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## Information and Notices

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## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

532ND EESC PLENARY SESSION, 14.2.2018-15.2.2018

**Opinion of the European Economic and Social Committee on ‘Lessons learned for avoiding the severity of austerity policies in the EU’****(own-initiative opinion)**

(2018/C 227/01)

Rapporteur: **José LEIRIÃO**

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| Plenary assembly decision                    | 21.1.2016  |
| Legal basis                                  | Rule 29(2) of the Rules of Procedure<br>Own-initiative opinion |
| Section responsible                          | Economic and Monetary Union and Economic and Social Cohesion   |
| Adopted in section                           | 29.1.2018  |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 177/26/18  |

**Introduction**

The content of the opinion has included input from representatives of civil society organisations and the social partners belonging to the economic and social councils of the three Member States concerned (Greece, Ireland and Portugal) during a series of EESC missions to those countries. The purpose was to gain an understanding of, and take note of, the views of people who are witnessing and experiencing the adverse impact on the social dimension, the business sector and social and civil society dialogue of the austerity policies imposed by the Troika.

**1. Conclusions and recommendations**

1.1. The first lesson from the crisis was that the euro area was not equipped to deal with the financial crisis. The EESC therefore welcomes the Commission's aim to reform the euro in key aspects by abandoning austerity policies and deepening the Economic and Monetary Union. The EESC considers these to be the prerequisites for a grand European coalition to continue the task of reconstructing a 'common European destiny' and regaining the trust of all Europeans.

1.2. The way in which the adjustment programmes were designed led to a number of inconsistencies at different levels, including: coordination and liaison between the three Troika partners (the International Monetary Fund (IMF), the European Commission and the European Central Bank (ECB)) in the planning, scale and anticipation of potential risks arising from the crisis; lessons learned from previous crises that were not always taken into account or were not applicable in the new single currency area; and a certain imbalance between the IMF's mechanisms and the macroeconomic policy instruments of the euro area. The EESC, while noting the expertise of the IMF, recommends that in future crisis situations affecting any EU Member States, the European Union institutions should be solely responsible for developing and implementing the adjustment programmes. If it is necessary to establish partnerships with external institutions to tackle the crisis, the European Union and the euro area must take the leadership and should act in line with 'European values', strengthening the current social dialogue and civil and social rights in the EU. Future crises must be managed in a way that strikes a better balance between fiscal and social objectives and efforts to bring about qualitative improvements in the business sector.

1.3. The crisis and the adjustment programmes applied in the three Member States led to an economic, financial and social situation which in some instances set the countries back by 20 years, causing permanent damage — or damage that can only be rectified in the very long term — to their productive factors and to the functioning of the labour market. The EESC urges the Commission to design 'supplementary economic and social recovery' programmes, to be applied at the same time as or at the end of an adjustment programme, so as to ensure a swift return to the most competitive level for bringing about convergence.

1.4. The Commission should refocus on European values of solidarity and take immediate, extraordinary steps to help the most disadvantaged people living in extreme poverty and lacking adequate food, accommodation, healthcare and assistance in purchasing medicines. The EESC recommends setting up a targeted programme for social recovery to operate in the countries that are, or have been, subject to adjustment programmes. This support programme should follow the principles of the European Pillar of Social Rights recently adopted by the European Union and introduced in the three Member States in question.

1.5. The implementation of austerity policies led to a dramatic increase in the number of people in poverty (whether workers, the unemployed or people classified as inactive or homeless). The EESC calls on the Commission to draw up a 'European strategy for eradicating poverty in the EU and integrating the homeless' as a matter of urgency, with the requisite funding not only for building suitable reception facilities but also for running specific training programmes to provide people with job-related skills that match opportunities in both the public sector (municipalities) and the private one. It is also crucial to draw up a plan together with the Member States to come to the assistance of over-indebted companies and individuals, in view of their inability to repay their loans, saving them from insolvency and having their homes confiscated.

1.6. In the euro area, the rules of the Stability and Growth Pact, the Excessive Deficit Procedure and the Fiscal Compact, and the austerity policies they have engendered, are seriously penalising countries that are still suffering the effects of the crisis by preventing the growth of public investment and support for the creation of private sector jobs, since they would be subject to severe sanctions and penalties in the event of failure to comply with the rules. This state of affairs has accentuated inequality in Europe, with the poor countries becoming even poorer, trapped in a 'vicious cycle' due to these constraints. The EESC recommends reforming the Lisbon Treaty by asserting the primacy of economic cooperation and growth policies and of solidarity as the real alternatives to restrictive austerity policies. The EESC also proposes to examine if the '**golden rule of public investment**' could be an adequate instrument to stimulate public investment in the euro area and secure not only growth, job creation, entrepreneurship and the new skills required for the future of work, but also for 'inter-generational fairness', guaranteeing long-term sustainability of public finances together with fair distribution of the tax burden not only among the different generations but also to reflect differences in social and economic conditions, so that one group is not overburdened to the advantage of another.

1.7. The last two years have seen an improvement in the unemployment rates in the EU in general, particularly in the Member States subject to adjustment programmes. It is important to point out in this instance that this can be attributed not only to economic growth, but also to the hundreds of thousands of workers who emigrated and to the rapid increase in the imposition of part-time work. However, **the incidence of poverty and material deprivation at the different levels continue** to increase on account of the lower salaries and the precarious nature of new jobs. Thus although more jobs have been created in activities connected with tourism and in other related low skill areas, this has not led to an increase in either competitiveness or added value. The EESC recommends making specific funds available to channel more resources into creating jobs in the health services and the sectors most affected by emigration (science, programming, new technologies, engineering and medicine) to encourage those who have left to return to their countries of origin.

