45.

<sup>(2)</sup> List of EESC opinions and information reports.

<sup>(3)</sup> OJ C 175, 28.7.2009, p. 26.

<sup>(4)</sup> *Better regulation for better results — An EU agenda* — COM(2015) 215 final.

<sup>(5)</sup> *Better Law-Making* (OJ L 123, 12.5.2016, p. 1).

<sup>(6)</sup> OJ C 303, 19.8.2016, p. 45.

2.16. As can be seen in the EU Competitiveness Council conclusions <sup>(7)</sup>, 'the "Innovation Principle" should be applied, which entails taking into account the impact on research and innovation in the process of developing and reviewing regulation in all policy domains'. This is also reflected in the Slovak presidency's request, as well as in a recent CEPS study <sup>(8)</sup>, which suggests that overly strict rules are likely to hold up investment and slow down innovation. This interpretation is also in line with the thinking behind the REFIT programme.

2.17. The EESC believes that use of this new principle must be carefully defined in advance.

2.18. In the EESC's opinion, the 'innovation principle' should have the same weight as the other criteria mentioned in point 2.14 and used by the Commission to analyse the impact of a legislative proposal. A balance should therefore be struck between the innovation principle and the other criteria and care should be taken to ensure that it does not take precedence over them.

2.19. The EESC suggests to the Slovakian presidency that the potential of the innovation principle should continue to be studied by sharing best practices. The EESC calls on the Commission to use this as a basis to draw conclusions regarding the opportunities and impact of this new approach.

2.20. European legislation should always aim to create a legal framework that enables businesses and citizens to benefit from the advantages and freedoms of the internal market — i.e. to promote Europe's innovative drive. This means avoiding unnecessary administrative burdens; meanwhile, poorly designed, obsolete or burdensome rules should be revised or abolished.

2.21. The EESC believes that regulatory costs should be proportional to the benefits they generate. Needless administrative costs and burdens must be avoided for the sake of the businesses, individuals and administrations responsible for applying regulation. What matters is that a regulation's net benefit and added value outweigh its costs for businesses and society as a whole.

### 3. Forward-looking proposals for future proof legislation

3.1. The EESC stresses that the concept of 'future proof legislation' needs to be better defined. It needs to be respectful of the values and objectives of the European Union in accordance with Articles 1 and 2 of the Lisbon Treaty. Thus the innovation principle, which is one of the priorities of the Slovak presidency <sup>(9)</sup> and therefore closely linked to the new concept of future proof legislation, needs to take on this responsibility.

3.2. Innovation is one of the conditions required for sustainable growth in Europe. Whether at European or national level, all legislation should protect companies from unnecessary burdens, particularly SMEs, which have fewer resources. Innovation and competitiveness are the basis for the success of the European social market economy. Innovation needs a high-quality regulatory framework. Legislation and innovation interact in a complex way. This interaction must not be viewed in purely quantitative terms of more or fewer legislative provisions <sup>(10)</sup>.

3.3. The EESC is of the view that the use of sunset clauses in European legislation should be further analysed so as to avoid future bureaucratic hurdles.

3.4. Each piece of future proof legislation must remain true to its original purpose, always be consistent with the objectives of the treaties and be able to be flexibly enacted in national legislation, in compliance with the principles mentioned above. It should not go into too much detail, instead limiting itself to providing a framework that can be supplemented, if necessary, either by non-legislative instruments or by national regulators, the social partners and self-regulatory schemes (the latter always under the control of the legislator at the appropriate level).

3.5. The EESC is in favour of a clarification of the principles of subsidiarity and proportionality. Compliance with subsidiarity, or rather with the division of competences, is of paramount importance for the smooth functioning of the EU as a common legal area. These two principles are, however, sometimes used as arguments by opponents of legislative initiatives, without sufficient substantiation of their underlying reasoning. The criteria that determine the application of the principles of subsidiarity and proportionality need to be clarified. The European Union legal area must be unified and indivisible.

<sup>(7)</sup> Conclusions of the Competitiveness Council of 26 May 2016 (point (2)), [http://www.consilium.europa.eu/register/en/content/out/?&typ=ENTRY&i=ADV&DOC\\_ID=ST-9580-2016-INIT](http://www.consilium.europa.eu/register/en/content/out/?&typ=ENTRY&i=ADV&DOC_ID=ST-9580-2016-INIT)

<sup>(8)</sup> The Centre for European Policy Studies (CEPS) is a Brussels-based think tank.

<sup>(9)</sup> <http://www.eu2016.sk/data/documents/presidency-programme-eng-final5.pdf>

<sup>(10)</sup> *Better regulations for innovation-driven investment at EU level*, Commission Staff Working Document: [https://ec.europa.eu/research/innovation-union/pdf/innovrefit\\_staff\\_working\\_document.pdf](https://ec.europa.eu/research/innovation-union/pdf/innovrefit_staff_working_document.pdf)

3.6. The EESC considers that the legislative process at European level must be examined first in order to improve the quality of legislation. There are many initiatives that aim to improve the legislative process, but the stakeholders in this process do not agree on how this should be done. The EESC refers to the Commission guidelines in its 'Better Law-making' programme (19 May 2015) and the Interinstitutional Agreement (December 2015/16, April 2016), the Brok-Bresso report (February 2016), the Hübner report (March 2016), the Giegold report (end May 2016) and in particular to the Small Business Act (February 2011). It also draws attention to the proposals of Member States' governments and parliaments, to initiatives such as European Movement International (EMI) and the Union of European Federalists (UEF), as well as to the contributions of research institutes and think tanks.

3.7. Civil society organisations are of great importance in the development of European public opinion. Europe needs a less fragmented public opinion to serve as a sounding board for future proof European legislation. As the representative body of civil society organisations in Europe, the EESC is well placed to facilitate a consensus between various civil society stakeholders at all levels, and also in the Member States. More specifically, it is an important intermediary between the legislator and civil society organisations and the social partners.

3.8. The EESC is aware of the importance of impact assessments, especially for SMEs. They must be taken into account in the legislative process but cannot however replace the political process.

3.9. Simplifying laws that are difficult to understand and sometimes even to enforce, and abolishing regulations that have become redundant, can benefit citizens and economic players, thereby contributing to an environment that encourages growth and the creation of more good quality jobs (an 'enabling environment'). Nevertheless, the EESC asks that it be consulted when the Commission, the Parliament and the Council come to an agreement on the withdrawal of legislative proposals. In this context, it is important to evaluate the material and immaterial consequences of such withdrawals and to inform the EESC of them.

3.10. The Treaty of Lisbon aims to strengthen the role of the European Parliament as well as the Community method. In the aftermath of the crisis, the European Council became the cornerstone of the European institutional system and the EESC considers that this slide needs to be rectified. Future proof European legislation must be based on the Community method.

3.11. Meetings of Council configurations working on the basis of qualified majority voting should be public for the sake of greater transparency and democracy. Qualified majority voting for Council decisions should be the rule. The EESC also believes that a future reform of the treaties should try to improve the consistency of Council decisions, as its configurations currently pursue partly contradictory policies, with obvious effects on the quality of legislation.

3.12. The extension of the European Parliament's rights as provided for in the treaties, but not yet introduced, should be implemented as soon as possible. For example, the restricted right of initiative introduced by the Treaty of Lisbon (Article 225 TFEU) should be used more extensively pursuant to the terms of this Treaty. Rejection by the Commission should only be possible on formal grounds, in particular where the basis of competences is insufficient.

3.13. Differences in the pace of integration have long been a reality for the EU and these differences are inevitable going forward in view of the number of Member States. In this context, the EESC considers it necessary to make more use of enhanced cooperation. At the same time, EU institutions must not be weakened by the variable geometry of projects for European integration. Enhanced cooperation should function on the basis of qualified majority voting.

3.14. The EESC supports the European Parliament's call to transform the Economic and Monetary Union (EMU) into an 'effective and democratic economic government' and again stresses the importance of its participation in the consultative processes that need to accompany such a deepening of the EMU if civil society is to be involved.

3.15. The EESC considers that the trilogue fast-track legislative procedure should only be used in emergencies, which is in keeping with the terms of the Treaty. Unlike European Parliament committees, trilogue meetings are neither transparent nor accessible. Restricting the legislative procedure to a single reading means restricting the participation of civil society.

3.16. The EESC considers that the instruments and procedures introduced in the aftermath of the financial crisis and the euro crisis need to be better integrated within the European legislative framework. The European Parliament and bodies such as the European Committee of the Regions (CoR) and the EESC need to be better integrated into the European semester cycle. The European Stability Mechanism must be linked up to the EU legislative framework.

3.17. With regard to delegated acts, the European Commission should make its decision-making process more transparent (see Article 290 TFEU), as the Committee has repeatedly urged.

Brussels, 21 September 2016.

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

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## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

519ST PLENARY SESSION OF THE EESC ON 21 AND 22 SEPTEMBER 2016

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions’***(COM(2013) 884 final — 2013/0432 (COD))**(2016/C 487/08)*Rapporteur-general: **Mr Antonello PEZZINI**

Consultation	European Parliament, 22/06/2016
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote	173/0/3
(for/against/abstentions)	

**1. Conclusions and recommendations**

1.1. The European Economic and Social Committee has always considered an effective customs union to be an essential part of the European integration process, serving to guarantee the safe and transparent free movement of goods, in full compliance with competition rules and with maximum protection for consumers and the environment. It is also an effective means of tackling infringements, fraud, counterfeiting and facilitating the development of legitimate trade.

1.2. The Committee strongly supports the aims of the Commission’s proposal, insofar as the proposed measures are intended to:

- constitute a first step towards an effective single European customs regime, complete with a unitary system of governance, common legal and administrative customs bodies such as a European Customs Court, a common set of rules for implementing the Customs Code, a single IT system with uniform compliance procedures, and an unambiguous interpretation of the rules that facilitates the development of internal and external trade;
- provide certainty in a consistent manner across the whole Union with regard to regulation and enforcement, using a uniform system for detecting and penalising infringements, as well as civil and non-criminal sanctions (including the possibility of non-financial penalties) proportionate to the duties evaded and the seriousness of the infringement as determined by common maximum and minimum thresholds.



- form an integral part of the enhanced common legal system for preventing and deterring infringements, with the help of ITC compliance modelling and automatic early warning systems;
- provide common mechanisms for dispute resolution and comparison of sanctions imposed, with the aim of simplifying and accelerating the development of European trade and to avoiding long and costly legal procedures;
- comply fully with the obligations arising from the World Trade Organization (WTO) and World Customs Organization (WCO) international frameworks.

1.3. The EESC calls for the directive's objectives to include the requirement that this tool — which allows for the gradual but necessary convergence towards a single, unitary regulatory system in terms of both enforcement and interpretation — be accompanied by monitoring and market surveillance, based on automatic detection systems which do not impede the development of legitimate European trade.

1.4. The Committee recommends that in addition to assessing degrees of convergence in relation to implementing the new legislation at territorial level, the biannual report to be presented to the European Parliament, the Council and the EESC also propose indicators to be used in the next steps in the process towards creating:

- a genuine European Customs Agency,
- and a European Customs Court,
- and establishing an effective and efficient common customs corpus to align customs infringement and penalty systems, with a single basis for regulation and implementation and affording unambiguous interpretation.

## 2. Introduction

2.1. The Customs Union (CU) is the cornerstone of the European Union. The Union's customs legislation has been fully harmonised since 1992 in terms of substantive and procedural rules. The new Union Customs Code (UCC), Regulation (EU) No 952/2013, was adopted in 2013 and entered into force in 2016.

2.2. The regulatory aspects of customs matters are one of the areas which fall exclusively under the Union's remit, pursuant to Article 3 of the TFEU, while activities relating to organising checks are the responsibility of Member States. Sanctions and regulatory enforcement are covered by the framework for judicial cooperation in criminal matters (Chapter V of TFEU).

2.3. Customs operations represent around 16 % of global trade, handling imports and exports worth over EUR 3 500 billion per year. Customs duties collected in 2013 totalled EUR 15,3 billion, almost 11 % of the EU budget.

2.4. Non-harmonised national infringement and sanction systems may lead to illegal trade moving to Member States where there are lower risks of discovery and where sanctions are less stringent. Legitimate businesses must also face higher costs when operating across several jurisdictions. Here, varying sanctions regimes risk altering trade flows and economic strategies in the single market, as well as granting advantages to companies that operate in countries with less stringent customs checks.

2.5. National regimes applicable to customs infringements and sanctions have been analysed since the Customs 2013 programme, revealing a considerable number of differences between regimes. This has also been highlighted by recent in-depth studies <sup>(1)</sup>.

2.6. Customs enforcement laws follow 28 <sup>(2)</sup> different legal regimes, as well as different administrative and judicial traditions, with significant variation in the definition and severity of sanctions. The lack of consistency in implementing customs laws has an effect on conditions for competition, which should be homogeneous within the internal market.

2.7. Inconsistencies in the implementation of legislation concern, in particular: the nature of administrative and/or penal sanctions, the type of sanctions, thresholds and the extent of infringements, dispute resolution/settlements, levels and types of responsibility, any aggravating or mitigating factors, time limits and barred statutes and the responsibility of legal persons.

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<sup>(1)</sup> See: Analysis and effects of the different Member States' customs sanctioning systems. PE 569.990 — January 2016.

<sup>(2)</sup> Currently.

2.8. Inconsistencies relating to implementation need to be overcome and harmonised European customs regimes established — in accordance with the single customs principle — that enable Member States to agree on dispute resolution mechanisms for settlements in the event of customs infringements, in accordance with the nature and extent of the violation. The aim would be to avoid long and costly legal proceedings for both parties.

2.9. It is helpful to recall that the Customs Union is the operational arm of many of the EU's trade policy measures, and it implements numerous international agreements on trade flow. It does this by developing — via Member States' administrations — important horizontal processes involving data management and trader and implementation management. Inconsistencies in implementing legislation within the European system have already been the subject of complaints before the WTO.

2.10. In response to the serious challenges facing the customs union in terms of the way it functions, and given the inconsistent application of the rules, which could potentially dampen its overall effectiveness, the EESC has already emphasised the need 'to pursue a single customs policy, based on uniform, up-to-date, transparent, effective and simplified procedures, which will contribute to the EU's economic competitiveness at global level' <sup>(3)</sup>.

2.11. As the EESC has highlighted <sup>(4)</sup>, in order to establish a genuine internal market, definite time frames need to be guaranteed for implementing the enacting provisions and uniform interpretations of EU's — customs legislation, which should act as a single administration. The aim would be to ensure: the equal treatment of operators across the whole EU customs territory, easier access to the status of Authorised Economic Operator, a comprehensive update of all stakeholders concerned, computerised procedures and quality training of staff. In essence, we should be able to establish a **single European customs system**.

2.12. Only with effective progress towards a single European customs system and appropriate governance bodies will we be able to remedy the currently complex and varied functioning of the Customs Union.

### 3. The Commission proposal

3.1. The main objective of the Commission's proposal for a directive is to use a harmonising directive to establish a common legal reference framework that aims to achieve:

- equal treatment for economic operators;
- protection for the EU's financial interests;
- effective implementation of the rules on customs infringements and sanctions;
- legal certainty (*lex certa*) and conditionality and proportionality in relation to penalties (*nulla poena sine culpa*);

while ensuring compliance with customs rules in a consistent manner across the EU, accompanied by the harmonised implementation of regulations on customs infractions and sanctions, thereby avoiding having national infringement and sanctions systems that differ too greatly and so alter competition rules and affect the free movement of goods.

3.2. More specifically, in view of the chosen legal basis, Article 33 of the TFEU, the Commission has proposed:

- a long list of sanctionable offences divided into three sub-categories, namely: sanctionable offences in cases of strict liability, cases of misconduct or negligence and cases of fraud;

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<sup>(3)</sup> See: OJ C 229, 31.7.2012, p. 68.

<sup>(4)</sup> See the EESC opinions in OJ C 229, 31.7.2012, p. 68 and OJ C 251, 31.7.2015, p. 25.

- a scale of sanctions that are ‘effective, proportionate and dissuasive’ for each of the categories, in accordance with the criteria laid down in the case-law of the Court of Justice <sup>(5)</sup>;
- a range of sanctions that can be imposed from 1 to 30 % of the value of the goods, or established at a flat rate if the infringement relates to certain statuses or authorisations;
- introducing a four-year time limit from the day of the infringement, or the day that it ends in cases where there is a continuation or a recurrence of the infringement, in order to address discrepancies in the time limits on penal powers;
- introducing mechanisms to suspend the administrative procedure, in the event that the same circumstances lead to the initiation of criminal proceedings;
- providing an incentive for cooperation and the exchange of information between Member States.

3.3. The proposal, which was presented by the European Commission three years ago, came under scrutiny from the European Parliament and met with objections from several Member States. The Lithuanian parliament objected that ‘the chosen legal basis (Article 33 TFEU) of the Proposal does not authorise the Union to take action in establishing a framework concerning the infringements of Union customs legislation and providing for sanctions for those infringements.’ <sup>(6)</sup>. It argued that the legal basis did not comply with the principle of subsidiarity, in particular in failing to comply with the requirements of the principle of conferral, according to which the Union acts only if the Treaties provide for a legal basis for action.

3.4. The European Parliament has now resumed its examination of the proposal — entrusting the drafting of its opinion to Kaja Kallas MEP, the rapporteur for the IMCO Committee — and has requested that the legal basis be extended to include Article 114 of the TFEU <sup>(7)</sup>. This provides for a mandatory consultation with the EESC, as indicated in the referral letter to the EESC by the chair of the European Parliament’s IMCO Committee.

3.5. The EESC agrees fully with this choice and highlights the importance of a **uniform** customs system, able to provide value and unity not only to the internal market, but to the whole of European society, which is now more than ever in search of unitary systems.

#### 4. General comments

4.1. The European Economic and Social Committee has always considered an effective customs union to be an essential part of the European integration process, in order to guarantee the safe and transparent free movement of goods in full compliance with competition rules and with maximum protection for consumers and the environment.

4.2. The EESC considers it essential to secure a common approach to the prevention, deterrence and unambiguous identification of infringements, as well as a uniform approach to establishing sanctions, including a settlements system, to ensure a uniform, non-discriminatory implementation of European legislation throughout the whole of the Union, as provided for in Article 3 of the TFEU.

4.3. The EESC strongly supports accelerating the ongoing process of moving towards an effective single European customs regime. This should be achieved via a system of unitary governance, a European Customs Agency and the establishment of common administrative and judicial bodies <sup>(8)</sup>. There should also be a European Court of Customs <sup>(9)</sup> based on the North American example of using a single system for infringements and, as a last resort, a single sanctions regime backed by *ex ante* triggering of prevention and resolution/settlement systems that aim to contain/eliminate costly litigation that hinders community trade, particularly for small and medium-sized enterprises.

<sup>(5)</sup> See: Court of Justice rulings in cases C-382/92 and C-91/02.

<sup>(6)</sup> See: Seimas of the Republic of Lithuania — Conclusions of the Committee on European Affairs, document No ES-14-51, 9.7.2014 No 100-P-71.

<sup>(7)</sup> Article 33 of the TFEU is therefore the correct legal basis for a cooperation framework between customs authorities. Article 114 of the TFEU is the legal basis used for the adoption of harmonisation measures for the single market. The harmonisation measures referred to in this article require, as a prerequisite, the existence of differences between laws in the Member States that risk disrupting trade within the internal market.

<sup>(8)</sup> This is legally feasible, based on the provisions of Article 257 of the TFEU, which has already been applied to the EU Civil Service Tribunal (the employment tribunal for EU staff) and is also set to be used to establish a Unified Patent Court.

<sup>(9)</sup> The US Court of International Trade could be used as the model. ‘The Customs Courts Act of 1980 creates a comprehensive system for judicial review of civil actions arising out of import transactions and federal transactions affecting international trade.’

4.4. The Committee believes that the uniform implementation of European customs law must also include the litigation phase for economic operators, both within the internal market and internationally, as well as the *ex ante* approach to prevention, using single, enhanced telematic ICT solutions to avoid mountains of paperwork relating to detection.

4.4.1. The Committee reiterates the importance of 'a customs policy that is implemented on the basis of uniform, transparent, effective, efficient and simplified procedures, enabling the European Union to take on its global competitors and ensuring that the rights and security of industry and European consumers, as well as intellectual property, can be protected' <sup>(10)</sup>.

4.5. The EESC is convinced that any European system for infringements and settlements should be accompanied by measures that include all the other elements which form part of the general legal enforcement system, such as supervision, checks, investigation and monitoring.

4.6. The Committee insists that it is essential to provide certainty with regard to the legislation and its implementation in a uniform manner throughout the whole European Union. This should entail a single system for detecting and penalising infringements using clear and well-defined categories, and civil and non-criminal sanctions (including the possibility of non-financial penalties) in proportion to the seriousness of the infringement as determined by common minimum and maximum thresholds, which require the convergence of interests.

4.7. In the EESC's view, this first step towards a convergence of infringement and sanctions regimes in the common customs rules should:

- align time limits with the three-year time limit for the notification of a customs obligation, as is provided for in the Customs Code;
- guarantee that infringements are sanctioned in accordance with the degree of culpability;
- align financial penalties in a proportionate manner and in accordance with the duties evaded, not with the value of the goods.

4.8. The EESC insists that interoperability be guaranteed between the various databases used within the European market surveillance system, in order to increase the deterrent effect with regard to infringements. This should be done on the basis of a common strategy and with substantial support from Community programmes, in order to ensure that information is shared between the different authorities at different levels, in real time, particularly in cases of infringements and sanctions of a serious nature, including tackling illegal trade and simplifying procedures for legitimate trade.

4.9. In accordance with Court of Justice case-law, the Committee agrees with the inclusion of Article 114 TFEU, in addition to Article 33, as a legal basis, since the measures set out under Article 114 are intended to improve the operating conditions of the internal market and contribute to removing distortions in competition, which is the spirit of this legislative proposal.

4.10. Pending an effective customs union, the EESC calls for a boost to EU action on staff training and development, as well as to the EU legislative framework's management capacity, including via action on administrative capacity and establishing a common customs support team to ensure the uniform application of sanctions, resolutions and settlements.

4.11. The Committee recommends that the report to be submitted by the Commission to the European Parliament, the Council and the EESC every two years should not only contain an assessment of the degree of convergence in Member States, but also an overview of the key performance indicators on sanctions, the spread of best practices, the effectiveness of the relevant services, and the effectiveness of the European legislation framework adopted. This could be used to assess the next steps in the process towards the creation of a **genuine European Customs Agency, a European Customs Court and in training an effective and efficient common customs body**.

Brussels, 21 September 2016.

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

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<sup>(10)</sup> See: EESC opinion (OJ C 271, 19.9.2013, p. 66).

**Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches**

[COM(2016) 198 — 2016/0107 (COD)]

(2016/C 487/09)

Rapporteur: **Victor ALISTAR**

Co-rapporteur: **Petru Sorin DANDEA**

Consultation	European Parliament, 28/04/2016 Council, 28/04/2016
Legal basis	Article 50(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	08/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	204/7/16

## 1. Conclusions and recommendations

1.1. The EESC endorses the Commission proposal, which aims to make the taxation system more transparent through country-by-country reporting, and considers that this measure will boost public confidence in the European Union.

1.2. Tax transparency is a useful tool for ensuring recognition of the contribution made by multinational enterprises to public revenue in the place in which they operate.

1.3. The EESC points out that public opinion and particularly business is calling for the country-by-country system to include disclosure of specific data regarding compliance with tax requirements (previously established by other regulatory instruments at European, Member State and capital market level).

1.4. A level playing field is guaranteed when all operators active in the single market have a fair tax burden on profits made in the European single market, regardless of the way in which they are organised in the global market.

1.5. While the standards proposed by the Commission are minimal and lower than those set by the OECD as regards the data that must be reported, the proposal for a directive is calling for them to be publicly disclosed in order to ensure consistency with the companies' codes of ethics and public accountability to all consumers, partners and taxpayers in the EU. The EESC therefore considers that the set of data to be provided must be that established by the BEPS standards which the EU and most Member States have already adopted, given that this regulatory instrument deals with transparency and is not intended to scale back existing international commitments.

1.6. The EESC considers that the regulatory instruments set out in the Commission's anti-tax-avoidance package must ensure that large and/or multinational enterprises which meet their tax commitments honestly are not put at a disadvantage by the aggressive tax planning of other multinational enterprises.

1.7. The EESC recommends that the data be disclosed in one of the internationally-used languages included among the official languages of the EU in order to achieve the objective of giving the public genuine access to data for the whole single market.

1.8. With a view to simplifying the administrative burden inherent in disclosing and managing data at EU level, the EESC considers that Member States should be required to establish a public register for country-by-country reporting, to include an EU-wide standardised system.

1.9. Given the Member States' and Commission's Open Government Partnership commitments, the publication of data on a portal should take the form of an open system, enabling civil society and business to access and use the data easily.

1.10. The EESC considers that, in order to resolve the underlying problems, the Commission must produce a more ambitious package which pursues the ongoing tax harmonisation and ensures that the resources needed for the Member States' investment programmes, social protection and economic growth are collected efficiently, proportionately and without discrimination, avoiding both tax base erosion and the dangers of abuse and surcharging in some jurisdictions.

1.11. The EESC considers that the EUR 750 million threshold is too high and calls either for it to be reduced or for a schedule to be drawn up stipulating a gradual decrease in the threshold.

1.12. Clearer criteria must be established for defining tax good governance and listing tax jurisdictions which do not comply.

## 2. European Commission proposal

2.1. In March 2016, the European Commission presented a communication<sup>(1)</sup> setting out a proposal for a directive amending the Accounting Directive<sup>(2)</sup>. The proposal was submitted in connection with the anti-tax-avoidance package presented by the Commission in March 2016 as part of the Agenda for fairer, more transparent and more effective corporate taxation<sup>(3)</sup>.

2.2. Combating tax avoidance and aggressive tax planning is a priority for the European Commission. With this proposal, the Commission seeks to implement the principle of taxing profits where they are generated.

2.3. The proposal requires multinational enterprises with a turnover of more than EUR 750 million to disclose publicly the income tax they pay and other relevant tax-related information in a country-by-country report.

2.4. The proposal does not require micro or small enterprises to comply with any new obligations in relation to income tax.

2.5. The proposal for a directive amending Directive 2013/34/EU includes measures to implement Action 13<sup>(4)</sup> of the OECD's BEPS action plan (Base Erosion and Profit Shifting) uniformly across the EU. These measures address improving the mechanism for the automatic exchange of information between Member State tax administrations and include information on year-end results for multinational corporations among the types of information to be exchanged.

2.6. The proposal responds to calls by the European Parliament to introduce EU-wide country-by-country reporting (CBCR) on corporate income tax.

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<sup>(1)</sup> COM(2016) 198 final.

<sup>(2)</sup> Directive 2013/34/EU.

<sup>(3)</sup> [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/anti\\_tax\\_avoidance/timeline\\_without\\_logo.png](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/anti_tax_avoidance/timeline_without_logo.png)

<sup>(4)</sup> <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>



2.7. Between June and December 2015, the Commission held a broad consultation on the CBCR proposal. There were 400 respondents, including companies, industry associations, NGOs, members of the public and think tanks. Most individuals who responded to the consultation called for the EU to lead the debate, and if necessary to go beyond current international CBCR initiatives. Most of the companies that responded preferred a CBCR standard aligned with the OECD's BEPS standard.

2.8. The proposal is supported by an impact assessment which was received positively by the Regulatory Scrutiny Board. Following the opinion of the Board, the impact assessment was improved.

2.9. The Commission estimates that around 6 000 companies will need to draw up a country-by-country report as they are active in the EU. Of those, only 2 000 companies are headquartered in the EU, a fraction of the total 7,5 million companies.

### 3. General and specific comments

3.1. The proposal calls for the rules set out in the OECD's BEPS action plan <sup>(5)</sup>, which aims to combat aggressive tax planning at global level, to be implemented uniformly across the Member States. As it has pointed out in previous opinions <sup>(6)</sup>, the EESC welcomes the Commission's initiative and supports its efforts to combat aggressive tax planning, a practice used by some multinational corporations which is estimated to erode Member States' tax bases by tens of billions of euros each year.

3.2. The Commission's anti-tax-avoidance package helps make tax practices more transparent and generates legitimate pressure in favour of a level playing field in terms of competition and performance between companies with access to tax planning instruments and those operating only at single-market level. This directive does not amend the principles of taxation; instead, it imposes greater transparency with regard to the way in which they are applied, in response to European public demand in the wake of the Luxleaks and Panama Papers scandals.

3.3. The proposal excludes 85-90 % of multinational companies, as only companies generating revenue in excess of EUR 750 million will be subject to CBCR requirements. The EESC considers this threshold to be too high and discriminatory. Leaving the majority of multinational corporations outside the scope of the directive could make it less effective.

3.4. The EESC considers that the EUR 750 million threshold should be gradually decreased and a schedule for this drawn up, following intermediate impact assessments.

3.5. The Commission proposes that the country-by-country report should include information described in Article 48c of the proposal. The EESC considers that this information should include a declaration by the company on any operations carried out in jurisdictions included in the list provided for in Article 48 g. Similarly, in order to ensure that the directive delivers the anticipated results, the list of types of information stipulated in the article should include data on assets and sales and a list of all subsidiaries and branches, as recommended by the OECD's BEPS standard.

3.6. The Commission proposes that the country-by-country report should be detailed and provide separate financial statements for each Member State in which the parent undertaking has subsidiaries or branches. For jurisdictions outside the EU, the proposal states that information must be provided in consolidated form. The EESC considers that the consolidated presentation of data might conceal aggressive tax planning operations, and thus make the directive less effective. The EESC urges the Commission to stipulate disclosure of detailed country-by-country reports for every tax jurisdiction in which the parent undertaking has subsidiaries or branches.

3.7. Article 48 g of the proposal provides for a list to be drawn up of tax jurisdictions that are uncooperative or do not comply with good governance standards in tax matters. The EESC has already endorsed <sup>(7)</sup> the proposal for an EU list of jurisdictions which refuse to apply good governance standards in tax matters. Currently, most Member States have their

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<sup>(5)</sup> <http://www.oecd.org/ctp/beps-actions.htm>

<sup>(6)</sup> See EESC opinions *The fight against tax fraud and tax evasion* (OJ C 198, 10.7.2013, p. 34) and *Anti-tax-avoidance package* (OJ C 264, 20.7.2016, p. 93).

<sup>(7)</sup> See EESC opinion *Tax transparency package* (OJ C 332, 8.10.2015, p. 64).



own systems of lists and penalties for financial transactions involving these jurisdictions. The EESC considers that an EU list with clear criteria for identifying uncooperative jurisdictions and penalties uniformly applicable by all Member States would be a much more effective instrument for combating tax avoidance and aggressive tax planning. The EESC therefore endorses the measures set out by the Commission in this strategy.

3.8. In order to meet the policy objective of greater transparency with regard to the taxation of companies, the EESC recommends establishing a national public register administered by the Member States' tax administrations so that the country-by-country report is freely accessible. With a view to easing working procedures and cutting red tape, the EESC recommends that the directive establish an EU-wide standard format so that data can be processed openly in line with Open Government Partnership commitments.

3.9. The EESC also considers that in order to ensure a uniform system of tax ethics across the single market, fiscal policies must be underpinned by greater harmonisation of tax principles and policies, with more emphasis on the principle of taxing income where it is generated, including for production and trade relationships between Member States.

3.10. Given the many requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC welcomes the Commission's initiative of including in the provisions of the directive the requirement that Member States disclose publicly the data set out in the country-by-country reports.

3.11. The proposal stipulates that the country-by-country report be published in the official language of the Member State in which the company operates. The EESC considers that in order to ensure that the public has access to the tax information included in the report, the information must also be published in at least one internationally-used language.

3.12. Given the damage done by the crisis to the administrative capacity of Member States' tax administrations, the EESC recommends that the Commission and the Member States should assign the human and financial resources needed to ensure that the new tax rules are implemented successfully.

Brussels, 21 September 2016.

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

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**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) 2016/399 as regards the use of the Entry/Exit System’**

(COM(2016) 196 final — 2016/0105 (COD))

**and on the ‘Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011’**

(COM(2016) 194 final — 2016/0106 (COD))

(2016/C 487/10)

Rapporteur: **Mr Cristian PÎRVULESCU**

Consultation	European Parliament, 09/05/2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	09/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	155/2/0

## 1. Conclusions and recommendations

1.1. The European Economic and Social Committee considers that the entry/exit system (EES) in its new form is indeed needed, providing added value in terms of security at European level. As in other areas of policy and regulation, with its opinions the Committee promotes a balanced approach which reconciles security and proper law enforcement without ever departing from the fundamental values of the EU.

1.2. The Committee considers that the roll-out of the new entry/exit system must be accompanied by campaigns explaining as clearly as possible how the system works, emphasising the protection of personal data. It recommends organising information campaigns and educational campaigns targeting both authorities and third-country nationals.

1.3. The Committee considers that staff involved in running the system must be properly informed and trained, and recommends that such training be given significant financial and institutional support.

1.4. The Committee considers that compliance with fundamental rights will need to be monitored constantly by the competent EU institutions and open to civil society organisations at both European and national levels.

1.5. As regards personal data, the Committee stresses that the right to access, rectify and delete personal data must be clearly defined and safeguarded.

1.6. After the system is rolled out, the Committee would recommend carrying out an investigation similar to the one undertaken in the pilot phase, in order to explore the system's impact on passengers under 'real-life' conditions.

## 2. Introduction: background and grounds for setting-up a new EU entry/exit system

2.1. Given that the total number of regular border crossings in 2025 is forecast to rise to 887 million, of which around one-third are expected to be by third-country nationals travelling to Schengen countries for a short-term visit, there is a need to modernise the EU's borders in order to enable shared and efficient management of the flow of travellers.

2.2. The new entry/exit system (EES) covers border crossings by all third-country nationals visiting the Schengen area for a short stay (a maximum of 90 days in any period of 180 days), both visa-required and visa-exempt travellers or possibly travellers entering on the basis of a touring visa (up to one year).

2.3. The introduction of the EES aims to: 1. address border check delays and improve the quality of border checks for third-country nationals; 2. ensure systematic and reliable identification of 'overstayers'; and 3. reinforce internal security and the fight against terrorism and serious crime.

2.4. In February 2013, the Commission tabled a package of legislative proposals on smart borders to modernise the Schengen area's external border management. There have been a number of developments since 2013, which have facilitated the design and implementation of the EES:

2.4.1. the Visa Information System (VIS) became fully operational and the biometric verification of visa-holders against VIS at Schengen external borders has become compulsory;

2.4.2. visa liberalisation dialogues with countries in the Western Balkans and at the eastern and south-eastern borders of the EU were concluded or have been accelerated, which will lead to an increasing proportion of visa-exempt travellers to the EU;

2.4.3. the Internal Security Fund (ISF-B) was adopted, which earmarked EUR 791 million for the development of smart borders;

2.4.4. the *European Agenda on Migration* identified 'border management' as one of the 'four pillars to manage migration better'; and

2.4.5. the European Court of Justice judgment on the Data Retention Directive provided legal clarity on the conditions and safeguards that need to be respected for the storage and use of EES data.

## 3. General comments on the establishment of a new EU entry/exit system

3.1. The Committee believes that it is necessary to move from a non-integrated and cumbersome system, based on the stamping of travel documents by border staff, to a quasi-automated one, which facilitates access for third-country nationals. The added value of EU efforts here is obvious. The European Union needs a border system that can cope with both increased mobility and the need to ensure security across the EU — a system that facilitates mobility and, at the same time, manages to avoid impacting on fundamental rights.

3.2. The Committee is pleased that the system has been piloted and that it was possible to observe the effects of using different biometric identification systems on third-country nationals in practice (see report on the results of the pilot project)<sup>(1)</sup>. The survey results show considerable confidence in the reliability of biometric technologies and reflect the existing consensus among experts on the most secure and reliable means of biometric identification for determining a person's identity.

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<sup>(1)</sup> European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project. Report on the technical conclusions of the Pilot, Volume 1.