1.8. Digitisation, automation and artificial intelligence (AI) are radically changing the economy, labour market (including new forms of work), skills and society, posing a challenge to its structures (including the automatic stabilisers) and consequently adding unforeseeable numbers of people to those who are already excluded. The EESC recommends further examining current ideas to set up a 'universal, basic European unemployment insurance' scheme. Moreover, the possibility should also be examined of setting EU-wide minimum standards for national unemployment schemes to respond effectively to the challenge and guarantee decent social protection available to everyone throughout their working lives (15-65 years). Regarding the issue of poverty eradication, the Commission should also introduce a 'minimum living income', adopting a European approach and commitment to ensure that there is 'no-one left behind'.

1.9. Future adjustment programmes should reflect all the issues and interests that emerge from social and civil society dialogue, with the involvement of civil society organisations. The EESC calls on the Commission to create 'econometric models with a human face' that include parameters to protect the social dimension and support businesses, thereby meeting a dual objective: social well-being and a sustained renewal of quality in the business sector. The social partners and representatives of civil society must be included in the programme's monitoring and assessment panel, on an equal footing with representatives of the EU, the ECB and other bodies, so as to draw on the constructive role of civil society and prevent the economic and social model being undermined, as occurred in the cases under analysis. All the institutions that draw up, monitor and evaluate the adjustment programmes must be subject to democratic control (e.g. by national parliaments). Evaluation and control should take place at six-monthly intervals, or another time frame considered adequate, so as to avoid irreparable damage and allow corrections to be made in good time. The set of macroeconomic follow-up indicators should include the 'Beyond GDP' social scoreboard, to be updated in line with the European Pillar on Social Rights.

1.10. Public debt in the three Member States rose astronomically and interest payments act as a constraint, blocking public investment in economic development and reducing investment in social protection, healthcare, education, pensions, unemployment benefit and support to those who are most disadvantaged and marginalised. These Member States, with the exception of Ireland, remain heavily indebted, with the situation exacerbated by speculation on the financial markets. The EESC would recommend that the Commission put this issue at the top of the agenda and follow up on the conclusions of the High Level Group on the mutualisation of debt and euro debt securities, appointed by the Commission in July 2013. The EESC also congratulates the ECB on its quantitative easing programme whereby it acquires Member States' public debt, which has provided a substantial and decisive contribution to economic recovery and public debt management in the Member States subject to adjustment programmes.

1.11. As it approaches the end of its 60th year, the European project is facing serious challenges, giving rise to doubts about its future, including the consequences of Brexit. One of the reasons for the divorce between civil society and the Commission's governing bodies is that the European Union has failed to live up to people's expectations regarding economic convergence and inclusive growth. Although some recent growth may seem stable, the euro area as a whole was set back by a decade, and it was not until 2015 that GDP returned to the pre-crisis levels of 2008. The EESC sees a need for a pragmatic and ambitious initiative to reform the Economic and Monetary Union to make it more resilient and citizen-friendly. A reform of this kind would call for better economic policy coordination bringing both areas together in an intelligent way, with policy in northern and central Europe based more on competitive market rules and in southern Europe on greater solidarity, risk-sharing and integration. Added to this, it should not be possible for the European Union to refrain from common solidarity, particularly in extreme situations such as impoverishment and inequalities in wages and migration management, and nor should it be possible for each Member State to act as it pleases.

1.12. The credit rating agencies were a key influence in ramping up the severity of the sovereign debt crisis. Their credibility can be called into question given that when, at the onset of the financial crisis in the US, the Lehman Brothers bank declared bankruptcy in 2008, it had retained the highest rating right up until the moment of its collapse. The EESC would suggest that the Commission strive to set up an independent international body with the task of evaluating credibility and impartiality regarding the adequacy evaluations conducted. It should also promote the creation of a European Credit Rating Agency.

1.13. The EESC recommends that future crises in the European Union should be managed by striving for a better balance between fiscal and social objectives, adopting not just a purely macroeconomic approach to imbalances, but also taking on board other issues, such as income and wealth inequalities, poverty reduction, a strong and competitive business sector, inclusive growth and employment, climate change, the participation of women in the labour market and corruption. We need to think and act on the understanding that 'human beings and human life take precedence over deficits'.

## 2. General introduction

2.1. The financial crisis unleashed in Greece, Ireland and Portugal was the sequel to the one that began in the US, and was exacerbated by these countries' presence in the euro area. An uncontrolled economic boom ensued in the wake of looser controls on public spending and banking, coupled with the fact that public enterprises continued to obtain loans using the State as guarantor, leading to a huge increase in public spending. The results ranged from rapid and uncontrolled growth in budget deficits, to a negative impact on trade balances and the balance of payments.

2.2. Financial liberalisation and the uncontrolled growth of bank credit, fuelled by aggressive sales practices on the part of the banks, led to over-indebtedness of households and SMEs — who were subsequently unable to pay their debts — and of the banking sector, with an increase in credit impairments as a result of speculation, posing a risk to the normal functioning of the banking system. The governments continued to pursue a pro-cyclical fiscal policy, leading to a dangerous deterioration in budget deficits and sovereign debt, and leaving the three Member States in question highly vulnerable to speculation on international investor loans. These bad practices meant that taxes paid by the public were used to prevent the major banks from declaring bankruptcy, thus further increasing sovereign debt.

2.3. The global crisis starting in 2007-2008 revealed the weakness of a still-young currency and reached the euro area, hitting it hard (between the third quarter of 2011 and the first quarter of 2013). Although the first Member States affected were not part of the euro area, the truth is that when vulnerabilities were perceived in some countries of the euro area, the disruption was far-reaching. The Member States affected needed to take difficult decisions and use tax-payers' money to prop up the banks financially to prevent them collapsing. Property and financial bubbles had built up and expanded over the previous years, with the banks running into difficulties after these bubbles burst. Combined with falling revenue and high levels of expenditure as a result of the major recession, levels of public debt in the EU rose significantly, from 70 % to 92 % of GDP on average in 2014 <sup>(1)</sup>.

2.4. Meanwhile, the credit rating agencies gave Greece, Ireland and Portugal a 'junk' rating, prompting international investors to raise interest rates to levels that made it impossible for these Member States to finance their budget deficits on the financial markets. To avoid bankruptcy, they turned to the European Commission requesting loans with more affordable interest rates to fund their activities and cover at least public salaries and social benefits. The Commission turned to the IMF for assistance, in view of its extensive experience in this field, in setting up a consortium (Troika) consisting of the Commission, the ECB and the IMF. They lent the Member States the amounts necessary to avoid default, which in turn entailed accepting 'economic, financial and fiscal adjustment programmes' with the following general objectives:

- structural reforms to boost potential growth, create jobs, and improve competitiveness and the structural deficit (it should be noted that during this period and as a result of it, unemployment increased exponentially along with the collapse and insolvency of thousands of businesses, the social dialogue was suspended and labour laws were revised, to the detriment of the workforce), fiscal consolidation through structural measures and better, more effective budgetary control,
- deleveraging the financial sector and recapitalising the banks,
- recapitalisation, accomplished with the Member States concerned acting as guarantors and assuming liability, thereby contributing to the exponential growth of sovereign debt.

2.5. These measures, known as 'austerity measures', had a devastating effect on people who were already grappling with the increase in unemployment and high levels of debt, as well as on firms, mainly SMEs adversely affected by the lack of bank credit and a very significant decline in economic activity. The Troika displayed total indifference to the drastic consequences of its policies on the social dimension and on business structure, with SMEs bearing the brunt.

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<sup>(1)</sup> Easterly 2002; IMF (2010) Greece Request for Stand By Arrangement; Country report No 10/110, May; Reflection paper on the deepening of the economic and monetary union, European Commission, 31 May 2017.

2.6. The EESC acknowledges that the scale of the crisis has in fact challenged the economic, social and even political resilience of the EU in general and the Economic and Monetary Union (EMU) in particular. In order to prevent the crisis, it has become clear that it would not have been enough to take the purely quantitative aspects of a Member State's growth into consideration: quality of growth also needs to be evaluated, that is to say, the macroeconomic factors which may or may not underpin the sustainability of the process need to be identified<sup>(2)</sup>. If controls of this type had been conducted effectively, the crisis would certainly not have assumed the catastrophic proportions that it did in those Member States.

### 3. Brief description of the events leading up to the Troika's intervention in Portugal

3.1. When it still had high customs tariffs and duties and its own currency, allowing devaluation, the Portuguese economy's trade balance deficit between 1974 and 1995 stood at 9,1 % of GDP on average; from 1996 to 2010, during which time the euro started being used as the currency, the average trade deficit stood at 8,5 % of GDP. These figures show that the euro cannot be deemed responsible for the loss of competitiveness.

3.2. Thus, the main reason for Portugal facing a public debt crisis is not that the export sector has lost competitiveness, but because adoption of the euro meant removing the automatic stabilisers which helped maintain acceptable levels of net foreign debt and keep the budget deficit under control. The explanation for the causes of the Portuguese crisis prompted a different approach to how best to respond to this crisis — very different to the one adopted by the Troika<sup>(3)</sup>.

3.3. The EUR 78 billion (about 45 % of GDP) financial package would cover the 2011 to 2014 period and came with the promise of safeguarding Portugal's financial stability, and that of the euro area and of the European Union. There were 222 measures in the programme, with an impact on a variety of sectors; during its period of application, various revisions were carried out, introducing austerity measures which were even more stringent. These measures were seen as a comprehensive plan for completely reforming the country<sup>(4)</sup>.

### 4. Brief description of the events leading up to the Troika's intervention in Ireland

4.1. When it joined the EU, Ireland's average income was 63 % of the EU average; after a few years it managed to achieve 125 % of the EU average, that is to say, it was above the European average. It remains so today, despite the crisis. The golden period of economic growth occurred from 1994 to 2000, during which GDP rose by an average of 9,1 % per annum. Nevertheless, from 2008 to 2009, GDP collapsed by 13 % per annum. Internal demand entered into freefall from early 2008 onwards. The austerity policy following the financial adjustment programme led to a decade being lost<sup>(5)</sup>.

4.2. In the first few years after the euro was introduced and up to 2007/2008, Ireland experienced a property boom and prices sky-rocketed. The credit boom was highly concentrated in speculative property loans. When the financial crisis hit and property price increases came to an end, tax revenue collapsed dramatically since it was closely tied in with the property boom. The result was a sharp increase in the deficit, badly affecting the financial system at the same time, and the share prices of the major Irish banks collapsed<sup>(6)</sup>.

4.3. On 21 November 2010, Ireland became the second country in the euro area to ask for financial assistance. The programme comprised a EUR 85 billion loan, EUR 35 billion of which was earmarked for the financial system<sup>(7)</sup>. On 14 November 2013, the Eurogroup concluded that the economic adjustment programme had been a success and that Ireland would be able to exit the programme at the end of the year.