3.3. We should welcome the participation of the *Agency for Fundamental Rights*, which has carried out an opinion poll among third-country nationals who have encountered various biometric systems that could be used, in order to investigate, in different locations (airports, stations and trains, ports and sea borders, road border crossings) and under different conditions, the elements involved in biometric identification of third-country nationals; all systems used in this experiment are already available on the market <sup>(2)</sup>.

3.4. The survey results show that providing biometric data is considered to be humiliating by some people, with an average of 45 % (North America — 30 %, Europe — 43 %, Latin America and the Caribbean — 46 %, Asia — 52 % and Africa — 58 %) <sup>(3)</sup>. As regards the type of biometric data collected, iris scanning is considered to be humiliating by most respondents (32 %), followed by facial recognition (26,2 %). It is also worth pointing out that a considerable proportion of respondents (44,3 %) believed that the system would cause less discrimination.

3.5. In its opinions, the Committee has repeatedly sought to promote a balanced approach, in which the need for security and law enforcement always goes hand in hand with the stated values of the EU and its aim of being free, open and secure at the same time.

3.6. It is of crucial importance for the European Union and its Member States to facilitate the entry-exit system in order to attract, rather than to discourage, more visitors, from tourists to business people and professionals. Therefore the Committee has drawn attention to worrying trends in some Member States which are becoming increasingly reluctant to admit third-country nationals. 'The Committee is concerned that it will not be credible for the Member States to seek to make it easier for citizens of non-EU countries to enter the EU at a time when some Member States are threatening to send EU citizens back to their countries of origin, because they are unemployed, or quite simply preventing them from entering' <sup>(4)</sup>.

3.7. In its opinion on smart borders, the EESC pointed out that 'the European Union's identity is explicitly and implicitly associated with openness and interconnectedness not only within but also across borders. The EU is a vibrant cultural, social, political and economic space and cross-border mobility is instrumental in maintaining its relevance in the global arena. With this in mind, the EU institutions and Member States should make sure that the new systems do not affect the travel and willingness to travel to the EU of third-country nationals' <sup>(5)</sup>.

3.8. In the same opinion the Committee stressed the importance of safeguarding fundamental rights and non-discrimination, and of using procedural and institutional means to ensure that data collected and stored in the system is protected and used appropriately.

3.9. It is as yet unclear to what extent the Member States must contribute on a budgetary and institutional level to implementing this system. It is necessary to clarify this issue and to find solutions to obtain a firm commitment from Member States to cooperate and contribute to implementing the system.

3.10. The Committee draws attention to similar experiments carried out by countries that have implemented the same type of systems. The expectations of the public and all stakeholders must be adapted according to the system's ability to achieve all the objectives set.

#### 4. Specific comments

4.1. As regards biometric identification, the Committee is pleased that the number of fingerprints has fallen from 10 to four, the minimum for obtaining relevant data when combined with facial recognition.

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<sup>(2)</sup> European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project — Annexes, November 2015, pp. 307-335.

<sup>(3)</sup> European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project — Annexes, November 2015, p. 322.

<sup>(4)</sup> 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 — An open and secure Europe: making it happen' — COM(2014) 154 final (OJ C 451, 16.12.2014, p. 96).

<sup>(5)</sup> Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union' COM(2013) 95 final — 2013/0057 (COD), on the 'Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)' COM(2013) 96 final — 2013/0060 (COD), and on the 'Proposal for a regulation of the European Parliament and of the Council establishing a registered traveller programme' COM(2013) 97 final — 2013/0059 (COD) (OJ C 271, 19.9.2013, p. 97).

4.2. As regards personal data, the Committee stresses that the right to access, rectify and delete personal data must be clearly defined and safeguarded.

4.3. It is essential that when using the EES, the competent authorities guarantee that they will uphold the human dignity and integrity of the people asked to provide data and that they do not discriminate on the basis of sex, colour, ethnic or social origin, genetic features, language, religion or belief, political opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

4.4. The operation of the EES has a strong impact on the exercise of the rights enshrined in the *Charter of Fundamental Rights of the European Union*: the right to human dignity (Article 1), the prohibition of slavery and forced labour (Article 5), the right to liberty and security (Article 6), respect for private and family life (Article 7), protection of personal data (Article 8), the right to non-discrimination (Article 21), the rights of the child (Article 24), the rights of the elderly (Article 25), the rights of persons with disabilities (Article 26) and the right to an effective remedy (Article 47). The Committee considers that compliance with fundamental rights will need to be monitored constantly by the competent EU institutions and open to European and national civil society organisations.

4.5. Although the pilot project used to test the running of the system in a number of locations did not give rise to any significant resistance or reservations by users, as is clear from the findings of the survey by the Agency for Fundamental Rights, some groups of people may have difficulties using the system and public opinion may not be favourable. There may also be people who have reservations about the collection of biometric data, either for cultural and religious reasons or because they do not trust the way in which the data will be used and safeguarded by the authorities.

4.6. The Committee therefore considers that the roll-out of the system should be accompanied by campaigns explaining as clearly as possible how the system works, emphasising the protection of personal data. All guarantees relating to the collection, storage and use of data must be disclosed, so that any reservations can be overcome and obstacles to mobility removed.

4.7. The Committee considers that staff involved in running the system must be properly informed and trained. The pilot project revealed that border staff have pointed out that they need to be trained for the new equipment and procedures<sup>(6)</sup>. The Member States are responsible for ensuring that the system works properly. Accordingly, rules and procedures should establish the Member States' liability in the event of harm arising from any infringement of the regulation.

4.8. The Committee considers that transferring or making personal data obtained by the Member States through the EES available to third countries, international organisations or private entities established in or outside the EU must be limited and fully justified.

4.9. The Committee considers that the appointed authorities and Europol should request access to the EES only when they have good reason to believe that this will provide information which will be of significant help in preventing, detecting or investigating a terrorist offence or another serious offence. The EES will be useful for police work but access must be strictly regulated.

4.10. The Committee is pleased that the anticipated costs of the system have been revised, with a significant drop (from EUR 1,1 billion to EUR 480 million).

Brussels, 21 September 2016.

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

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<sup>(6)</sup> European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project. Report on the technical conclusions of the Pilot, Volume 1, p. 14.

**Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010**

(COM(2016) 52 final — 2016/0030 (COD))

(2016/C 487/11)

Rapporteur: **Graham WATSON**

Consultation	European Commission, 16.9.2016 European Parliament, 7.3.2016 Council of the European Union, 9.3.2016
Legal basis	Article 194 of the Treaty on the Functioning of the European Union and Article 304 of the Treaty of the Functioning of the European Union (TFEU)
Section responsible	Transport, Energy, Infrastructure and Information Society
Adopted in section	7.9.2016
Adopted at plenary	22.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	133/4/9

## 1. Conclusion and recommendations

1.1. EU security of gas supply policy has been partly successful in encouraging Member States to think in terms of solidarity and shared security. Nonetheless, most energy policy issues are still treated mainly as national interests. In order to deliver the security Europeans expect, energy supply has to be tackled in a more coherent way at EU level.

1.2. Such an EU-wide regulation needs to take account of the broader context of global climate change mitigation efforts with ambitious targets set out by the Paris Agreement, the EU's strategy for a resilient Energy Union with a forward-looking climate change policy, and various geopolitical tensions in Europe and globally, including the movement of refugees, crises at Europe's borders including the recent ones in Ukraine, Turkey, Libya and Georgia, as well as the rise in regionalism threatening EU integration.

1.3. Substantial investment is required to secure gas supplies in Europe. It is important that this is found primarily from private sources; profits in the oil and gas industry are such that public support should not be needed. A predictable and reliable political framework is necessary to ensure investor confidence and, in turn, a steady and reliable supply of gas.

1.4. The proposed Regulation is designed to avert gas supply crises like those in 2006 and 2009. Most of the demand for gas is for heating buildings. A widespread energy efficient building retrofitting programme as suggested in the Energy Performance of Buildings Directive (2010/31/EU) and the Energy Efficiency Directive (2012/27/EU), especially when targeted at gas-heated buildings, would lead to a significant drop in demand for gas, especially in the winter months in which the previous crises occurred.

1.5. Natural gas remains an important transitional source of energy and makes a significant contribution to reducing GHG emissions, chemical emissions, as well as emissions of dangerous toxic substances such as PM<sub>10</sub> and PM<sub>2,5</sub> particulates. With emission level indicators considerably lower than those for coal, a greater share of natural gas in Member States' energy mix is of particular importance for the improvement of air quality and, as a consequence, the health of the citizens of Member States and their neighbours. However, the transition to a low-carbon economy must be speeded up and gas procurement policy must take account of this.

1.6. Energy consumers can play an important part in developing and managing supply. Methods to activate consumers should be developed in cooperation with consumers themselves, including innovative use of ICT. Energy poverty should be addressed primarily by social policy measures. Such measures should include dedicated national plans to stimulate investments in building-renovation programmes, as stipulated in Article 4 of the Energy Efficiency Directive (2012/27/EU), prioritising fuel-poor and vulnerable consumers and promoting collaboration between social partners.

1.7. The rolling-out of RES combined with accelerating electrification may well reduce EU gas consumption and therefore imports; the faster the RES adoption, the less relevant the EU's external policies on securing gas supplies will be. The Committee requests that the Commission provides an assessment of how accurate the coordination has been between EU gas consumption forecasts, EU security of gas supply, RES development and energy efficiency improvements across sectors.

## 2. Introduction (gist of the Commission proposal)

2.1. In view of the economic disruption and individual suffering caused by interruption to gas supplies, the European Commission seeks to build on the EU's earlier work to ensure greater interconnection of gas delivery infrastructure and greater solidarity between Member States in their willingness to share the burden of interruptions.

2.2. The draft Regulation updates an important policy within the Union's drive to create a European Energy Union (COM(2015) 80 final). The Energy Union must fit within the context of the EU's commitments to act to halt — and, if possible, reverse — man-made climate change resulting from the burning of fossil fuels.

2.3. The purpose of the draft regulation is to ensure that all Member States put in place appropriate tools to prepare for and manage the effects of a gas shortage due to a disruption in supply or exceptionally high demand.

2.4. To meet this objective, the draft regulation proposes stronger regional coordination, with certain principles and standards being set at EU level. The approach proposed is that Member States should cooperate closely within their regions when conducting regional risk assessments. Risks identified through regional risk assessments will be addressed in regional preventive action plans and emergency plans, to be peer-reviewed and approved by the Commission.

2.5. To ensure that risk assessments and plans are comprehensive and consistent with one another, the Regulation sets out mandatory templates listing aspects that must be taken into account when conducting the risk assessment and drawing up the plans.

2.6. The Regulation also improves the application of the supply standard to protected customers (mainly households) and the infrastructure standard (the possibility of supplying gas even if the largest infrastructure is not available). It enables permanent bi-directional capacity. Finally, it proposes the introduction of additional transparency measures concerning gas supply contracts, as such contracts may affect security of supply in the EU.

2.7. The need for EU action is justified on the grounds that national approaches both result in sub-optimal measures and aggravate the impact of a crisis. A measure taken in one country can cause a shortage of gas in neighbouring countries.

2.8. While functioning markets are vitally important in securing gas supplies, well-coordinated measures taken by Member States, particularly in the event of an emergency, can significantly boost supply security. This concerns better coordination not only of national mitigation measures in the event of an emergency, but also of national preventive measures, such as proposals for better coordination of national storage or LNG policies (COM(2016) 49 final), which can be strategically important in certain regions.



2.9. A monitoring report by the Agency for the Cooperation of Energy Regulation in 2014 showed there are still serious reasons for concern as regards cooperation between Member States (the predominantly national measures they take are not well suited to tackling gas supply problems); moreover the stress test conducted in the summer of 2014 (COM(2014) 654 final) showed that a severe disruption of gas supplies from the east would still have a major impact throughout the EU.

### 3. General comments

3.1. The main difficulty with this proposal for a regulation is not its text but its context. While the Union's Framework Strategy for a resilient Energy Union with a forward-looking climate change policy (COM(2015) 80 final) speaks in almost messianic tones about the need to combat climate change, this draft regulation — while consistent with previous regulations on security of gas supply — is not entirely consistent with the framework strategy's goals.

3.2. Many climate scientists tell us that to stand a reasonable chance of limiting the planet's temperature rise to 2 °C, we have to get greenhouse gas emissions close to zero by 2050. For 1,5 °C, even sooner. To eliminate the roughly 4 611 million tonnes of CO<sub>2</sub> equivalents that we, for instance, poured into the atmosphere in 2013 we have to meet EU's primary energy demand (1 567 million tonnes of oil equivalent (Mtoe) in 2013) with clean power. More than two thirds of the emissions come from the fossil fuels that drive our industrial civilisation, and those fossil fuels have to be replaced.

3.3. Natural gas remains an important transitional source of fuel and has helped the EU reduce GHG emissions from solid fuels, especially in countries where coal plays a dominant role. However, the transition to lower-carbon and finally carbon-free energy sources must be speeded up. This is a requirement for meeting the long-term goal of keeping the increase in global average temperature to 1,5 °C, as stipulated in the Paris Agreement, of which gas supply policy must take account. This should be reflected in the risk assessments which Member States are asked to carry out. Better alignment between the EU's gas supply policy and the dimensions of the Energy Union, in particular a fully integrated European energy market, energy efficiency improvements and decarbonisation, is needed to promote efficient investment and set the framework for a resilient energy system.

3.4. Five years after the adoption of Regulation (EC) No 994/2010, the security of the gas supply remains a highly topical issue, especially given the tensions prevailing between Ukraine and Russia. Efforts are being made at national and EU level to enhance the security of gas supplies for the winter of 2016/2017 and beyond. However, a serious drive to ensure better energy performance of buildings through insulation, prioritising gas-heated buildings, would have a substantial impact on the need for gas.

3.5. Natural gas has replaced solid fuels as the second most important fuel for the EU, delivering 23,8 % of all primary energy consumed in 2013. This has helped the EU cut its GHG emissions. However, the rise in renewable energy is remarkable: in 2013, renewables provided 15 % of gross final energy consumption in the EU, up from 8,3 % in 2004, putting the EU on track to reach its 2020 target of a 20 % share of renewables. Gross electricity generated from renewable sources more than doubled between 2000 and 2013 and provided more than a quarter of all electricity in 2013.

3.6. The rolling-out of RES combined with accelerating electrification may well reduce EU gas consumption and therefore imports; the faster the RES adoption, the less relevant the EU's external policies on securing gas supplies will be. Improved coordination between EU gas consumption forecasts, EU security of gas supply, RES development and energy efficiency improvements across sectors is, therefore, essential.

3.7. Coordination between EU countries in transport and delivery of all kinds of fuels is essential to the building of an Energy Union, both on the level of policies and long-term strategies. The Commission's proposal seeks to divide the EU into seven 'regions' within which policy should be coordinated. This is at best a halfway house, since EU-wide policy coordination will soon be necessary and this should ideally be extended further to include Energy Community Contracting Parties — the neighbouring countries with which the EU has agreements in the field of energy.

3.8. In view of increasing competition for energy supplies and the need to diversify sources of supply, energy must remain an important part of the EU's external policies; these should however increasingly be geared to securing supplies of energy from renewable sources, particularly from mature technologies such as solar and wind power generation, to complement supplies from domestic production from renewable energy sources.

3.9. A new energy policy governance must ensure coherence between different aspects of energy supply as well as fulfilment of EU-level targets. One important aspect for ensuring coherence is an early, systematic and structured engagement with civil society in order to ensure that awareness of energy security challenges is shared widely among civil society organisations and that — most importantly — policymakers across Europe are aware of the concerns, interests, resources and solutions offered by civil society and social partners for addressing these challenges and achieving the objectives of EU energy policy. To this end, the EESC has been actively promoting the concept of a European Energy Dialogue and the Commission has strongly welcomed the EESC's initiative.

3.10. Mutual reinforcement of the external and internal dimensions of energy policy, as set out in the Energy Diplomacy Action Plan (EDAP), should be another important feature of energy policy governance. The EESC has previously called for the design and implementation of the EU's external energy policy to enhance existing, and establish new, energy cooperation and dialogues with major producer states and regions, transit states and regions, neighbouring countries, as well as key global and regional strategic partners, in order to strengthen the diversification of EU energy sources, supplies and routes.

3.11. The external energy policy of the EU, including gas procurement policy, must take account of a broad geopolitical context. The EESC has previously stressed that commercial aspects of the project should not be the sole factor in the decision, especially considering the tendency of Russia to use energy as a tool for geopolitical aims. The political stability of countries along the pipeline route and their vulnerability to foreign political influence, the social and environmental record of project developers as well as the involvement of Russian companies in exploration and production are among factors which the EU's energy diplomacy must consider. The assessment of new project needs, furthermore, to take into account their impacts on the energy security of neighbouring countries. With respect to Ukraine, for example, there is a risk that projects removing the transit of gas from its territory will affect its revenues, forestall investment in network upgrades and take away leverage with Moscow.

#### 4. Specific comments

4.1. The EESC welcomes the Commission's proposal for a common definition of 'protected customer'.

4.2. The EESC welcomes the concepts of 'shared responsibility' and a 'three-level approach' between natural gas undertakings, Member States and the EU for security of gas supply; and the proposal that the Commission should coordinate action where necessary, as called for in a past EESC report <sup>(1)</sup>. This approach is particularly important in ensuring transparency of supply contracts.

Moreover, the Committee considers that the responsibilities and tasks of the public authorities set out in Article 3 must be distinguished from those of companies or private bodies, and therefore suggests a new wording making it clear that:

— security of gas supply is a task of the Member State Competent Authorities and the Commission, within their respective fields of responsibility,

— natural gas companies and industrial gas consumers must cooperate and implement the measures decided by the relevant authorities.

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<sup>(1)</sup> OJ C 339, 14.12.2010, p. 49.