### 5. Brief description of the events leading up to the Troika's intervention in Greece

5.1. Between 2001 and 2007, the Greek economy, after the Irish one, was the one with the highest rate of growth in the euro area, with average GDP growth of 3,6 % between 1994 and 2008. However, during these years of consecutive growth, endemic macroeconomic imbalances and structural shortcomings were exacerbated by the weakness of the political system at national and European level.

<sup>(2)</sup> See the EESC opinion on the subject of *Macroeconomic imbalances* (OJ C 218, 23.7.2011, p 53).

<sup>(3)</sup> ZBW — Leibniz Information Centre for Economics (Intereconomics 2013).

<sup>(4)</sup> ZBW — Leibniz Information Centre for Economics (Intereconomics 2013).

<sup>(5)</sup> ZBW — Leibniz Information Centre for Economics (Intereconomics 2013).

<sup>(6)</sup> EESC Study 'The impact of anti-crisis measures and the social and employment situation: Ireland' (2013).

<sup>(7)</sup> ZBW — Leibniz Information Centre for Economics (Intereconomics 2013).

5.2. The national savings rate dropped about 32 percentage points between 1974 and 2009, contributing to the current account deficit and increasing the chronic foreign debt. Unbridled public expenditure, combined with a failure to ensure adequate revenue from taxes, resulted in an accumulation of public debt <sup>(8)</sup>.

5.3. In August 2015 Greece was granted a third stability support programme through a supplement to the Memorandum of Understanding, which set out in detail the political conditions required, including a social impact assessment, as a way for the Commission to feed into the process and also as a manual for guiding and monitoring its implementation. This followed Commission President Jean-Claude Juncker's insistence — and guidelines — in 2014, that 'in the future, any support and reform programme [should go] not only through a fiscal sustainability assessment[,] but through a social impact assessment as well', which was likewise aimed at ensuring that the 'social effects of structural reforms [are] discussed in public'. The Commission is fully aware of the social conditions in Greece, deeming the improvement thereof to be essential for achieving sustainable and inclusive growth <sup>(9)</sup>.

5.4. By a decision of the European Council on 15 June 2017, an additional loan has been granted to Greece to assist economic, financial and social recovery.

## 6. The macroeconomic, social and financial results of the adjustment programme

6.1. In general, it can be argued that the only success that can be attributed to the adjustment programmes was that they made it possible for the Member States (Ireland and Portugal) to leave the Excessive Deficit Procedure and again access the financial markets on acceptable financial terms. Reducing the budget deficit and increasing exports helped to improve the external current account balance (goods, services and capital); economic growth and employment have shown an upturn since 2014. All the remaining indicators continue to have a drastic effect on social well-being and to undermine macroeconomic factors, something that will continue in the very long term. Some of the damage caused will be permanent, such as the brain drain of highly-skilled people, resulting in a negative impact on potential growth in innovation and development in their countries of origin, a sharp rise in poverty and inequality in incomes, access to basic healthcare, and people's general well-being <sup>(10)</sup>.

## 7. Lessons learned that must lead to change and innovation in European policies

7.1. The European Union — and the euro area — were caught completely unprepared for tackling a financial crisis in their Member States, inducing them to accept the IMF proposals in their totality instead of adapting them to the common values and standards of European solidarity. In the case of Greece, the European Union wasted precious time before reacting to the problem, and its initial suggestions were neither clear nor definitive — for example, the total amount of the loan needed was changed several times due to hesitations on the part of the Commission, thus allowing speculation on the markets and leading to a further deterioration in a situation that was already bad.

7.2. The economic, financial and fiscal adjustment programmes implemented in Greece, Ireland and Portugal were drawn up by the IMF and in part reflected the same rationale pursued by the IMF in periods of crisis in the 1980s in Africa and in the 1990s in some Asian countries. In these cases, the devaluation of the currency through the exchange rate mechanism played an effective role in maintaining growth and easing the balance of payments, thereby achieving macroeconomic stabilisation, in particular fiscal consolidation and the stabilisation of inflation, as well as boosting exports (1). What was new in the case of Greece, Ireland and Portugal was that this was the first time that such programmes had been implemented in an area with a single currency (without resorting to a currency devaluation) and in countries that belonged to the European Union and the euro area. In the case of these Member States, where the objectives were to correct fiscal and external imbalances and restore confidence, the IMF considered that significant refocusing of the economy was needed since growth in GDP was expected to be low (2). Thus the adjustment programmes sought to achieve fiscal consolidation by means of austerity policies focusing on radical cuts to public expenditure and long-term structural measures, such as reform of taxes and labour and pay legislation in order to reduce States' deficits and increase their revenue. The austerity policy was implemented by **'internally devaluing the components of the economic and social model'**.

<sup>(8)</sup> EESC Study 'The impact of anti-crisis measures and the social and employment situation: Greece' (2013).

<sup>(9)</sup> Study of the Economic Governance Support Unit of the EP on *The Troika and financial assistance in the euro area: successes and failures* (Feb 2014).

<sup>(10)</sup> See appendix I with the main statistical indicators.

7.3. The overall assessment of the IMF programmes carried out by its Independent Evaluation Office (July 2016) indicates that although pre-crisis surveillance had correctly identified the problems in the three countries, it **failed to anticipate and weigh up the scale of the risks** that later **proved to be fundamental in terms of their negative effects**, contributing to imbalances in the performance of the adjustment programmes. Furthermore, it refers to inconsistencies in coordination between the Troika partners in implementing and complying with the euro area instruments (EMU, SGP, EDP and the European Semester), adding that the training of the negotiating teams and the responsibilities of its members were not clearly defined and that lessons from previous crises were not always taken into account.

7.3.1. Austerity measures triggered a '**vicious cycle**' in which austerity led to recession, followed by more austerity, resulting in a catastrophic decrease in GDP, which shrank to the levels of 10 and 20 years ago, cuts in public and private investment spending and the collapse in the banking system. This triggered a failure of the productive system (SMEs and family firms, and the self-employed) and catastrophic severity at all levels of social protection.

7.4. The shortcomings and inconsistencies in preparing assistance programmes were, generally speaking, the following:

- the structural dimension of the crisis was overlooked,
- the level of company and household indebtedness was underestimated,
- the impact of internal debt on growth and job creation was underestimated,
- State reforms did not touch on fundamental structural aspects,
- structural reform of the economy was whittled down to the devaluation of internal competitiveness factors (wages, longer working hours, restrictive labour reforms, drastic tax increases, etc.),
- the time frame for implementing the programmes was limited,
- it is extremely difficult to achieve internal and external balance at the same time when both present very high deficits,
- budgetary consolidation measures, applied above all on the expenditure side in a severe recession, where the country concerned has no mechanism for currency depreciation and when its partners are doing exactly the same, have not succeeded in any country in the world, at any point in history. The consensus today is that such measures are deemed recessionary in the short term and the scars they leave on an economy are often permanent,
- inadequate fiscal multipliers led to gross errors.

7.5. Any 'adjustment programme' must reflect all political aspects and dialogues important to the success of the programme, but must always include 'distributional impact indicators' for the adjustment measures, with a specific focus on identifying the effects on the social dimension and on businesses at the most diverse levels. It must also provide for compensation measures so that these negative effects (e.g. business failures, rising unemployment rates, wage cuts, increased poverty and higher emigration) can be tackled successfully, through recovery programmes, so as to avoid dramatic social situations, including emigration. All sectors must be winners: it must not be a case of winners and losers, as happened with the programmes implemented in Greece, Ireland and Portugal.

Brussels, 14 February 2018.

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

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## APPENDIX 1

For reference please note the following basic indicators:

| Basic indicators                | Greece  |         |         | Ireland |         |        | Portugal |         |         |
|---------------------------------|---------|---------|---------|---------|---------|--------|----------|---------|---------|
|                                 | 2008    | 2013    | 2016    | 2008    | 2013    | 2016   | 2008     | 2013    | 2016    |
| Total unemployment rate         | 8 %     | 27,5 %  | 23,4 %  | 6,4 %   | 13,1 %  | 6,9 %  | 7,8 %    | 16,2 %  | 10,5 %  |
| Youth unemployment rate (15-24) | 22 %    | 58,3 %  | 48 %    | 12,8 %  | 27,5 %  | 16 %   | 16,5 %   | 38,1 %  | 28 %    |
| Poverty rate                    | 28,7 %  | 35,7 %  | 36,4 %  | 22,3 %  | 30,5 %  | 26 %   | 19,7 %   | 24 %    | 23,1 %  |
| GDP growth                      | - 0,3 % | - 3,2 % | 2,1 %   | - 4,4 % | 1,1 %   | 5,2 %  | 0,2 %    | - 1,1 % | 1,4 %   |
| Budget deficit as a % of GDP    | - 7,7 % | - 6,1 % | - 1,2 % | - 7 %   | - 7,2 % | 0,5 %  | - 2,6 %  | - 2,9 % | - 2,1 % |
| Public debt as a % of GDP       | 100 %   | 177,9 % | 178,8 % | 42,4 %  | 119,5 % | 75,4 % | 71,7 %   | 129 %   | 130,4 % |

Source: Eurostat

### The social effects and effects on the corporate structure of the austerity programme in Portugal

- Income from work fell by 12 % from 2009 to 2014.
- The drop in income was extremely unequal **and** to a great extent regressive, mainly affecting the ‘middle class’, the poorest in society and small family businesses.
- The fact of incomes in Portugal shrinking by 5 % acted in a counter-cyclical way to trends in Europe, where family incomes grew by 6,5 % (between 2009 and 2013).
- There was a considerable rise in inequality due to the decrease in the lowest wages and a significant increase in ‘precarious employment’, which meant an increase in the number of employed, but poor, workers.
- With a deterioration in income poverty, the poverty rate rose by 1,8 %, from 17,7 % to 19,5 %, and the number of poor reached 2,02 million in 2014.
- the shrinking resources of the poorest in the population affected the most vulnerable (older people and children).
- In the course of the adjustment programme, more than 400 000 Portuguese emigrated, mainly people with high-level scientific and technical qualifications<sup>(1)</sup>, and thousands of businesses (mostly SMEs and family businesses) declared bankruptcy.

### The social effects and effects on the corporate structure of the austerity programme in Ireland

- In 2009, the guaranteed minimum income was reduced by 15 %, but this was put back to its original level in 2011.
- The adjustment of the domestic, retail and construction markets entailed major job losses in these sectors<sup>(2)</sup> as a result of the bankruptcy of thousands of companies.

<sup>(1)</sup> *Desigualdade de rendimento e Pobreza em Portugal* ('Inequality of income and poverty in Portugal') (FFMS, September 2016).

<sup>(2)</sup> EESC study on *The impact of anti-crisis measures and the social and employment situation: Ireland* (2013).

- The unemployment rate rose by 6,4 % in 2008 to 15 % in 2012; this mainly concerned long-term unemployment and youth unemployment, which was in line with rates in southern European countries (around 30 %).
- From 2008 onwards, emigration rose rapidly (82 000 emigrants in 2012 alone).
- Welfare benefits were reduced by about 15 %.
- In addition to public sector and welfare benefit cuts, the strategy was to cut back staff in the public sector (health, education, security and the civil service) through voluntary redundancies.
- Net income in the lower decile fell by 25 %.
- The percentage of the population at risk of poverty rose to 15,8 % (around 700 000 people, 220 000 of whom were children) <sup>(3)</sup>.
- The complete standstill in construction programmes created a shortage in the availability of housing that lasted for a decade after the collapse. Businesses linked to the sector, mainly SMEs, were hard hit, leading to very negative consequences for employers and workers.