- 4.3. The EESC notes the criteria proposed for the composition of the seven 'regions' within the EU. At the very least, a solution should be envisaged where one Member State could be simultaneously a member of more than one 'region'.
- 4.4. The EESC notes that the infrastructure standard proposed is largely unchanged from that in the 2010 Regulation. It welcomes the proposal for bi-directional ('reverse flow') capacity on interconnectors between Member States.
- 4.5. The EESC notes that the supply standard proposal is largely unchanged from that in the 2010 Regulation. It welcomes the requirement for an impact assessment before any new non-market measures.
- 4.6. The EESC notes the proposal that risk assessment now be carried out at regional level. It welcomes this as a step towards the day when risk assessment will be carried out at EU level. It welcomes the Commission's proposed template and sees the peer review process as important in this regard.
- 4.7. The EESC welcomes the proposals for emergency plans, crisis management procedures and emergency responses.
- 4.8. The EESC welcomes the proposals for transparency and solidarity between Member States, based on the stress tests of the summer of 2014, as an appropriate insurance mechanism. In particular, the Committee notes with appreciation the agreement of the High Level Group on Central and South-Eastern Europe Gas Connectivity on a list of priority projects, the implementation of which will enable the countries in the region to have access to at least three sources of gas, thereby ensuring diversification and security of supply.
- 4.9. The EESC welcomes the proposal for cooperation with third countries which are contractual partners within the Energy Community.
- 4.10. The EESC acknowledges the importance of the proposal for continuous monitoring of the security of gas supply measures and urges the Commission to include in this the need to phase out the use of natural gas in favour of renewable energy sources.
- 4.11. The EESC notes the proposed derogations for Malta and Cyprus and encourages both countries, in view of their favourable climates, to be among the leaders in the transition to meeting energy needs from renewable energy sources rather than fossil fuels.

Brussels, 22 September 2016

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

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**Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU strategy for liquefied natural gas and gas storage**

(COM(2016) 49 final)

(2016/C 487/12)

Rapporteur: **Marian KRZAKLEWSKI**

Consultation	Commission, 16.2.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and Information Society
Adopted in section	7.9.2016
Adopted at plenary	22.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	109/0/8

## 1. Conclusions and recommendations

1.1. The EESC believes that the EU strategy for liquefied natural gas (LNG) and gas storage set out in Communication COM(2016) 49 final is an essential element of the Energy Union project which is aimed at ensuring the security and diversification of energy supplies.

1.2. In the next few years global gas liquefaction potential will increase, which is likely to put downward pressure on prices; the Committee therefore sees this as an opportunity for increasing the security and resilience of the EU's gas system.

1.3. The Committee believes that the European gas market should be made more flexible by increasing the share of LNG.

1.4. The EESC considers that increasing the proportion of LNG in the EU gas market, ensuring that there are adequate gas reserves in storage facilities and promoting the genuine diversification of energy supplies are factors that will ensure the energy security of European Union's Member States.

1.5. The Commission communication rightly draws attention to the apparent adequacy of the EU's regasification capacity, 'apparent' since it is not distributed optimally at regional level.

1.6. The Committee agrees that to achieve full and sustainable diversification of gas supplies to the EU, a diversified approach to the construction of new LNG terminals is required.

1.6.1. Priority should be given to investments aimed at balanced supply routes. Prudent EU measures supporting the construction of new LNG terminals and cross-border transmission links should take account of regions which are currently isolated and dependent on a single supplier.

1.6.2. Effective and timely investments in projects of common interest are important for the expansion of the LNG market in the EU. Transparent mechanisms should be established in order to ensure a fair distribution of investment and operating costs between the Member States and economic operators.

1.6.3. The Committee believes that the EU must ensure that the development of fast-track LNG terminal and Floating Storage Regasification Unit (vessels) (FSRU) projects is a technologically neutral choice, based on the most effective investment.

1.7. The EESC supports the Commission's intention of verifying the compliance with EU law of Inter-governmental Agreements (IGAs) for LNG purchases from non-EU countries.

1.8. The Committee points out that the Commission communication does not show how the strategy to boost the share of LNG and increase gas storage is consistent with the major network investments currently planned by the EU's neighbours, such as Nordstream 2.

1.9. The EESC recognises and stresses the value of natural gas, including the important role of LNG, to the EU's transition to a low-carbon energy system and efforts to reduce GHG emissions as well as toxic emissions of gas and dust (PM<sub>10</sub>, PM<sub>2,5</sub>), which pose a risk to the health and lives of people in the Member States.

1.9.1. The strategy outlined in the communication should emphasise more strongly the important role of natural gas as a bridging technology in the transition from coal to low-carbon energy. As a cleaner energy source, gas has a particularly important role to play in efforts to sharply cut low-stack emissions, especially from households and transport.

1.9.2. The EESC recommends that, during the transition from coal to a low-carbon economy, there should be a greater share of natural gas in Member States' energy mix, especially in those countries where coal plays a dominant role.

1.10. The Committee supports the idea set out in the communication that using LNG in the heavy goods transport sector, as well as in maritime transport, may significantly reduce environmental damage.

1.10.1. At the same time, the Committee points out that, in the section of the communication dealing with LNG, not enough attention is paid to the intensive development of the European system of obtaining and using LNG as a fuel in transport, both road and maritime.

1.11. The EESC recognises that gas storage plays a particularly important role in Europe's security architecture and in maintaining a stable supply of natural gas. The EU's existing storage capacity is considerable (COM(2016) 49 final), but its distribution is insufficient.

1.12. The EESC highlights the fact that, in order to ensure balance and achieve energy security, operators must adopt sets of principles, namely the idea that the minimum level of stored gas must cover 100 % of the national market's gas requirements for the winter period; however, the best alternative would be to balance stored gas at regional level.

1.13. The Committee supports and views as important the Commission's plans to remove barriers to trade between effective regional gas hubs and individual national markets.

1.14. In connection with the question of completing missing infrastructure, which was highlighted in the communication, the EESC considers that use should be made of the opportunity afforded by the European Fund for Strategic Investments (EFSI) with a view to providing additional financing for critical energy and teleinformatics infrastructure projects.

## 2. Background

2.1. In March 2015, the Council of the EU adopted its conclusions on the Energy Union. The most important part of this document stipulates that, 'The EU is committed to building an Energy Union with a forward-looking climate policy on the basis of the Commission's framework strategy, whose five dimensions are closely interrelated and mutually reinforcing:

- energy security, solidarity and trust,
- a fully integrated European energy market,
- energy efficiency contributing to moderation of demand,
- decarbonising the economy,
- and research, innovation and competitiveness.'

2.2. The EESC notes that, in paragraph 2, point (a) of this document, the Council called for **work to be stepped up on electricity and gas infrastructure projects**, including interconnections — particularly to peripheral regions — in order to ensure energy security and a well-functioning internal energy market.

2.3. This EESC opinion looks at the **EU strategy for liquefied natural gas (LNG) and gas storage**, as set out in communication COM(2016) 49 final. The strategy is an important part of the plans for an Energy Union (COM(2015) 80), in terms of its contribution to the security of the energy supply, the competitiveness of energy markets and the climate and environment objectives pursued within and outside the framework of the Energy Union.

2.4. Natural gas is an important fuel in the EU energy mix, accounting for 25 % of total energy consumption. It is important to highlight that extraction of this raw material in the Member States meets 34 % of energy production needs in industry, services and for private purposes.

2.5. **Natural gas extraction in the EU is declining relatively quickly.** In 2004, 229,5 billion m<sup>3</sup> of natural gas were extracted, but this fell to 132,3 billion m<sup>3</sup> in 2014. What is more, existing reserves will only last for 11,3 years. This explains why the European Union is the world's largest importer of natural gas. In 2014, natural gas consumption in the EU amounted to 386,9 billion m<sup>3</sup>. This was the lowest level for 10 years, 11,6 % lower than the previous year, yet average annual gas consumption in the EU between 2004 and 2013 was 447 billion m<sup>3</sup>.

2.6. **Global recoverable deposits of natural gas are enormous** (187 000 billion m<sup>3</sup>), with an R/P ratio of 54 years. When unconventional gas resources are factored in, the ratio rises to 290 years.

2.7. By 2020, **world gas liquefaction capacity will increase** significantly (+ 50 %), especially in the USA and Australia (over 100 million tonnes/year), which is bound to push prices downwards. This is an opportunity for EU Member States to boost the security and resilience of the EU's gas system so that it can cope with any disruptions to supply.

2.8. In the first decade of the 21st century, **gas was imported into the EU mainly via a system of gas pipelines, and gas in liquid form (LNG) accounted for only fifth of imports**, despite the fact that LNG has only 1/600th of the volume, making it more economical from the point of view of transport and storage.

### 3. General comments

3.1. The EESC acknowledges the **important role of gas in the EU's low-carbon energy transition**, and in efforts to cut emissions. **Ensuring that Member States have balanced and unfettered access to diversified and politically stable gas producer markets** is becoming a key short and medium-term priority, contributing to the EU's climate and energy policy and to the creation of a stable Energy Union. Policy on the proportion of gas in the energy mix should take account of the long-term objective set in the Paris Agreement (COP 21), i.e. to keep the increase in global average temperature below 1,5 °C.

3.2. The Committee notes that the Commission Communication COM(2016) 49 final is a continuation of the agreement on the EU climate and energy policy framework, adopted by the Council of the European Union on 23-24 October 2014. The agreement sets the following targets to be achieved by 2030:

- a 40 % reduction in CO<sub>2</sub> emissions,
- a share of at least 27 % of renewable energy in the EU energy mix,
- an increase in energy efficiency of at least 27 %.

3.3. The economic competitiveness of gas as a fuel in EU countries, as well as the question of whether gas will become a viable competitor to solid fuels, particularly coal, will be decided over the course of the next decade by the interplay between five different factors:

- climate and energy policy, particularly efforts to improve air quality,
- gas prices,

- implementation of the EU emissions trading scheme, and thus prices for CO<sub>2</sub> emission allowances,
- the strength of gas exports (LNG) from the USA and Australia, and
- the world market price of crude oil and coal.

3.4. The EESC supports and views as important the Commission's plans to **remove barriers to trade between effective regional gas hubs** and individual national markets. To this end, it is essential to complete the internal gas market, remove regulatory, commercial and legal barriers and ensure access to these markets.

3.4.1. Since the importation of liquefied shale gas from the USA can have a positive impact on the European gas market, the EESC urges the EU to engage in active negotiations, within the framework of the TTIP, to remove barriers to imports of this kind of gas from the USA.

3.5. It should be pointed out that the **Commission communication does not show how the strategy** to boost the share of LNG and increase gas storage **is consistent with** the planned Nordstream 2 investment (COM(2016) 49 final).

3.6. The strategy outlined in the communication should emphasise more strongly the important role of natural gas as a bridging technology in the transition from coal to low-carbon energy. As a fuel, gas is particularly suited to rapid and stable electricity and heat generation, and could therefore act as a back-up technology for renewable energy sources.

3.7. The EESC recommends that, during the transition from coal to a low-carbon economy, there should be a greater share of natural gas in Member States' energy mix, especially in those countries where coal plays a dominant role. This is of particular importance for the improvement of air quality, which will have a positive impact on the health of the citizens of those countries and their neighbours, while significantly reducing greenhouse and toxic gas emissions.

3.7.1. In some Member States, an average of two thirds of final energy is used to heat homes, and is produced in low-efficiency coal-fired plants. Investments in small-scale gas-fired cogeneration plants would enhance the resilience of the energy system and improve air quality. Such investments are carried out within a short time-frame (2 years); financial costs (CAPEX) are relatively low (although they are increased by operating costs) and partly offset the relatively high fuel costs. Another advantage of small-scale gas-fired cogeneration plants is the very short time needed for synchronisation with the energy distribution network, thus making them an excellent source of compensatory energy during periods of peak energy demand.

3.8. In connection with the question of **completing missing infrastructure**, which was highlighted in the communication, use should be made of the opportunity afforded by the European Fund for Strategic Investments (EFSI). Under this programme, complementary financing is to be provided for the following projects for critical energy and information infrastructure, among others:

- development of energy interconnections between countries,
- diversification of energy sources and transmission routes,
- development of European and regional contingency plans for an energy crisis,
- improving the energy efficiency of the economy.

#### 4. Specific comments on LNG

4.1. The Committee believes that **the European gas market should be made more flexible** by increasing the share of LNG.

4.2. **Increasing the proportion of LNG in the EU gas market, ensuring that there are adequate gas reserves in storage facilities and promoting the genuine diversification of supply routes** are factors that will increase the energy security of European Union's Member States.



4.3. The Commission communication rightly draws attention to the **apparent adequacy of the EU's regasification capacity** — 'apparent' since this capacity is not distributed optimally. In the Iberian peninsula, France, the United Kingdom and the Netherlands, regasification capacity is used to a very limited extent, whereas the Member States in the Baltic Sea regions, in central and eastern Europe and in south-east Europe are heavily dependent on a single supplier.

4.4. The Committee agrees that **to achieve full and sustainable diversification of the gas supply** in the European market, there needs to be a diversified approach to the construction of new LNG terminals. Priority should be given to investments aimed at balanced supply routes.

4.5. Prudent **EU measures supporting the construction of new LNG terminals and cross-border transmission links** should, as a matter of priority, take account of regions which are currently isolated and dependent on a single supplier. Stimulating investment in such a way would ensure that a number of gas suppliers have equal access to these regions, on the basis of free and fair competition. In this context, it is particularly important to increase interconnections so as to facilitate trade in gas between the domestic markets of Member States, particularly in regions currently without adequate security of supply.

4.6. Of key importance for **the expansion of the LNG market in the EU** is effective and timely **investments in projects of common interest (PCI)**. Clear mechanisms must be established in order to ensure a fair distribution of investment and operating costs between Member States with different levels of LNG infrastructure and gas storage capacity.

4.7. The EU must ensure that the development of fast-track LNG terminal and FSRU projects is a technologically neutral choice, based on the most effective investment, which should lead to the lowest possible regasification tariffs, reduced time to market for products, lower implementation risk and greater market certainty.

4.8. The EESC fully supports the European Commission's plans to verify whether intergovernmental agreements between Member States and non-EU countries on purchases of LNG comply with EU law.

4.9. The Committee supports the idea set out in the Commission's communication that using LNG in the heavy goods transport sector as an alternative to diesel and that replacing heavy fuel oil in maritime transport may significantly reduce environmental damage.

4.9.1. The Committee points out that, in the section of the communication dealing with LNG, not enough attention is paid to the European system of obtaining and using LNG as a fuel in transport, both road and maritime. In particular this concerns the innovative development of the supply system and the network of refuelling points for road transport and bunkering in maritime transport. These objectives are achieved, inter alia, through the 'Blue corridor' project involving EU countries from France to the Baltic.

4.10. In some EU Member States with limited access to gas networks, solid fossil fuels are heavily used to generate electricity and heat. Using LNG as an alternative fuel in local systems, where it might replace conventional fuels that cause significant gaseous and particulate pollution, may bring about a rapid improvement in air quality. Under those circumstances, and in accordance with long-term sustainable development goals, LNG cannot replace renewable energy sources.

4.11. The EESC shares the view expressed in the Commission communication that renewable energy sources and energy efficiency should provide cost-effective solutions and that, when taking decisions on LNG infrastructure, the options should be carefully weighed up in order to avoid the risk of technology lock-in or stranded assets. Investment in energy sources must not be considered in isolation from the economic development of the EU Member States.

## 5. Specific comments on gas storage

5.1. The EESC recognises that **gas storage plays a particularly important role in Europe's security architecture** and in maintaining a stable supply of natural gas to the EU economy. The EU's existing storage capacity is considerable, but its distribution is far from sufficient. Over 83 % of gas storage capacity is located in the west and south-west of Europe. Major obstacles to the cross-border use of storage capacity include tariff and regulatory barriers and an insufficient network of interconnectors in some European regions.

5.2. The EESC highlights the fact that, in order to ensure balance and achieve energy security, operators must adopt sets of principles, namely the idea that the **minimum level of stored gas must cover 100 %** of the national market's gas requirements for the winter period. However, the most economically rational alternative would be the balancing of stored gas on a regional scale. This optimal model can be achieved once interconnectors have been developed in north-east Europe (Finland, Sweden, the Baltic States, Poland), in the south-east (Bulgaria, Turkey, Serbia, Croatia) and in the south-west (Portugal, Spain, France). A second condition is the removal of all barriers to cross-border transmission, especially border tariffs.

5.3. The Committee welcomes the Commission's proposals to ensure a level playing field between competing flexibility instruments and to develop Europe-wide network codes that take account of the harmonisation of charges for gas transmission 'to and from storage', as long as the tariff structure reflects storage costs.

5.4. Measures to ensure unfettered, physical access to storage facilities and capacity in the transmission system, including in the cross-border context, should be considered essential. The EESC agrees with the European Commission on the need to make optimum use of existing storage capacity by completing work on network codes. From this perspective, effective cooperation between Member States and neighbouring countries on the optimal use of storage capacity on both sides is important.

Brussels, 22 September 2016.

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

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a Decision of the European Parliament and of the Council on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy and repealing Decision No 994/2012/EU’**

(COM(2016) 53 final)

(2016/C 487/13)

Rapporteur: **Vladimír NOVOTNÝ**

Consultation	European Commission, 16/02/2016 Council, 02/03/2016 European Parliament, 07/03/2016
Legal basis	Articles 194(2) and 304 of the Treaty on the Functioning of the European Union.
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	07/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	139/0/4

## 1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s proposal and the proposal for a decision as a whole, and sees it as a step towards strengthening legal certainty in the area of energy investment and related infrastructure projects, increasing transparency with regard to security of gas supplies, and improving the functioning of the internal energy market.

1.2. The EESC is in favour of carrying out, by means of an ‘ex-ante’ mechanism, an evaluation of international agreements in the energy sector that are concluded with third parties (IGA), as a means of avoiding the risk that agreements could come into conflict with EU law and the requirements of the internal energy market. At the same time, it considers prevention in this case to be a more effective approach than *ex-post* corrective measures.

1.3. The EESC proposes that the procedure of notification and verification prior to the conclusion (ex ante) of international agreements in the energy sector be restricted to agreements on supplying gas in the Member States, which is the most sensitive energy commodity as it is usually supplied to several EU Member States.

1.4. The EESC takes the view that the revised decision should only concern the drafting of framework agreements with a direct impact on the internal market of the Union and/or the security of energy supply, and the Commission should only assess whether or not the proposed IGA that is submitted to it complies with EU law.

1.5. Better protection of confidential information throughout the process of preparing the IGA will be one of the conditions for the successful implementation of the proposed notification and verification procedures with regard to international agreements on energy that are in preparation or under negotiation.

1.6. In the EESC’s view, the *ex-post* legal and administrative procedures that are currently in force should be used to evaluate other energy agreements. However, at the same time it suggests that consideration could be given to Member States being able to voluntarily submit these agreements for an *ex-ante* evaluation at their own request.

1.7. The EESC also considers that the proposed twelve-week period available for the Commission to issue an unfavourable opinion, in the event that the draft agreement is deemed incompatible with EU law, should be the maximum time limit. After this period is over it will be assumed that the Commission has accepted the proposed agreement and that negotiations to conclude the IGA can move forward.

## 2. Introduction

2.1. The Proposal for a Decision of the European Parliament and of the Council on establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy is part of the European Commission's 'winter package', which focuses on the security of energy supplies as part of the Energy Union project. This package focuses primarily on gas supplies from third countries.

2.2. In 2015, the Commission embarked upon an evaluation — with a view to revision — of the effectiveness of Decision No 994/2012/EU of 25 October 2012 on intergovernmental agreements, which established an information exchange mechanism for energy agreements between Member States and third countries.

2.3. The Commission's evaluation report concludes that the current decisions do not fulfil one of their main aims, which is to ensure that intergovernmental agreements comply with European Union law. The Commission identified three root causes of this problem:

- the fact that the Commission is not notified in advance about intergovernmental agreements, which increases the risk of these agreements being drawn up in a way that is not consistent with EU law;
- the lack of legal mechanisms in some intergovernmental agreements enabling them to be modified or rescinded;
- the lack of transparency in negotiations of intergovernmental agreements or their substitution effect.

2.4. The Commission has drawn up a proposal for a decision to repeal Decision No 994/2012/EU. It contains several significant changes aimed at tackling the findings of the review of that decision. This revision has two main objectives:

- to ensure the compliance of intergovernmental agreements with EU law in order to guarantee the proper functioning of the internal market and improve the EU's energy security; and
- to make intergovernmental agreements with third countries more transparent in order to increase the cost effectiveness of the EU's energy supply and solidarity between Member States.

## 3. Commission document

3.1. The proposal for a revised decision contains the following elements:

3.1.1. Notification obligations with regard to intergovernmental agreements:

- the Member State is obliged to inform the Commission of its intent to enter into negotiations with a third country in order to conclude new intergovernmental agreements on gas supply or amend existing ones;
- the Commission should be kept informed of progress in preparations for the agreement once notice of the negotiations is given;
- Commission services may provide Member State with advice on how to avoid incompatibility of the intergovernmental agreement with Union law or Union policy positions adopted in Council or European Council conclusions where Member State gives Commission notice of negotiations;
- the Member State is obliged to notify the Commission about draft intergovernmental agreements or amendments to them, with all accompanying documents, as soon as the parties have reached agreement on all of their main elements, so that the Commission can carry out an *ex-ante* evaluation;

- the Member State is obliged to notify the Commission regarding intergovernmental agreements or amendments, with all accompanying documents, upon ratification;
- the Member State is obliged to notify the Commission about all existing intergovernmental agreements or amendments, with all accompanying documents;
- agreements between undertakings are not covered by notification obligations, but may be submitted on a voluntary basis;
- the Commission is obliged to share information and documents it has received with other Member States, in accordance with data confidentiality provisions.

#### 3.1.2. Evaluation by the Commission:

- the Commission is obliged to perform an *ex-ante* evaluation of draft intergovernmental agreements or amendments to these agreements and to inform the Member State within six weeks of possible doubts it may have about compatibility with Union law, in particular in the case of internal energy market legislation and Union competition law;
- the Commission is obliged to inform the Member State of its opinion on the compatibility of the intergovernmental agreement or amendment with Union law within 12 weeks of the date of notification;
- the Member State must not conclude the proposed intergovernmental agreement or amendment until the Commission has informed it, in its opinion, of any possible doubts. When concluding the proposed intergovernmental agreement or amendment, the Member State must take the utmost account of the relevant conclusions and findings of the Commission;
- Obligation of Commission to perform *ex-post* assessment of existing intergovernmental agreements or amendments and to inform Member States in case of doubts as to the compatibility of these agreements with Union law within nine months of notification.

#### 3.1.3. Notification obligations and evaluation by the Commission with respect to non-binding instruments:

- the Member State is obliged to submit existing and future non-binding instruments to the Commission, along with all accompanying documents;
- the Commission may perform an *ex-post* evaluation of submitted non-binding instruments and inform the Member State accordingly if it considers that the measures implementing the non-binding instrument could conflict with Union law;
- the Commission proposes that the most efficient, effective and proportionate option with regard to costs would be for its *ex-ante* evaluation of intergovernmental agreements to be mandatory. Member States should be obliged to notify the Commission at an early stage of any negotiations on an intergovernmental agreement on gas supplies and to submit the proposals involved to the Commission for the purposes of its *ex-ante* evaluation.

#### 3.2. According to the Commission, this decision is expected to favour:

- increased legal certainty, which promotes investment;
- the smooth functioning of a more competitive internal energy market free from segmentation;
- increased transparency with regard to the security of supply in all Member States.

### 4. General comments

4.1. The EESC has already addressed the issue of agreements in the energy sector in connection with preparations for Decision No 994/2012/EU of the European Parliament and of the Council in 2012 <sup>(1)</sup>. In its opinion, the EESC emphasised that energy agreements should be guided by both strategic and commercial considerations, while at the same time respecting the principles of proportionality and transparency.

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<sup>(1)</sup> OJ C 68, 6.3.2012, p. 65.

4.2. The Committee regretted, inter alia, that the draft decision did not cover significant trade agreements by private parties in the energy sector extending to several Member States, in which there was a risk of conflict with EU law. It warned of potential threats that could arise where strategic partnerships might lead to the enforced adoption of practices imposed by non-EU interests where these may prove to be detrimental.

4.3. With regard to the proposed decision of the EP and the Council revising Decision No 994/2012/EU of the European Parliament and the Council, European employers' organisations have expressed their reservations in their capacity as key partners in social dialogue and representatives of organised civil society. The employers' associations maintain that the *ex-post* mechanism is sufficient. They stress that the evaluation should be targeted at agreements that have an impact upon the internal energy market or the security of energy supply.

4.4. Civil society organisations and a certain number of Member States have also insisted that liability be imposed where there is leakage of sensitive information and the requirement to provide adequate protection for commercial interests. They also supported the exclusion of agreements between private entities and those based on Euratom mechanisms from the scope of the decision and put forward the requirement that the revision of Decision No 994/2012/EU should as a whole respect the freedoms of enterprise and commerce, the protection of trade secrets and the right to good administration.

4.5. During public consultations carried out as part of the proceedings, similar objections were also raised by interested parties, including European sectoral organisations and regulatory organisations. They highlighted, among other things, the fact that the Commission's supporting documents [SWD(2016) 28 final] do not provide sufficient proof or compelling, evidence-based arguments enabling the reader to legitimately conclude that the legislation currently in force does not fulfil its objectives and must therefore be replaced by new legislation. Stricter enforcement of the existing decision could enable problems with international agreements to be addressed without the need to resort to fresh legislation.

4.6. With a view to reaching an appropriate compromise, in the present opinion the EESC draws on comments and objections set out above from across the spectrum of civil society organisations, as well as on the Commission's own arguments. It also draws on the conclusions of the EU Energy Council.

4.7. On the basis of the Commission's experience regarding the difficulty of modifying international agreements that have already been concluded in the energy sector where an inconsistency with EU law is discovered after the fact, the EESC supports the proposal to apply the *ex-ante* mechanism as a means of preventing violations of EU law and the rules of the internal energy market in cases that are relevant to the EU as a whole or that affect several Member States.

4.8. The EESC takes the view that the revised decision should therefore only affect major intergovernmental agreements with third parties that have a direct impact on the internal market of the Union and/or the security of energy supply, and the Commission should only assess whether or not the proposed IGA that is presented to it complies with EU law.

4.9. The Commission should not be given any specific mandate when it provides assistance to a Member State that is negotiating a small IGA of limited importance. At the same time, the option should be maintained for Member States to themselves request advice from the Commission, with the aim of preventing conflict between the negotiated agreement and EU law. In such cases, the Commission should be bound by strict deadlines to provide relevant information.

## 5. Specific comments

5.1. The EESC thinks that the control mechanism should continue to apply only to international agreements on gas supplies.

5.2. The Committee endorses the Commission's view that the obligations set out by the proposal for a decision should not apply to agreements concluded between private entities. It does, nevertheless, recommend that application of the proposed *ex-ante* mechanism be considered in the case of agreements in the private sector that may have a significant impact on the internal energy market or the security of energy supply. However, the rules for this procedure must be clearly determined.

5.3. The EESC expects accountability to be enshrined in cases where commercially sensitive information is lost and such cases to be examined in the light of criminal law.

5.4. The EESC does not think it necessary or beneficial for the decision under consideration to apply to non-legally binding instruments (Article 2 of the proposal).

5.5. The Committee expresses doubts regarding the Commission's statement that the proposal will not have any impact on the EU budget. In particular, in cases where the *ex-ante* mechanism is extended to agreements between private entities, both administrative costs and administrative burdens are likely to rise. The EESC would have liked to see an analysis of how the principle of solidarity will be respected and the principle of proportionality upheld in the new decision.

5.6. The EESC approves the Commission's proposal to maintain the optional nature of the advice it provides (Article 4 of the proposal): its assistance should never be obligatory in negotiations between a Member State and a third country.

Brussels, 21 September 2016.

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

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Cloud Initiative — Building a competitive data and knowledge economy in Europe’**

(COM(2016) 178 *final*)

(2016/C 487/14)

Rapporteur: **Mr Antonio LONGO**

Consultation	European Commission, 19/04/2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	07/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	149/1/1

## 1. Conclusions and recommendations

1.1. The EESC supports and endorses the Commission’s strategic choice of an open European computing cloud geared to the scientific community, as part of a strong political and economic commitment to digital innovation. The Committee has, on a number of occasions since 2011, put forward a series of recommendations to the Commission aimed at positioning Europe at the forefront of this promising sector, helped by leading companies.

1.2. The EESC considers that this is an absolute priority of strategic importance with regard to both bridging the technology gap and to the economic, social and cultural progress of society.

1.3. The EESC proposes a European cloud open to all citizens and businesses. First of all, the EESC calls for clarification and precision on the future timetable and arrangements for widening the user base, as promised to innovative SMEs and industry.

1.4. The EESC agrees with the Commission’s analysis of the obstacles preventing Europe from tapping into the potential of data, particularly regarding the lack of interoperability, the fragmentation of structures and their lack of openness to other contributions and exchanges. The communication points to positive measures to overcome the division between national arrangements, which stand in the way of implementing a real digital single market, by means of actions to widen access and build trust between the public sector and academia, which are often totally separate and disconnected.

1.5. The EESC calls for the integration measures to be implemented in such a way as to encourage the scientific community to change its way of thinking, using mechanisms to bring together academic infrastructures, research centres and public bodies and reviewing incentive structures to secure an increase in data sharing, while those communities in which data sharing is already quite common should be encouraged to play a key role in defining the details of Open Data.

1.6. The EESC calls for greater clarity on how the European Data Infrastructure, which is also intended to promote development and the implementation of High Performance Computing (HPC), will interact with the flagship initiative to boost quantum technologies.

1.7. The EESC proposes that the Commission launch wide-ranging consultations, directly involving the scientific community and associations representing people’s interests, on the decisive question of governance as well as on the progressive opening up to all and arrangements for data use and preservation.

1.8. The EESC recommends that the hardware and software needed for the European cloud be acquired in Europe, and calls for greater clarity regarding the financial resources provided by various framework programmes, the structural funds, the CEF and the EFSI.

1.9. The EESC proposes that the Commission, in agreement with the Member States, should initiate a major programme to develop and promote new, highly-qualified occupations which will open up new highly-qualified job opportunities and encourage young scientists working in other countries to return to the EU.

1.10. In order to offer businesses and the public a clear and secure legislative framework in such a strategic but also complex and fast-changing sector as the digital one, the EESC proposes that a 'single digital Europe portal' be set up, so citizens and businesses have ready access to relevant EU texts.

1.11. Lastly, the EESC emphasises that if a fully-fledged digital revolution is to take place, there is a need for education and training for every age group of the European population, whether working or not. The EESC highlights the need to invest in the technological training of women and in enabling them to access senior and management posts in particular.

## 2. Background and content

2.1. The Commission has prepared a series of guidelines intended to lay the foundations for an open European cloud computing initiative geared to the scientific community and has published a proposal which, taking the development of 'big data' as its starting point, considers that the cloud is a tool that can fully exploit the mass of data produced by public and private actors. An ability to make use of big data is seen as having an impact on the global economy, opening up the possibility of major industrial and social innovations and new financial services and products.

2.2. The Commission's proposal comes as part of a first industrial policy package under the Digital Single Market strategy announced on 19 April 2016, with a substantial EUR 50 billion financing plan, aimed at a fully-fledged 'path to digitise European industry'. It comprises 'a set of measures to support and link up national initiatives for the digitisation of industry and related services across all sectors and to boost investment through strategic partnerships and networks'.

2.3. The cloud computing initiative is one of the most important commitments to 'give Europe a global lead in the data-driven economy'. This choice, according to Carlos Moeda, Commissioner for research, development and innovation, is also a response 'to the scientific community's plea for an infrastructure for Open Science [...] The benefits of open data for Europe's science, economy and society will be enormous'.

2.4. In the Commission's view, Europe needs to answer four questions:

- how to maximise data sharing?
- how to ensure that data can be used as widely as possible, across scientific disciplines and between the public and private sectors?
- how better to interconnect existing and new data infrastructures across Europe?
- how best to coordinate the support available to European data infrastructures?

2.5. The instrument identified by the Commission is the development of a **European Open Science Cloud** — a trusted, open environment for the scientific community to store, share and reuse scientific data and results. This major instrument, designed to enhance calculating capacity, connectivity and high-capacity cloud solutions, would make use of a **European Data Infrastructure**, linking firstly the scientific community and subsequently the public sector and industry. This requires open cooperation between all those interested in exploiting the data revolution in Europe.

2.6. The Commission makes it clear that the initiative will be complemented by further action under the Digital Single Market strategy covering cloud contracts for business users and switching cloud service providers, as well as by the free flow of data initiative.

2.7. The Commission identifies five reasons why Europe is not fully tapping into the potential of data:

- **data coming from publicly funded research is not always open;**
- **lack of interoperability;**
- **fragmentation of data and computing infrastructures;**
- lack of a **world-class High Performance Computing (HPC) infrastructure to process data;**
- the need for **advanced analytics techniques such as text and data mining in a dependable environment.**

2.8. The **European Open Science Cloud** should give Europe a global lead in scientific data infrastructures, offering 1,7 million researchers and 70 million professionals a virtual environment with services that are free at point of use. The development of this instrument would be driven by the scientific community and would also in the future be open for education and training purposes. The definition of recognised technical standards would make it possible to create a secure data environment for all users.

2.9. Starting with existing infrastructure, the Commission plans to leverage other planned actions such as open access to scientific publications and data in Horizon 2020. The **governance** of the European Open Science Cloud will be determined upon the conclusion of a thorough preparation process that is already under way.

2.10. The communication identifies the following specific measures needed in order to create the cloud:

- **make all scientific data produced by the Horizon 2020 programme open by default;**
- raise awareness and change **incentive structures;**
- develop **interoperability and data sharing;**
- create a **fit-for-purpose pan-European governance structure;**
- develop **cloud-based services for open science;**
- enlarge the scientific user base of the European Open Science Cloud.

2.11. The Commission also proposes a **European Data Infrastructure**, with integrated world-class HPC capability: this is a necessity for Europe, to be met on an exascale by 2022, and which would put it among the leaders in the field.

2.12. The Commission considers that the European Data Infrastructure will also contribute to the digitisation of industry, to fostering industrial innovation and to the development of strategic European platforms in research.

2.12.1. The actions will take place between 2016 and 2020.

2.13. In the communication, the Commission also announces a **flagship initiative** to promote the research and development of quantum technologies.

2.14. Lastly, the Commission intends to **widen access and build trust** between the public sector and academia, opening the European cloud to the public sector.

2.15. **The user base** would subsequently be extended to public services, innovative SMEs and industry. The initiative will be extended to public services on the basis of existing examples of excellence, such as the INSPIRE Directive for spatial information and the eHealth Network. It will be extended to industry on the basis of current examples of supply of key scientific infrastructures, such as Helix-Nebula, EBI-EMBL and PRACE. For SMEs, the next step could be to involve them as providers of innovative solutions for the EOSC, as is already being done under Horizon 2020.

2.16. The Commission mentions various sources of funding:

- Horizon 2020 framework programme for research and innovation;
- Connecting Europe Facility (CEF);
- European Structural and Investments Funds;
- European Fund for Strategic Investments (EFSI).

2.16.1. The initial estimate of the additional public and private investment required amounts to EUR 4,7 billion over five years.

2.17. The initiative will over time generate revenue of its own as its use by the scientific community, innovative start-ups and the public sector takes off.

### 3. General comments

3.1. The Commission's choice of a political and economic commitment to digital innovation, especially its choice regarding European cloud computing, meets with the EESC's full support.

3.1.1. The Commission has defined a highly ambitious strategy. Although very complex, the policy objectives are clearly defined. Europe's weaknesses and the challenges facing it in building services to exploit big data from science and public services are clearly identified and this should be the starting point for all the work to be carried out in the coming years.

3.2. Since 2011<sup>(1)</sup> the EESC has, on a number of occasions, put forward a series of recommendations to the Commission 'to encourage Europe to position itself at the forefront of this promising sector, helped by leading companies'.

3.3. It should however be immediately pointed out that the EESC's proposal was for a European cloud open to all citizens and businesses. The title of the communication could mislead readers because it does not indicate that it is addressed to the scientific community alone.

3.4. The EESC welcomes the Commission's decision, and highlights the strategic importance of the choices made with regard to both bridging the European technology gap and the economic, social and cultural progress of European society. The science cloud also meets the scientific community's need to have access to, and to share, public research data.