### **The social effects and effects on the corporate structure of the austerity in Greece**

The crisis and anti-crisis policies carried out in Greece had both direct and indirect detrimental effects on businesses (bankruptcy), employment and the social dimension. The impact was not felt equally by workers, pensioners, tax-payers and their families:

- the unemployment rate was 13,5 % in October 2010; it rose to 27,5 % in 2013,
- youth unemployment remains at around 45,5 %,
- severe income losses are related to the high rates of unemployment,
- drastic cuts in wages and pensions, combined with part-time jobs, over-indebtedness and high taxes, drastically reduced family incomes, corroded purchasing power and marginalised large segments of the population,
- civil society organisations have faced severe financial problems, which made it impossible to participate consistently in social and civil dialogue, or adequately address the challenges arising. This may weaken the quality of democracy since it can lead to the under-representation of the various economic and social interests,
- market monitoring mechanisms offered by civil society are deteriorating due to the lack of human and financial resources, leading to gaps in protection for a wide variety of interests, including consumers,
- social protection levels, education and health were considerably weakened as a consequence of the cuts <sup>(4)</sup>,
- the situation continues to be dramatic with regard to access to healthcare, purchasing of medicines and social protection,
- these situations exacerbated poverty levels, with poverty now affecting more than 20 % of the population, increasing inequality.

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<sup>(3)</sup> ZBW — Leibniz Information Centre for Economics (Intereconomics 2013).

<sup>(4)</sup> EESC study *The impact of anti-crisis measures and the social and employment situation: Greece* (2013).

## APPENDIX 2

The following amendment was rejected during the discussion but received over a quarter of the votes.

**Point 1.7.**

Amend as follows:

*Digitisation, automation and artificial intelligence (AI) are radically changing the economy, labour market (including new forms of work), skills and society, posing a challenge to its structures (including the automatic stabilisers) and consequently adding unforeseeable numbers of people to those who are already excluded. The EESC recommends that the Commission set up a 'universal, basic European unemployment insurance' scheme to respond effectively to the challenge and guarantee decent social protection available to everyone throughout their working lives (15-65 years). ~~Regarding the issue of poverty eradication, the Commission should also introduce a 'minimum living wage', adopting a European approach and commitment to ensure that there is 'no one left behind'.~~*

**Reason**

The proposal is infeasible in this form, and also does not fall within the competence of the Commission.

The amendment was rejected by 74 votes to 129 with 13 abstentions.

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**Opinion of the European Economic and Social Committee on ‘Industrial change in the health sector’**

**(own-initiative opinion)**

(2018/C 227/02)

Rapporteur: **Joost VAN IERSEL**

Co-rapporteur: **Enrico GIBELLIERI**

|  |  |
|--|--|
| Plenary Assembly decision                    | 1.6.2017   |
| Legal basis                                  | Rule 29(2) of the Rules of Procedure<br>own-initiative opinion |
| Body responsible                             | Consultative Commission on Industrial Change (CCMI)            |
| Adopted in CCMI                              | 23.1.2018  |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | Unanimously (163 votes in favour)                              |

## 1. Conclusions

1.1. The medical technological industry — focus of the opinion — plays a major role in the current transformation of the health sector to the benefit of patients and a value-based health care in Europe.

1.2. A major issue is highly personalised health care that ensures equal and better access and quality. Technology and large sources of anonymous data will greatly facilitate new treatments and operations as well benefit all phases of prevention and recovery. Recovery increasingly takes place outside hospitals, using eHealth technology.

1.3. Subsidiarity is cautiously guarded in health care systems as services of general interest. The medical sector and its organisation are very decentralised and fragmented. National and regional barriers must be reduced to optimise outcomes of new technologies and achieve better efficiency and effectiveness in line with the publicly defined objectives of health care systems.

1.4. The ongoing interaction between the great variety of relevant stakeholders — national ministries, patient organisations, medical staff and other personnel in health care, hospitals, insurance companies and supervision — creates a complex environment for industrial actors, notably SMEs.

1.5. The industrial transformation process is also considered to take due account of the common values and principles that underpin Europe’s health systems, as laid down by the Council in 2006 <sup>(1)</sup>, as well as confirmed in recent commitments in the EU social pillar and the agreed Sustainable Development Goals <sup>(2)</sup>.

1.6. Industry needs the European scale as a basis for a reliable domestic market as well as to build sufficient international resilience. The EU is critically important for the creation of a better playing field as well as for guiding and monitoring transformation processes.

<sup>(1)</sup> See EPSCO Council Conclusions (2006/C 146/01) and its Annex, 2 June 2006 on the impact of European values.

<sup>(2)</sup> See notably the goals 3, 5, 9, and 10.

1.7. Key stakeholders and Member States should develop optimal approaches and commitments regarding access to and quality of health and care, affordability, and prevention. In the same context special approaches, also concerning nursing, are required to meet the needs of vulnerable, notably elderly people. As important are optimal approaches towards new technologies and innovation, integrated care models, and alliances, as well as (cross-border) networks and (large-scale) PPPs. Proper implementation of EU rules and guidelines should be ensured. Each of these issues requires the Commission services to play an active and stimulating role.

### **Recommendations**

1.8. The European institutions should foster economic performance, innovation, digitalisation and effective public procurement, while facilitating cross-border trade in medical devices and industrial products.