3.5. The EESC agrees with the Commission's analysis of the obstacles preventing Europe from tapping into the potential of data, particularly regarding the lack of interoperability, the fragmentation of structures and their lack of openness to other contributions and exchanges. Moreover, the EESC emphasises that there is a need for education and training for every age group of the European population, whether working or not<sup>(2)</sup>. The EESC highlights the need to invest in the technological training of women and in enabling them to access senior and management posts in particular.

3.6. The Committee agrees with the objectives and measures put forward by the communication to deal with the differing national situations, which hinder the implementation of a real European single digital market. What is more, the shift from storing personal and work-related data on private computers to using public or commercial clouds must now be seen as a general trend. The cloud initiative is therefore a step in the right direction.

3.7. The Commission's commitment to steps to widen access and jointly build trust between the public sector and academia, which are often entirely separate and cut off from each other, is also highly positive.

### 4. Specific comments

4.1. Certain aspects need to be clarified. The Commission's plan appears simultaneously to be highly complex in terms of its objectives but vague on a number of crucial points.

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<sup>(1)</sup> OJ C 24, 28.1.2012, p. 40; OJ C 76, 14.3.2013, p. 59.

<sup>(2)</sup> OJ C 451, 16.12.2014, p. 25.

4.2. First of all, the EESC recommends that the hardware and software needed for the European cloud be acquired in Europe. Software solutions are highly developed in Europe and it should be possible to avoid technological dependence on other regions of the world. As regards hardware, the EESC is pleased to note that at least one of the two exascale supercomputers is expected to be European.

4.3. The EESC is also concerned about the resources, professional as well as financial, required to implement and develop the cloud. Available human resources with suitable skills will be key to unleashing big data's full potential for economic growth and jobs for Europe. We also urge the Commission to carefully take into account cross-border cloud systems in specific science communities, which already exist and work well, as well as national activities aiming to achieve the same objective.

4.3.1. While welcoming Horizon 2020 and the funding for the EDISON project which is speeding up the process of making 'data scientist' a recognised profession, the EESC urges the Commission, in agreement with the Member States, to initiate a major programme to develop new, highly-qualified occupations which will promote highly-qualified jobs and encourage young scientists working in other countries to return to the EU. In particular, there is a pressing need for 'data stewards' who are able to assist scientists, industry and the public administration to make the most of and share the data they collect. These Commission initiatives are of the utmost urgency and must seek to regain ground lost in terms of job opportunities.

4.4. Neither is it clear how the proposed European Data Infrastructure, which is also intended to promote development and the implementation of High Performance Computing (HPC), is to interact with the flagship initiative to complement it with a view to boosting the use of quantum technologies. The two initiatives are complementary but differentiated. While exascale supercomputers are expected to be ready by 2018, the strategy for quantum technologies is still in the early stages and has a long-term approach.

4.5. The communication is also very imprecise when it assumes that mechanisms for integration between academic structures, research centres and public institutions will naturally emerge as a result of the European Cloud for Open Science and the European Data Infrastructure. This strategy will not succeed without the alignment of all stakeholders. Raising awareness and changing incentive structures for academics, industry and public services to share data is a prerequisite for developing the European Open Science Cloud. In particular, communities where data sharing is already quite common, as in many research areas, could be key for defining the details of Open Data in a bottom-up process.

4.5.1. The EESC endorses the Commission's decision to make open research data the default option for all new projects under the Horizon 2020 programme as of 2017. The EESC urges the Commission to review the 2012 Recommendations on access to and preservation of scientific information.

4.6. Similarly, clarification is needed regarding the mechanisms intended to widen the user base, as promised for innovative SMEs and industry, via data and software centres of excellence and data service innovation hubs for SMEs.

4.7. The EESC calls for better cloud governance: according to the Commission, it will be defined following the conclusion of a thorough process of preparation which is already under way. The scientific community, businesses and the general public are entitled to take part in this governance and the Commission has a duty to indicate how and to what extent. The Open Science Policy Platform (OSPP) could be helpful.

4.8. The EESC proposes that wide-ranging consultations be launched, directly involving the scientific community and associations representing people's interests, on questions such as governance, the progressive opening up to all and arrangements for data use and preservation.

4.9. The Commission must in particular provide more detailed information on the administrative platform for managing the cloud.

4.10. The EESC considers funding to be an absolute priority for Europe in the light not only of the large number of countries in which it is to be implemented, but also of the economic backdrop of low growth in Europe, which hampers private investment in a European initiative that will in practice have only an indirect and secondary impact on industry and SMEs.

4.11. Businesses would effectively benefit from the positive effects of the cloud and data infrastructure only once it begins operating in compliance with common technical standards that are still to be defined, and within a legislative framework on privacy, cybersecurity and intellectual property that has not yet been consolidated in EU law or transposed into the Member States.

4.12. In this regard, the EESC proposes that a 'single digital Europe portal' be set up, so citizens and businesses have ready access to relevant EU texts.

Brussels, 21 September 2016.

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

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — ICT Standardisation Priorities for the Digital Single Market’**

(COM(2016) 176 final)

(2016/C 487/15)

Rapporteur: **Gundars STRAUTMANIS**

Consultation	European Commission, 19.4.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	7.9.2016
Adopted at plenary	21.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	159/1/3

## 1. Conclusions and recommendations

1.1. **The EESC broadly welcomes** the document drafted by the Commission, as it provides a starting point for plans and initiatives promoting ICT standardisation; it establishes priority domains and key actions, accompanied by a timetable (roadmap).

1.2. **The EESC believes** that standardisation should help to increase added value, secure employment in all areas and improve the wellbeing of society as a whole. It is therefore particularly important to identify the priority domains where standardisation is to be carried out, including in the information technology and communication (ICT) sector, so as to resolve these issues which are vital for everyone. This demonstrates that this Commission communication is truly necessary, and also clearly shows why the drafting of this document is crucial for further ICT standardisation — and, in turn, the development of the Digital Single Market.

1.3. **The EESC wishes to put forward a number of recommendations** which could help the Commission further improve the communications and other accompanying documents that it has drawn up.

### 1.3.1. Recommendation No 1

**The EESC recommends** that in future communications and other related documents, the Commission should inform all stakeholders about the need to take a balanced approach to ICT standardisation: standards as a restricting factor versus creativity.

### 1.3.2. Recommendation No 2

**The EESC recommends** that efforts should be made to ensure consistency between the priority domains for ICT standardisation that have different names in the Commission communication and the annual Rolling Plan for ICT Standardisation. In order to create consistency between the various documents and all inter-related texts, unified terminology must be used.

### 1.3.3. Recommendation No 3

Given the importance of the task of setting priorities for ICT standardisation, **the EESC recommends** that more information should be provided in terms of the reasons, methodology and results with regard to the choice of priority areas.



#### 1.3.4. Recommendation No 4

To ensure that all stakeholders have a better understanding of the implementation and consistency of the Commission communication, **the EESC recommends** that information should be distributed regarding the recurring activities to supplement or continue the work launched by this document.

#### 1.3.5. Recommendation No 5

To ensure that all stakeholders can be confident that the Commission, when drawing up its communication, has looked beyond issues linked directly to priorities for ICT standardisation and has also assessed the impact of these priorities on various social concerns (see Article 11 TFEU), **the EESC recommends** that the Commission's future communications should contain specific details about the participation of various stakeholders and about the social consequences of its approach in the field of ICT standardisation, which already affects the whole of society.

1.4. While the Committee supports the Commission communication as a whole, **the EESC would nevertheless suggest** evaluating:

- whether, in terms of its form, the communication is sufficient to achieve the stated objectives, e.g. providing 'leadership', or whether it might be necessary to use forms that allow for more action and decisiveness,
- whether the notion of 'leadership' should be re-examined, and whether the Commission communication should perhaps focus on partnership-based cooperation with global standardisation organisations rather than following the principles of competition, given that we broadly share the same needs, which transcend the borders of the EU.

## 2. Introduction

2.1. On 19 April 2016, the European Commission adopted its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ICT Standardisation Priorities for the Digital Single Market (COM(2016) 176 final).

2.2. **Objectives** of the Commission communication:

- to support and strengthen Europe's role in the global digital economy,
- to ensure that ICT-related standards are set in a way that is more responsive to policy needs,
- to ensure that standards are dynamic, open, and more closely linked to research and innovation.

2.3. **Spirit** of the Commission communication:

- **a comprehensive strategic and political approach to standardisation for priority ICT technologies.** The communication sets out a comprehensive strategic and political approach to standardisation for priority ICT technologies that are critical to the completion of the Digital Single Market.
- **addressing the challenges related to ICT standardisation.** To address the challenges related to ICT standardisation, the Commission announced that it would launch 'an integrated standardisation plan to identify and define key priorities for standardisation with a focus on the technologies and domains that are deemed to be critical to the Digital Single Market'.

2.4. **Context** of the Commission communication:

- **common standards as the foundation of an effective Digital Single Market.** Common standards ensure the interoperability of digital technologies and are the foundation of an effective Digital Single Market. They guarantee that technologies work smoothly and reliably together, provide economies of scale, foster research and innovation and keep markets open. Differing national standards, however, may significantly slow down innovation and put European businesses at a disadvantage vis-à-vis the rest of the world,

- **Regulation (EU) No 1025/2012 on European Standardisation.** The recent revision of the EU's standardisation policy resulted in the adoption of Regulation (EU) No 1025/2012 on European Standardisation and the creation of a framework for a more transparent, efficient and effective European standardisation system for all industry sectors. **The communication builds on Regulation (EU) No 1025/2012** <sup>(1)</sup> and is linked to the planned Joint Initiative on Standardisation that is part of the wider Single Market Strategy (COM(2015) 550 final — Upgrading the Single Market: more opportunities for people and business.).

2.5. **Key issues** of the Commission communication:

- ICT standards as the cornerstone of the Digital Single Market,
- setting standards for ICT: a fast-changing and challenging global context,
- Europe's response: a two-pillar plan to prioritise and deliver ICT standard-setting for the Digital Single Market,
- five priority domains: the building blocks of ICT standard-setting,
- a high-level commitment to deliver and ensure leadership through standards.

### 3. Overview of and general comments on the text of the Commission communication

#### 3.1. *ICT standards as the cornerstone of the Digital Single Market*

3.1.1. Point 1 of the Commission communication states that the transformation of the global economy to a digital economy affects all industrial and service sectors. Similarly, point 1 addresses the general issues relating to the communication, such as:

- the purpose of the communication,
- the nature of the communication,
- the background to the communication.

#### 3.2. *Setting standards for ICT: a fast-changing and challenging global context*

3.2.1. Point 2 of the Commission communication states that development of ICT standards faces several new challenges that require a focused and sustained EU-level solution.

3.2.2. The communication stresses that the potential consequences of these challenges could be a dispersal of limited resources, relatively poor efficiency and, more broadly, a dampening of Europe's innovative capacity.

#### 3.3. *Europe's response: a two-pillar plan to prioritise and deliver ICT standard-setting for the Digital Single Market*

3.3.1. Point 3 of the Commission communication presents a priority action plan for the next wave of technology standardisation in the digital economy.

3.3.2. Approach proposed by the Commission:

- (1) the communication identifies a **list of priority building blocks** for the Digital Single Market where improved ICT standardisation is most urgent, accompanied by deliverables and a timeline;
- (2) the Commission proposes a high-level political process, to validate, monitor, and — where necessary — adapt the list of priorities. This process is expected to make use of the instruments of the European Standardisation System, and involve a wide range of stakeholders, both within the EU and at international level.

3.3.3. Both parts of this priority plan will need to be taken forward together, to ensure that the EU becomes a leader in the global digital economy.

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<sup>(1)</sup> OJ L 316, 14.11.2012, p. 12.

### 3.4. *Five priority domains: the building blocks of ICT standard-setting*

3.4.1. In point 3.1 of the communication, the Commission identifies the five priority domains that constitute the **fundamental technological building blocks** of the Digital Single Market (order of listed domains is not important):

- cloud computing,
- internet of things — IoT,
- 5G communications,
- (big) data technologies,
- cybersecurity.

3.4.2. The priority areas were selected based on advice from the European Multi-stakeholders Platform on ICT Standardisation, which brings together industry stakeholders, standard-setters, governments and civil society representatives.

3.4.3. The digital transformation has important implications for different sectors as well as consumers. Many **important areas of ICT application** (for example: e-health, intelligent transport systems, smart energy, advanced manufacturing, smart cities, etc.) are based directly on the five selected priorities of ICT standardisation.

3.4.4. **The priorities selected will complement other standardisation instruments used to implement European standardisation policy.** In addition to the planned Joint Initiative on European standardisation, these are the Rolling Plan for ICT Standardisation, and the Annual Union Work Programme.

### 3.5. *A high-level commitment to deliver and ensure leadership through standards*

3.5.1. Point 3.2 of the Commission communication states that setting priorities for ICT standards for the Digital Single Market alone will not suffice. **Success depends on a high-level commitment to standardisation from a broad stakeholder base**, including from industry, standard-setting organisations, and the research community, as well as from EU institutions and national administrations.

3.5.2. **The Commission proposes a high-level process to achieve the prioritised actions.** This process will build on and complement the European Multi-stakeholders Platform, the Rolling Plan for ICT Standardisation and the Annual Union Work Programme for European Standardisation as a mechanism to implement and disseminate standards. The Commission communication describes each element of the process and all related activities.

## 4. Particular comments

### 4.1. *Balance between standardisation and creativity*

4.1.1. From the perspective of the Commission communication, standardisation is not an end in itself, but simply a means; one of its aims is to encourage research and innovation in ICT.

4.1.2. Standards are not just about opportunities; they also lay down frameworks and limitations. Standards may facilitate development, but they may also slow it down, particularly in sectors that are developing very rapidly, such as ICT.

4.1.3. Point 2 of the communication, entitled 'Setting standards for ICT: a fast-changing and challenging global context', which discusses the problems encountered in the standardisation process, states that: '... the increasing complexity resulting from a proliferation of standards, and the diversity of technical communities involved in standard setting can **slow down innovation**'.

4.1.4. The findings of the public consultation (Synopsis report on the public consultation 'Standards in the Digital Single Market: setting priorities and ensuring delivery') reveal the views of the concerned stakeholder groups, such as the ICT sector. This sector wants a 'bottom-up' standardisation process.

4.1.5. It is clear that imposing overly strict standards, or imposing them prematurely, may

- restrict creativity, which would hold back the development and implementation of innovative solutions,
- lead to a situation where standards have been drawn up and approved, but where producers carry out their daily activities by following other 'standards' which they themselves have set.

4.1.6. This means that, during the standardisation process, the situation should be carefully assessed as regards the design, adoption and implementation of each standard and a reasonable balance must be struck between standards as a restricting factor versus creativity, i.e. leaving open the possibility to express oneself freely in order to create new 'non-standard' solutions.

4.1.7. *Recommendation No 1*

**The EESC recommends** that in future communications and other related documents, the Commission should inform all stakeholders about the need to take a balanced approach to ICT standardisation: standards as a restricting factor versus creativity.

#### 4.2. *Inconsistencies between the priority domains in various documents on standardisation*

4.2.1. Point 3.1 of the Commission communication sets out the aforementioned five priority domains for ICT standardisation:

- cloud computing,
- internet of things — IoT,
- **5G communications**,
- **cybersecurity**,
- **(big) data technologies**.

4.2.2. At the same time, the communication refers to the annual Rolling Plan for ICT Standardisation. The different areas identified and described in the annual Rolling Plan for ICT Standardisation 2016 are listed below:

3.5. <b>Key enablers and security</b>	<b>95</b>
3.5.1. Cloud computing	96
3.5.2. <b>Public Sector Information, Open Data and Big Data</b>	101
3.5.3. eGovernment	106
3.5.3.1. DCAT Application profile for data portals in Europe	107
3.5.3.2. Exchange of metadata on re-usable interoperability assets (eGovernment)	107
3.5.3.3. Core Vocabularies to facilitate the development of interoperable solutions	107
3.5.4. Electronic identification and trust services including e-signatures	109
3.5.5. Radio Frequency Identification (RFID)	112
3.5.6. Internet of Things	114
3.5.7. <b>Network and Information Security</b>	120
3.5.8. ePrivacy	124
3.5.9. E-Infrastructures for Research Data and Computing-Intensive Science	127
3.5.10. <b>Broadband Infrastructure Mapping</b>	131
3.5.11. Preservation of digital cinema	134

4.2.3. Although these two documents — the Commission communication and the Rolling Plan for ICT Standardisation 2016 — are related and complementary, they use different terminology. Neither of the two documents makes a link between similar domains of standardisation.

#### 4.2.4. *Recommendation No 2*

**The EESC recommends** that efforts should be made to ensure consistency between the priority domains for ICT standardisation that have different names in the Commission communication and the annual Rolling Plan for ICT Standardisation. In order to create consistency between the various documents and all inter-related texts, unified terminology must be used.

### 4.3. *Selection of priorities for ICT standardisation*

4.3.1. Point 3.1 of the Commission communication specifies the five priority areas for ICT standardisation; it is stated: 'These areas were selected based on advice from the European Multi-stakeholders Platform on ICT Standardisation, which brings together industry stakeholders, standard setters, governments and civil society representatives. **A public consultation process confirmed a broad consensus around the prioritisation presented here.**'

4.3.2. Public consultation took place from 23 September 2015 to 4 January 2016 and there were 168 participants. The findings of the consultation are set out in the **Synopsis report** on the public consultation 'Standards in the Digital Single Market: setting priorities and ensuring delivery'.

4.3.3. Given that the results of the survey are taken into account when selecting the ICT strategy's priority areas, which are set out in the Commission communication and concern a large proportion of European entrepreneurs, a relatively low participation rate (168 respondents) could require additional information on the composition structure of respondents.

4.3.4. Information on the groups of respondents is available in the report <sup>(2)</sup>.

4.3.5. As can be seen, many respondents belong to different standardisation organisations. A relatively small proportion is made up of developers and producers — those who follow market needs closely, who set or follow trends in technological advances and who have their own development plans. In absolute terms, their numbers are small.

4.3.6. The findings of the consultation, which are set out in the Synopsis report, provide information on the selected domains but do not, however, indicate the number of domains actually examined or what they are (nor do they indicate the domains mentioned in the annual Rolling Plan for ICT Standardisation). They also do not specify who made the choices or, where the initial list included other fields, what the opinions were.

#### 4.3.7. *Recommendation No 3*

Given the importance of the task of setting priorities for ICT standardisation, **the EESC recommends** that more information should be provided in terms of the reasons, methodology and results with regard to the choice of priority areas.

### 4.4. *Life cycle of the communication*

4.4.1. The Commission communication mentions many specific points that will change over time, including the priority domains, the key actions, the main deadlines, and many other things. This means that such a document, i.e. the Commission communication, cannot be designed for the long term.

4.4.2. Therefore, there needs to be a specific procedure, applied in practice, describing in what way and how often the document will be reviewed, public consultations organised, decisions taken, operational planning carried out and other activities undertaken — i.e., the regular life-cycle management of the document and any related activities should be planned.

#### 4.4.3. *Recommendation No 4*

To ensure that all stakeholders have a better understanding of the implementation and consistency of the Commission communication, **the EESC recommends** that information should be distributed regarding the recurring activities to supplement or continue the work launched by this document.

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<sup>(2)</sup> [http://ec.europa.eu/information\\_society/newsroom/image/document/2016-17/synopsis\\_report\\_on\\_the\\_public\\_consultation\\_-\\_standards\\_in\\_the\\_digital\\_single\\_market\\_setting\\_priorities\\_and\\_ensuring\\_delivery\\_15264.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-17/synopsis_report_on_the_public_consultation_-_standards_in_the_digital_single_market_setting_priorities_and_ensuring_delivery_15264.pdf)

#### 4.5. *Insufficiently covered subjects*

4.5.1. The Commission communication mentions many aspects regarding the choice of priorities for ICT standardisation and the measures planned to take this work forward. However, on reading this communication and the related documents, the EESC study group found that several aspects that are important to society are not addressed at all or are mentioned only in passing.

4.5.2. Although the main purpose of the Commission communication is to identify priority avenues for ICT standardisation and related activities, its practical implementation and enforcement will also have an effect, whether direct or indirect, in areas such as:

- consumer rights,
- activity of small and medium-sized enterprises (SMEs),
- employment and job security,
- working time and conditions,
- how people with special needs can have access to ICT,
- environmental protection,
- various other issues connected with the social dimension.

4.5.3. The EESC notes that during the standardisation process, attention must be paid to:

- providing all stakeholders with a ‘common level playing field’,
- the importance of stressing standardisation issues in EU bilateral free trade agreements,
- how activity sectors are demarcated,
- competencies of employees to meet requirements of standards,
- fundamental rights of employees,
- involvement of representatives of civil society in dialogue.

#### 4.5.4. *Recommendation No 5*

To ensure that all stakeholders can be confident that the Commission, when drawing up its communication, has looked beyond issues linked directly to priorities for ICT standardisation and has also assessed the impact of these priorities on various social concerns (see Article 11 TFEU), **the EESC recommends** that the Commission’s future communications should contain more specific details about the participation of various stakeholders and about the social consequences of its approach in the field of ICT standardisation, which already affects the whole of society.

Brussels, 21 September 2016.

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

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European eGovernment Action Plan 2016-2020 — Accelerating the digital transformation of government’**

(COM(2016)179 final)

(2016/C 487/16)

Rapporteur: **Raymond HENCKS**

Referral	European Commission, 19.4.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	7.9.2016
Adopted at plenary	22.9.2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	162/1/3

## 1. Conclusions and recommendations

1.1. The European Union’s goal of establishing eGovernment providing personalised and user-friendly end-to-end digital services without borders by 2020 hardly seems feasible at the rate that the successive action plans on the subject are currently being implemented in a large number of Member States.

1.2. The EESC supports the proposals of the 3rd European Action Plan (2016-2020) aimed at speeding up implementation of efficient, interoperable and universally accessible eGovernment.

1.3. EGovernment can only work if other prerequisites, such as the provision of an efficient network and digital services, universal, affordable access and adequate digital training for users of all levels and ages, are met. Whilst eGovernment is supposed to become the default means of communication in the medium or long term, traditional means of communicating with public administrations (postal delivery, personal contact, telephone) should be maintained for members of the public who wish to use them.

1.4. As regards the rights of eGovernment users, particularly rights of access and non-discrimination, freedom of expression and information, protection of privacy and personal data, education and general knowledge from school education to life-long learning, appeal procedures, etc., the EESC proposes that the Commission bring together all the rights of eGovernment users on a single website.

1.5. The EESC endorses the seven principles on which the Commission proposal is based, but doubts whether some of them can be implemented without the relevant legal and technological problems being resolved.

1.6. As regards the ‘once only’ principle, according to which individuals and businesses should not have to supply the same information to public administrations more than once, the EESC notes that there are still unresolved legal and organisational problems and calls on the Commission to launch a pilot scheme in this area. It also proposes making provision for the ‘whole-of-government approach’, which involves collaboration between the different public bodies that extends beyond their respective fields of competence with a view to providing the public with a combined response from a single body.



1.7. The EESC also regrets that the 'no legacy' principle, which involves renewing IT systems and technologies in public administrations so as to keep pace with technological developments, does not feature among the adopted principles.

1.8. It insists, under the principle of 'openness and transparency', on citizens and businesses having an explicit right to control the transmission of their personal data to other public administrations and, where appropriate, to delete them (right to be forgotten), in keeping with the relevant legislation and procedures, and urges the Commission to submit a proposal for a secure European archive and online document exchange system.

1.9. Since many citizens need to familiarise themselves with the new eGovernment tool, the EESC believes that Member States and their regional and local authorities should provide citizens with digital skills training and be asked to provide a digital help service or a local support service to be co-financed by EU funds. This also applies to public sector employees as part of their ongoing professional training.

1.10. The EESC very much regrets that the action plan makes no reference whatsoever to the social implications and consequences of eGovernment, or to the repercussions for employment, as regards both job losses and the many vacancies which cannot be filled for lack of candidates with the necessary digital professional qualifications. When redeploying posts freed up by the switchover to digital public administration, officials whose posts have been economised should be assigned to the assisted digital service or steered towards suitable roles.

## 2. Introduction

2.1. The European eGovernment Action Plan 2011-2015 (using ICT to promote smart, sustainable and innovative eGovernment)<sup>(1)</sup> expired in December 2015.

2.2. However, eGovernment is still a major area of development on the digital agenda, and one of the key initiatives needed to complete a 'single digital market' at both national and EU level

2.3. A number of initiatives set out in the action plan have yet to be duly implemented in many Member States and must be continued in the new Action Plan for eGovernment for 2016-2020.

2.4. Governments will therefore have to improve the design of their online services by focusing more on users' needs to ensure the functioning of effective and efficient eGovernment services across national borders.

## 3. Content of the Communication

3.1. The new action plan, which focuses on accelerating digital transformation, is intended to serve as a catalyst, and will make it possible to coordinate public sector modernisation efforts and resources in the field of eGovernment.

3.2. The action plan comprises 20 actions, a non-exhaustive list which can be accomplished progressively in line with developments in a rapidly changing environment by means of other measures, proposed either by the Commission or by stakeholders.

3.3. The initiatives to be launched under the new action plan will have to comply with the following overarching principles:

- **digital by default:** digital services should become the norm, while other communication channels should be kept for those who, by choice or out of necessity, are not connected. In addition, public services should be provided via a single point of contact or one-stop shop which acts as an intermediary, and through a variety of channels,
- **once only principle:** under this principle, individuals and businesses should not have to provide the same information to public administrations more than once,

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<sup>(1)</sup> COM(2010) 743 final and COM(2010) 744 final.

- inclusiveness and accessibility: public administrations should design digital public services which are inclusive by default and cater for different needs such as those of the elderly and people with disabilities,
- openness and transparency: public administrations should share information and data between themselves and enable citizens and businesses to access, control and correct their own data; enable users to monitor administrative processes that involve them; and engage with and open up to stakeholders (such as businesses, researchers and non-profit organisations) in the design and delivery of services,
- cross-border by default: public administrations should make relevant digital public services available across borders and prevent further fragmentation from arising, thereby facilitating mobility within the single market,
- interoperability by default: public services should be designed to work seamlessly across the Single Market and across organisational silos, relying on the free movement of data and digital services in the European Union,
- reliability and security: all initiatives should go beyond mere compliance with the legal framework on personal data protection and privacy and IT security, by integrating those elements in the design phase.

#### 4. General comments

4.1. The EESC supports the Commission's efforts to speed up the development and uptake of eGovernment services. Since the first Action Plan for eGovernment in 2006, the Member States have been committed to promoting effective, efficient, interoperable and universally accessible eGovernment services, including online cross-border services. These commitments were confirmed in the context of the digital single market strategy to be implemented by 2020.

4.2. However, it is clear that despite some progress, as reflected in the assessments of the 2011-2015 Action Plan, and despite substantial Community financial resources made available but little used by the Member States, users are still faced — to varying degrees depending on the Member States — with fragmented modernisation of Member State public administrations and insufficient supply of online cross-border services. The EESC wonders why the EU funds made available remain severely underutilised and asks the Commission to carry out an analysis of this issue, to remove any barriers and to encourage Member States to use these funds effectively and efficiently, including with regard to eGovernment.

4.3. eGovernment is one of the key aspects of the digital single market strategy. However, other key aspects of the digital sector, which are not dealt with in this communication, are a prerequisite for implementing eGovernment. Thus, it is clear that state-of-the-art networks and digital services must be available to citizens of all ages and to businesses, who must have universal access at an affordable price, irrespective of their geographical or financial situation and that, where appropriate, be provided with assistance and training in order to acquire the skills needed to take advantage of digital applications effectively and responsibly.

4.4. Another key element is that of the rights of eGovernment users, which are based, first and foremost, on human rights and the fundamental freedoms that apply to internet users, particularly rights of access and non-discrimination, freedom of expression and information, protection of privacy and personal data, education and general knowledge from school education to life-long learning, appeal procedures, etc., as well as specific rights directly related to eGovernment. Given the different sources of the rights enjoyed by eGovernment users, the EESC proposes that the Commission bring together all the rights of eGovernment users on a single website.

4.5. Given that users often find it difficult to find the online information and assistance that they need, the Commission proposes the creation of a one-stop-shop/Single Digital Gateway, at both EU and national level. Single gateways of this kind are already operating in most Member States and local and regional authorities. The EESC supports the creation of such an access point for national central, regional or local public administration, in order to redirect users directly to the competent authorities able to deal with their requests or requirements.

4.6. The 2016-2020 Action Plan is based on seven principles which were largely already in force under the previous action plans. Whilst the EESC endorses these principles in general, it nevertheless wonders how they can be implemented before the relevant legal issues (management of personal data and protection of privacy in an open government context) and technological problems (enabling and industrial technologies, migration of services to digital channels) have been resolved.

4.7. The new action plan focuses on interoperability and the reuse of data held by public administrations, as much of the information currently collected by public administrations is used only once or for a very limited purpose. Under the 'once only' principle, users will no longer have to resubmit their current details every time they contact public administrations. The authorities will be able to share that information with other public administrations, with due respect for the protection of personal data and privacy. In accordance with this principle, business registers throughout the EU should be connected, the various national and cross-border systems should work together and administrations would no longer have to ask repeatedly for information they already have. Whilst the Data Protection Regulation remains applicable with regard to eGovernment, the EESC believes that it is necessary to ensure a balance between monitoring under the rule of law and the security and freedom of citizens.

4.8. The new Commission approach is to keep pace with a rapidly changing environment. However, the EESC notes that the 'no legacy' principle, which involves renewing IT systems and technologies in public administrations so as to keep abreast of technological developments, does not feature among the seven adopted principles, pending its testing by the Commission for possible implementation.

4.9. The Commission states that it wishes to emphasise the involvement of individuals in the creation of digital public services and, in line with the 'openness and transparency' principle, calls on public administrations to engage with citizens, businesses, representatives of the social partners and consumers, researchers and non-profit organisations in the design and delivery of services.

4.10. Individuals will thus be able to make suggestions and address specific questions directly to the Commission and the Member States using a 'collaborative platform' which will connect individuals and authorities and make it possible to identify similar problems in different countries and determine good practice and solutions for administrations to introduce. The EESC supports such an initiative, which will allow each individual to provide feedback to national, regional or local authorities on the problems encountered in his or her environment.

4.11. The principle of 'openness and transparency' requires public administrations to share information and data and allow individuals and businesses to access their data and to check and correct it. Regarding personal data, the EESC insists that citizens and businesses have an explicit right to control the transmission of their personal data to other public administrations and, where appropriate, to have these deleted (right to be forgotten), in keeping with the relevant legislation and procedures.

4.12. The EESC believes that in this connection the Commission will have to submit a proposal for a secure European archive and online document exchange system to avoid further incompatibility.

4.13. A principle which is not referred to in the action plan is the 'whole-of-government approach', which involves collaboration between the different public bodies that extends beyond their fields of competence with a view to providing individuals with a combined response from a single body.

4.14. The EESC urges the Commission to accelerate the introduction of the 'one-stop-shop' for eJustice, and for the maritime and other transport sectors. The future strategy should seek to amalgamate as much as possible the existing European portals (such as [eJustice](#), [solvit](#) and [youreurope](#)) into one single portal, and then, most importantly, to extend it to the national portals with the aim of simplifying all kinds of administrative procedures.

4.15. Although the EESC agrees with the idea that Member States and their regional and local authorities need to focus on these portals in the future in order to develop their online services, it stresses that these portals must continue to be a complementary service to physical points of contact and traditional means of communication (postal delivery, face-to-face over the counter exchanges, telephone).

4.16. The United Nations uses a development index based on three criteria to determine in which countries eGovernment is the most developed: online services for citizens, telecommunications infrastructure and human capital. It is clear that the action plan makes no reference whatsoever to the social implications and consequences of eGovernment, or to the repercussions for employment, as regards both job losses and the many vacancies which cannot be filled for lack of candidates with the necessary digital professional qualifications.

4.17. Providing services online by default is not a substitute for fighting the digital divide.

4.18. There are still large disparities between, on the one hand, the eGovernment services available and, on the other hand, the use and uptake of these services by users. This reluctance of users to take advantage of online services is often due to a lack of digital skills. Many citizens need to familiarise themselves with the new eGovernment tool and need an 'assisted digital service' or local support. This also applies to public sector employees as part of their ongoing professional training.

4.19. The EESC believes that Member States and their local and regional authorities should be urged to provide citizens with digital skills training and be asked to provide a digital help service for citizens co-financed from EU funds. When redeploying posts freed up by the switchover to digital public administration, officials whose posts have been economised should be assigned to the assisted digital service or steered towards suitable roles.

Brussels, 22 September 2016.

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

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission — Nuclear Illustrative Programme presented under Article 40 of the Euratom Treaty for the opinion of the European Economic and Social Committee’**

(COM(2016) 177 final)

(2016/C 487/17)

Rapporteur: **Mr Brian CURTIS**

Consultation	European Commission, 04/04/2016
Legal basis	Article 40 of the Euratom Treaty
Section responsible	Transport, Energy, Infrastructure and Information Society
Adopted in section	07/09/2016
Adopted at plenary	22/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	210/2/11

## 1. Conclusions and recommendations

1.1. In support of the developing Energy Union programme numerous energy-related legislative reviews and initiatives are currently under way and will be presented within the next 12 months. This strategic review could have been expected to articulate the main issues facing nuclear power generation, research and decommissioning as a contribution to this extensive legislative package. However, the PINC (the nuclear illustrative programme) does not offer a clear and comprehensive approach to how the complex future of nuclear power in the European energy mix can be strategically addressed.

1.2. The generation of nuclear power is politically delicate in most Member States and is influenced by fluctuating social and economic issues at national level. The Committee urges the Commission to take this opportunity to propose a clear analytical process and methodology which can offer a consistent, voluntary framework for national decision-making about the role — if any — of nuclear power in the energy mix.

1.3. The EESC is therefore calling for revisions and additions to the draft communication, as detailed in 4.3, to include specific sections on:

- the competitiveness of nuclear power in the short, medium and long term,
- the related economic aspects,
- contribution to security of supply,
- climate change and carbon targets,
- public acceptability, liability for nuclear damages, transparency and effective national dialogue.

1.4. Transparent monitoring is essential to both nuclear safety and public confidence; therefore the EESC proposes that the document should clearly endorse proposals on monitoring and reporting in Member States' national action plans as suggested by the European Nuclear Safety Regulators Group. Greater efforts should be made to include neighbouring non-EU countries.

1.5. Also in relation to public confidence, further reference should be made to extensive work on off-site and cross-border preparation for emergencies (Review of Current Off-site Nuclear Emergency Preparedness and Response Arrangements in EU Member States and Neighbouring Countries, Euratom December 2013) and to the conclusions of the 2016 Nuclear Security Summit, particularly in relation to potential terrorist threats.

1.6. In recognition of the major commitment being made by the EU to research into nuclear fusion power, the inclusion of a road map illustrating its progress towards commercial production would be helpful.

1.7. In the light of the vote by the UK to leave the EU, consideration should be given to the strategic impact of this action and in particular its significance for the Euratom Treaty. The need for deliberation on the potentially far-reaching consequences should be explicitly recognised in the PINC.

## 2. Introduction

2.1. According to Article 40 of the Euratom Treaty, the European Commission shall 'periodically publish illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment. The Commission shall obtain the opinion of the Economic and Social Committee on such programmes before their publication' (COM(2003) 370 final). Since 1958 five such nuclear illustrative programmes (PINC) have been published, the last in 2007 and one update in 2008. The final version will be prepared and published as soon as the Commission has received the Opinion of the EESC.

2.2. The Committee, as on previous occasions, values the opportunity to present its opinion on the draft document prior to the Commission presenting a final version to the Council and the European Parliament. The EESC urges the Commission in the strongest possible way to incorporate the recommendations set out in section one of this Opinion, making the PINC a more comprehensive and strategic document and ensuring that it will make a stronger contribution to the Energy Union package.