1.9. An EU industrial policy must build upon shared national and EU competences in the framework of Article 168 TFEU. In the same vein, EU innovation policies should be supportive. EU funding — Horizon 2020- and other — must be duly coordinated and dovetailed with national programmes.

1.10. The industry will benefit massively from the Digital Single Market strategy. Free flow of (big) data across the Union should be promoted, respecting patient privacy and security.

1.11. Public procurement has a major role in launching projects with advanced technologies. The Commission should ensure effective public procurement across the Union in line with Directive 2014/12/EC.

1.12. Within the broader context of national approaches there are many region based initiatives. The Commission should promote exchange of successful experiences. Bilateral contacts between public and private health authorities must be encouraged.

1.13. The European Semester and CSRs <sup>(3)</sup> should also examine the effect of technological change on the transformation of health systems.

1.14. The Commission must seek efficient internal coordination. It should foster dialogues and platforms between universities, local authorities, the social partners and the medical technological industry. These can be exemplary for close cooperation between public actors such as national health, finance and industry ministries, and the private sector.

1.15. The human factor is paramount. The transition to new health and care requires an open mind and new forms of professionalism in industry at all levels, as well as a redesign of health and care related work. The European social dialogue in health and social services that is in place since 2006 should be reinforced in view of adequate education and training programmes as well as to upgrade the quality of working conditions and work places.

## **2. The current picture**

2.1. In various opinions, the EESC has discussed the latest developments in the health sector <sup>(4)</sup>. This opinion focuses specifically on the current deep transformation in the medical technology industry.

2.2. The European technological medical sector alone employs more than 575 000 people, working in approximately 26 000 companies. The industrial landscape is dominated by SMEs interacting with big companies.

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<sup>(3)</sup> Country Specific Recommendations.

<sup>(4)</sup> OJ C 181, 21.6.2012, p. 160, OJ C 242, 23.7.2015, p. 48, SOC/560 — Sustainable social security and social protection systems in the digital era (not yet published in OJ), OJ C 133, 9.5.2013, p. 52, OJ C 434, 15.12.2017, p. 1.

2.3. The sector is estimated at roughly EUR 100 billion. The positive trade balance of EUR 14,1 billion in 2015 was double that of 2006 and went substantially beyond the American trade surplus of EUR 5 billion. The sector has excellent future prospects.

2.4. Research is driven by both continuous step-innovation and breakthrough and disruptive innovation in business, but often also as spin-offs from existing structures such as university hospitals. The number of patents shows the added value through innovation. In 2015, there were 12 474 patent applications in the area of medical technology. This number amounts to roughly 17 % more than in digital communication and computer communication, and nearly 55 % more than in pharmaceuticals and biotechnology <sup>(5)</sup>.

2.5. In 2015, health and long-term care accounted for 8,7 % of GDP in the EU and for 15 % of total government expenditure. This could rise to 12,6 % of GDP by 2060 due to more costly treatments, ageing populations and the sharp rise in chronic diseases and co-morbidities <sup>(6)</sup>. Due to financial constraints, healthcare delivery needs increasingly to cope with budget pressure. This may lead to short-term budget cuts that have a negative effect on R & D expenditure.

2.6. Co-creation and cooperation between large corporations and SMEs is the norm. Corporations focus on developing capital-intensive hardware and software platforms, while SMEs focus on specific platforms for specific purposes.

2.7. The differences between countries are significant. Health systems and financial structures, as well as the state of technology, including the absorption of innovative solutions and prevailing medical practices, also vary greatly from country to country.

2.8. Besides opportunities, the medical technology industry faces major challenges. It is an industrial sector in its own right due to the predominance of public actors, a wide range of stakeholders, the impact of European values <sup>(7)</sup> and the need for sustainable public finance, as well as due to cautiously guarded subsidiarity principle and often decentralised, usually regionally-based, ecosystems.

2.9. Regions are a fertile basis for cooperation. A lack of bundling initiatives and regional fragmentation, however, often block innovative SMEs, as their capacity to attract equity investment is directly related to their ability to develop larger markets for digital health solutions.

2.10. In contrast to the United States, where a large part of healthcare is organised through private insurance systems, health care in Europe is primarily publicly funded.

2.11. Progress in medical technology is driven by close interaction between all stakeholders. The ecosystem is drastically changing, with new players driving the digital transformation. The sector has to strike a delicate balance between market forces and public interest that requires affordable healthcare for all.

2.12. It has to operate in an environment of industry, doctors, hospitals, empowered patients and patient organisations, and insurance companies (including national statutory/mandatory social security systems); in other words, many interacting stakeholders are functioning in a complex system.

2.13. Technology and innovation are embedded in this specific ecosystem. Innovation is no longer mainly driven by the supply side. Current practices show a shift towards the demand side, which is generally not very keen to adopt new approaches. The final outcome is usually the fruit of intense coordination between all stakeholders at national and often regional level.

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<sup>(5)</sup> The European Medical Technological Industry in figures, 2015.

<sup>(6)</sup> European Commission, 2017.

<sup>(7)</sup> See note 1.

2.14. Industry focuses on specific solutions and the renewal of any element in the industrial value chain. Each medical specialty has its own features. In parallel, there are increasingly integrated care solutions.

2.15. The system as it functions is continuously tested. It is far from easy for industry to comply with all requirements while regulatory obligations sometimes overlap.

### 3. EU industrial policy

3.1. The EESC welcomes the recent EU focus on more productive output in health through more innovation, greater (cost-) efficiency, better access and increased e-skills<sup>(8)</sup>. The digital single market strategy opens new windows of opportunity as well as challenges.