2.3. Nuclear power is one of the major sources of energy in the EU. The State of the Energy Union 2015 report notes that 'the EU is one of only three major economies that generate more than half of its electricity without producing greenhouse gases, 27 % produced from renewable energy sources and another 27 % produced from nuclear energy'. This report also states that the PINC 'should bring more clarity on long-term nuclear investment needs and on the management of nuclear liabilities' (COM(2015) 572 final).

2.4. The EU's Energy strategy has been extensively developed since the last PINC and is currently a high priority. Targets for 2020, 2030 and 2050 are in place but major variables and uncertainties remain. These include the extent to which the Paris Agreement on climate change will be implemented, the volatility of the international market in fossil fuels, the rate at which new technologies will be applied, which countries are members of the EU, the influence of the global economic outlook and the extent to which the massive foreseen investments in the whole energy chain will be forthcoming.

2.5. Irrespective of EU energy policy the key decisions about the mix of sources providing energy generation remain the prerogative of Member States. EU energy policy can be used as reference for such decisions but energy is politically highly sensitive and is therefore subject to the varying social and political climate at national level. EU policy-making requires a clear analytical process and methodology which can offer a consistent framework for national decision-making. The PINC potentially offers the opportunity to do this for those states considering nuclear power as well as for those with nuclear power and who are assessing its future.

## 3. Gist of the draft Communication from the Commission

3.1. The Commission's communication opens with the statement that 'The PINC provides a basis for discussing how nuclear energy can help achieve the EU's energy objectives' and it concludes 'As a low carbon technology and a significant contributor to security of supply and diversification, nuclear energy is expected to remain an important component of the EU's energy mix in the 2050 horizon'.

3.2. The communication focusses on the investments related to post-Fukushima safety upgrades and to the safe operation of existing facilities. In addition it highlights the estimated financing needs related to nuclear power plants' decommissioning and to the management of radioactive waste and spent fuel.

3.3. 129 nuclear power reactors operate in 14 Member States with new build reactors envisaged in 10 of those states. The EU has the most advanced legally binding standards for nuclear safety worldwide. These are maintained and upgraded by regular revision of the Nuclear Safety Directive <sup>(1)</sup>.

3.4. The EU nuclear industry operates in a global market with a value of EUR 3 trillion up to 2050 and is a technology leader directly employing 400 000-500 000 people and facilitating 400 000 additional jobs.

3.5. European companies are heavily involved in global nuclear fuel production, cooperating closely with the Euratom Supply Agency, supplying the needs of the EU's western designed reactors and with a capacity to develop fuel assemblies for Russian design reactors (of which 19 are currently operating in the EU).

3.6. The Commission predicts a decline in the EU's current nuclear generation capacity (120 GWe) up to 2025 with this trend reversing by 2030. Nuclear capacity would remain stable between 95 and 105 GWe by 2050 assuming 90 % of the existing nuclear fleet is replaced in this time. The estimated investment is between EUR 350 and 450 billion, providing generation to the end of the century.

3.7. Cost over-runs and long delays on new projects and differing approaches by national licensing bodies have created investment difficulties. Design standardisation and enhanced cooperation between national regulators are seen as essential planks of future policy.

3.8. Lifetime extension programmes (for 10-20 years) for many EU reactors are in the pipeline, with an estimated cost of EUR 45-50 billion and the regulatory workload involved, in accordance with the amended Nuclear Safety Directive, should be anticipated and planned for.

3.9. 50 reactors are planned to be shut down by 2025. Although the matter is politically sensitive, action and investment on geological disposal and long term management of radioactive waste and related decommissioning issues needs prompt decisions by Member States.

3.10. Significant expertise on the storage and disposal of low and intermediate waste exists and deep geological disposal facilities will become operational in Finland, Sweden and France between 2020 and 2030 for final disposal of high level waste. The potential for sharing this expertise and the possibility of agreeing joint disposal facilities between Member States will bring both efficiencies and safety benefits. This will be enhanced by the establishment of a European centre of excellence.

3.11. Nuclear operators estimate that EUR 253 billion will be required for the costs of decommissioning with EUR 133 billion of dedicated funds identified. Member States are responsible for guaranteeing that the operators' liabilities are fully met and decommissioning takes place in a clear time-frame.

3.12. More coordination is needed in the technical development and marketing of non-power uses of radiation technology. For example, the medical imaging equipment market in Europe alone is worth EUR 20 billion annually and agriculture, industry and research have seen a growing use of this technology. Significant research investment continues in both new generation and modular fission plants and in continuing leadership in fusion research and this is seen as critical to maintain expertise, careers and global influence. This is particularly important as nuclear energy continues to expand globally although not in Europe.

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<sup>(1)</sup> OJ L 219, 25.7.2014, p. 42.



#### 4. General comments

4.1. The Committee has regularly given its opinion on the safety and role of nuclear power in the EU's energy mix <sup>(2)</sup>. This communication is the first illustrative review on nuclear from the Commission since Fukushima and although the previous PINC promised to 'increase the frequency of publication of the Nuclear Illustrative Programme' (COM(2007) 565 final) this has not happened. The 2016 PINC — though supported by an extensive staff working document — is half the length of the 2007 communication. The Committee suggests that some items should be added to the PINC in order to have a strategic document in which the contextual factors that shape investment and target setting decisions are discussed.

4.2. The Committee values the extensive analysis of investment in the entire nuclear fuel cycle which the PINC provides, recognising that it defines both the challenges and opportunities faced by the sector. The emphasis on the highest safety standards and the need to ensure comprehensive funding for all aspects of decommissioning is also welcomed. The working document offers considerable detail and the role of continuing research is also noted. Nevertheless, in other areas much has been left unsaid, weakening the strategic value of the document.

4.3. The draft 2016 PINC heralds a significant change in approach by the Commission. Previous PINCs have set the review in the context of the energy challenges facing the EU and the global community. For example the 2007 PINC featured sections not replicated in 2016 which offered clear strategic insight. These should be added to the present proposal, and should cover:

- competitiveness — what are the current and future factors affecting the competitiveness of nuclear power, for example the role of state aid, especially financial and fiscal aid, changes in perspectives on construction costs, capital costs, waste disposal, licencing procedures, lifetime extensions and the relative costs of other energy sources,
- economic aspects — the structure of the energy market remains uncertain, discouraging long term investment, and the economic risks of nuclear power are significant in a period of financial and political uncertainty,
- security of supply — energy demands worldwide are steadily increasing even if they have stabilised or reduced in Europe and the implications of this, and the political and foreign policy aspects, need greater attention. Energy security in particular is an area to which nuclear power can and does contribute with sources of fuel supply (uranium) at present seemingly more secure than oil or gas <sup>(3)</sup>,
- climate change — nuclear power contributes half of Europe's low carbon electricity,
- public acceptability — the wide variation across the EU on public attitudes to nuclear power is a little understood reality with significant effects on political acceptability.

All these issues have become more important in the last 9 years but the focus on safety and the fuel cycle dominates the PINC with little elaboration on these areas in either the communication or the staff working document. It neither outlines the nature of the debate on these topics, many of which are contested and controversial (for example, maintaining high standards in sub-contracted work), nor offers a set of guidelines or a strategic approach for the discussion of nuclear power in the energy mix as a whole. This reflects the approach of the Energy Union package where there is a similar reluctance to draw out the implications of a European energy strategy for national debates on the continuing role of nuclear (if any) in the energy mix.

4.4. As noted, the Commission's communication claims to 'provide(s) a basis for discussing how nuclear energy can help achieve the EU's energy objectives' ... as ... 'an important component of the EU's energy mix in the 2050 horizon'. Such statements cannot be fully supported by the content of this document. Previous illustrative programmes have been a major analytical review of the role of nuclear and offered guidelines for future policy.

<sup>(2)</sup> OJ C 341, 21.11.2013, p. 92; OJ C 133, 14.4.2016, p. 25.

<sup>(3)</sup> OJ C 182, 4.8.2009, p. 8.

4.5. In particular analysis of the investment needs for nuclear power (clearly a major difficulty in present circumstances) must surely now be set in the context of the total investment required to achieve the Energy Union goals as there are interactions and trade-offs between the investment decisions across all generation technologies and infrastructure.

4.6. In addition there are many additional contextual factors which shape nuclear politics and economics that have not been fully addressed and which are difficult for the Commission to elaborate on as they are subject to ongoing review or reform. These include the functioning of the Emissions Trading System, proposals for capacity mechanism subsidies, the development of the renewables sector, etc.

4.7. At present nuclear energy accounts for 28 % of the domestic production of energy in the EU, and 50 % of its low carbon electricity (Eurostat, May 2015). CO<sub>2</sub> reduction is a vital target in EU and global energy policy. To stay within a 2 °C temperature rise requires reductions in global energy CO<sub>2</sub> emissions averaging 5,5 % per year between 2030 and 2050. Achieving the EU's contribution to this was outlined in the Energy Roadmap 2050 which took a multi-scenario approach to how the energy mix would vary depending on various political, economic and social factors (COM(2011) 885 final). The communication assumes, based on the figures supplied by Member States, a nuclear capacity of around 100 GWe in 2050 but in the light of the current debate this assumption can command little certainty.

4.8. The Committee notes the recent example of Sweden, announced subsequent to the publication of the PINC and therefore not included, where a commitment was made to gradually replace decommissioned power plants with ten new nuclear reactors and in parallel to adopt measures to ensure an energy supply from 100 % renewables by 2040 (Financial Times 10 June 2016). Having both a strong RES policy and an additional capacity to supply low carbon energy to neighbours is, in this case, politically acceptable to all parties and consequently strategically significant in the European context. The document should therefore be updated to take this into account.

4.9. The EESC has consistently argued over many years for a more strategic approach to energy issues and greater emphasis on a far-reaching public dialogue on energy generation and use<sup>(4)</sup>. Technology is not value free and energy technology involves a wide range of ethical, societal, and political judgements. Member States have discretion in the composition of their energy mix, only half have operating nuclear power plants and a polarisation of views on nuclear power has taken place since the last PINC. This important cyclical review document would be enhanced by an objective presentation of the topical and high profile issues involved in 'discussing how nuclear energy can help achieve the EU's energy objectives'. Therefore it is suggested that a number of new sections are included in the final document, as set out in 4.3, and that the strategy as a whole takes greater account of specific comments 5.3.1-5.3.4 below.

## 5. Specific comments

5.1. The document emphasises the importance of better national coordination between Member States, improved cooperation between stakeholders and greater transparency and public participation in nuclear issues. The important role of the European Nuclear Safety Regulators Group (ENSREG) is noted in this respect as well as continuing to 'promote the dialogue between stakeholders in the European Nuclear Energy Forum' (ENEF). In December 2015, ENSREG issued a statement on 'the progress in the implementation of post-Fukushima National Action Plans (NACPs)' in which it noted that the status of implementation differs and that the rate of safety upgrade implementation should be strengthened to target agreed implementation deadlines. It recommended that 'a status report from each participating country on the implementation of the NACPs should be updated and published periodically to ensure a transparent monitoring with the aim of publishing a report on the implementation in 2017' (ENSREG Fourth Report November 2015). The EESC suggests that the Commission should include an endorsement of this recommendation in the PINC.

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<sup>(4)</sup> OJ C 291, 4.9.2015, p. 8.

5.2. The communication touches on relations with nuclear states neighbouring the EU and the EESC believes that the extension of active engagement with Belarus in particular would be helpful in resolving concerns about transparency and safety that have arisen over the construction in Ostrovets of the country's first nuclear reactor. Links through ENSREG should be given priority.

5.3. Concerning dialogue and transparency generally the EESC notes that, in practice, the role, resources, capacity and status of ENEF have been considerably reduced in the last 2 years. It is essential that there is further clarification of the key issues facing the dialogue about European nuclear policy as well as a common framework being proposed for discussion at national level. This is now unlikely to be taken forward within ENEF and is missing from the PINC. Such a framework would also aid the future governance of the Energy Union and should be applied consistently to all primary energy sources. To aid this clarification the PINC should therefore contain specific sections outlining the implications and relevance for nuclear investment policy. These topics, detailed in the following four paragraphs, are vital areas of debate essential to any strategic vision.

5.3.1. *The move to electricity and the degree to which a consistent supply of electricity can be assured from primary sources.* On the one hand nuclear energy can assist energy security as large volumes of predictable electricity can be generated continuously for extended periods and it can make a positive contribution to the stable functioning of electricity systems (e.g. maintaining grid frequency). On the other hand capital construction costs are high, new safety requirements are demanding, finance is uncertain and future market conditions largely unpredictable. These are issues which face every Member State with a nuclear generation capacity and could be critical in how and whether realistic national plans contributing to overall EU energy and climate targets can be met. The PINC should relate to a common framework for discussion of these issues, as the Commission has proposed in other strategic communications on energy, and put forward a balanced analysis of the role of nuclear energy.

5.3.2. *Public knowledge, attitudes and awareness of risk in energy generation.* On the one hand nuclear safety, the impacts of Chernobyl and Fukushima and the outstanding questions concerning decommissioning and radioactive waste disposal are issues of grave public concern in some countries. On the other hand there are significant and often understated negative factors attached to other primary energy sources. The EESC has consistently emphasised the vital role of public understanding of the energy 'dilemma' — essentially how to balance the interconnected and sometimes conflicting objectives of energy security, affordability and environmental sustainability. Political will is largely shaped by public attitudes and the low level of comprehensive energy awareness can result in sub-optimal political decision making. More resources and a supporting legal framework enabling, for example, local information committees as established in France, would be helpful.

5.3.3. *A methodology for assessing costs and competitiveness.* Affordable low carbon energy is essential in achieving agreed climate and energy targets, yet this area is sheltered from market competition. Neither is there a standard or acceptable methodology in use by which Member States assess future costs of alternatives in their power generation mix, prior to taking a political decision (which will be influenced by other factors).

5.3.4. *The relevance of an active research and power generation base in market, technological and safety leadership.* How important is it to retain a significant and evolving nuclear generation industry if employment and European influence and leadership in an industry which is expanding globally is to be maintained (US Energy Information Administration May 2016 — World nuclear generation to double by 2040)? For example, China intends to double its nuclear capacity to at least 58 GWe by 2020-21, with a further increase to 150 GWe by 2030. The importance of high quality, well-paid jobs in the EU is noted and were these to be phased out then a programme assuring a fair and supported transition would need to be in place.

5.4. The most significant element of EU nuclear research funding is committed to the development of the joint nuclear fusion programme (ITER). The EFDA (European Fusion Development Agreement) road map describes the route from present fusion experiments to a demonstration fusion power plant producing net electricity for the grid. The EESC asks the Commission to take into account a potential supply of electricity from fusion power plants in all post-2050 cost-effective energy scenarios. In addition continuing support for research into 4th generation reactors, with their potential for cost reductions and significantly reducing high level waste, should be encouraged.

5.5. The draft proposal was prepared in advance of the vote by the UK to leave the European Union and current legal opinion suggests that leaving the EU also means leaving Euratom. This has major strategic implications, not least for 2030 energy targets, but also for research, regulatory, supply chain and safety cooperation. This issue therefore needs to be recognised by this draft proposal, even though anticipating specific outcomes at this stage is problematic.

Brussels, 22 September 2016.

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

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**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 1303/2013 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability**

[COM(2016) 418 final — 2016/0193 (COD)]

(2016/C 487/18)

Consultation	European Parliament, 4/07/2016 Council of the European Union, 8/07/2016
Legal basis	Articles 117 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	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	169/1/4

Since the Committee endorses the contents of the proposal and has already set out its views on the subject in its earlier opinions on 'Amending Regulation for Structural Funds — specific measures for Greece' adopted on 8 October 2015 <sup>(1)</sup>, on 'Financial management and decommitment rules for Member States facing serious difficulties' adopted on 19 September 2013 <sup>(2)</sup>, on 'Structural Funds — General Provisions' adopted on 25 April 2012 <sup>(3)</sup> and on 'Amending provisions financial management — Structural Funds — for Member States in difficulties' adopted on 27 October 2011 <sup>(4)</sup>, it decided, at its 519th plenary session of 21 and 22 September 2016 (meeting of 21 September 2016), by 169 votes to 1 with 4 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned documents.

Brussels, 21 September 2016.

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

<sup>(1)</sup> EESC opinion on the 'Amending Regulation for Structural Funds — specific measures for Greece' (OJ C 32 of 28.1.2016, p. 20).

<sup>(2)</sup> EESC opinion on 'Financial management and decommitment rules for Member States facing serious difficulties' (OJ C 341 of 21.11.2013, p. 27).

<sup>(3)</sup> EESC opinion on 'Structural Funds — General Provisions' (OJ C 191 of 29.6.2012, p. 30).

<sup>(4)</sup> EESC opinion on 'Amending provisions financial management — Structural Funds — for Member States in difficulties' (OJ C 24 of 28.1.2012, p. 81).

**Opinion of the European Economic and Social Committee on the amended proposal for a regulation of the European Parliament and of the Council on additional customs duties on imports of certain products originating in the United States of America (codification)**

[COM(2016) 408 final — 2014/0175 (COD)]

(2016/C 487/19)

Consultation	European Commission, 23/06/2016
Legal basis	Article 207 of the Treaty on the Functioning of the European Union
Section responsible	REX
Adopted at plenary	21/09/2016
Plenary session No	519th
Outcome of vote	165/0/8
(for/against/abstentions)	

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 519th plenary session of 21 and 22 September 2016 (meeting of 21 September), by 165 votes with 8 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 21 September 2016.

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

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work**

[COM(2016) 248 final — 2016/0130 COD]

(2016/C 487/20)

Consultation	Council, 24/05/2016 European Parliament, 25/05/2016
Legal basis	Article 148(2) of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social affairs and Citizenship
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	171/0/3

Since the Committee has already set out its views on the content of the proposal in question in its opinions on the Proposal for a Council Directive on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) adopted on 2 June 1988<sup>(1)</sup> and on 20 October 1999<sup>(2)</sup>, as well as 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 an EU strategic framework on health and safety at work (2014-2020) adopted on 11 December 2014, it decided not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned documents.

Brussels, 21 September 2016.

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

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<sup>(1)</sup> OJ C 208, 8.8.1988 p.43.

<sup>(2)</sup> OJ C 368, 20.12.99 p. 18.







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