3.2. EU industrial policy can build upon shared national and EU competences in the framework of Article 168 TFEU<sup>(9)</sup>. Stepping up cooperation with the WHO and the OECD goes in parallel. EU and national authorities should actively fight counter-productive fragmentation. Objective measurements are desirable.

3.3. Industrial performance as well as interaction between industry and national and regional stakeholders must be fostered. EU funding mechanisms and national funding should be complementary. European, national and regional objectives should be brought under the same umbrella.

3.4. A range of directives and guidelines in the health sector also concerns industry: on health and safety<sup>(10)</sup>, on patient's rights<sup>(11)</sup>, on privacy, and on intellectual property rights. Notably FP7/Horizon 2020 and Cohesion Policy Funding, are co-funding medical devices related projects. Horizon 2020 has, for academic and medical technologies, especially benefitted the pharmaceutical industry. Since 2015, EIT has been very active in financing regional initiatives<sup>(12)</sup>.

3.5. An EU industrial policy is critical given the financial support and technological achievements in competing jurisdictions. In China, the *China 2025* strategy amounts to favouring domestic brands and to incentives for hospitals to privilege Chinese industry and to discourage foreign investment. This may hit European companies hard. Given existing and increasing protectionism in the US, one can hardly speak of an Atlantic level playing field. In the US, a digital revolution is also on its way<sup>(13)</sup>. Businesses from the US have easy access to the European market. Google is a strong new competitor. EU trade negotiations must secure up-to-date European production in providing universal health care.

3.6. The optimisation of data increases opportunities to all Europe-based companies<sup>(14)</sup>. Electronic Health Record (EHR) systems are very costly. The fragmentation of and cross-border barriers to health data hamper interoperability efforts and European SMEs. Future personalised medical solutions — better prevention, more accurate diagnosis, better treatment — will benefit largely from pooling data and resources across the EU. This pooling is still relatively modest as compared to the US and China.

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<sup>(8)</sup> See EPSCO Council Conclusions (2006/C 146/01) and its Annex, 2 June 2006 on the impact of European values.

<sup>(9)</sup> Article 168 in Title XIV TFEU: Public Health.

<sup>(10)</sup> Recently, the Council again adopted two regulations with a heavy impact on industry: one on new devices and one on in vitro diagnostics.

<sup>(11)</sup> See in this context art. 35 of the Charter of Fundamental Rights, doc. 2012/C 326/02, and the European Charter of Patients' Rights, 2002.

<sup>(12)</sup> The EIT KIC Health (European Institute of Technology and Innovation — Knowledge and Innovation Community) was established on 9 December 2014.

<sup>(13)</sup> See study Goldman Sachs, 1917: *A digital healthcare revolution is coming — and it could save America \$300 billion*.

<sup>(14)</sup> See Commission Communication *Building a European Data Economy*, March 2011 and the EESC's reaction TEN/630.

3.7. PPPs of stakeholders in the public and private sector need to be carefully assessed and monitored regarding their capability to create innovative and sustainable solutions, industrial objectives, and beneficial interaction and exchanges.

#### 4. Innovation and the need for sustainable long-term solutions

4.1. Presently, technological investment in the healthcare system is limited to 2-3 % of total healthcare costs. The range of innovations applies in detail to every single medical specialty <sup>(15)</sup>, greatly affecting the future of the medical profession as well as the organisation of hospitals and the health sector in general. New business models are being put in place across the Union.

4.2. Financial pressure may lead to cheaper short-term solutions and thus to less innovation. Moreover, incentives in various Member States do not contribute properly to innovation but may lead to unmet medical needs or reduced utility for patients and, ultimately, to more costly treatments. Bilateral exchanges and sharing initiatives at European scale are desirable.

4.3. Productive regional cooperation and *living labs* in the sector should be encouraged. The EIT fosters cooperation by promoting catalyst developments and synergies, amongst others via *hubs*, as well as by promoting dialogues, platforms and inter-linkages for individual projects.

4.4. Digital innovation, notably concerning mobile health applications, can help to address risk factors that are associated with chronic diseases. Mobile health and remote monitoring support prevention and may also reduce the need for burdensome treatments later on.

4.5. R & D and innovation are not self-propelling forces. On the demand side — which is almost exclusively the public sector — there is often risk aversion and a tendency to opt for the cheapest solution.

4.6. Sometimes distrust of public authorities has to be overcome. Medical staff may slow down innovations that may lead to a change of working methods, for instance in surgery, or to completely new treatments, for instance those involving robotics. Financial provisions for medical specialists may also hamper willingness to innovate. Insurance companies are not always cooperative either. In short, a natural openness towards innovation will often require a cultural shift in order to derive the full benefits.

4.7. An overview of the various beneficial innovations that are fostering quality of life, disease prevention, improved and extended life expectancy as well as better cost/price ratios, would be helpful.

4.8. This will also be in line with the concept of 'money for value'. Health and care has been — and potentially still is — the fastest growing sector in national budgets. A common awareness of the need for innovation and long-term solutions for patients should prevail among finance ministries, health ministries and stakeholders.

4.9. From the same perspective, the European Funds and, where appropriate, in combination with national funds, are indispensable.

#### 5. Public procurement

5.1. An estimated 70 % of global medtech sales go through a public procurement process, and 70 % of the decisions in those cases are determined on the basis of price, with each of these figures on the increase. This usually leads to less competitiveness and less innovation/new technologies, resulting in higher costs and reduced added value for patients <sup>(16)</sup>.

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<sup>(15)</sup> See, inter alia, the Strategic Research Agenda under Horizon 2020, COCIR, September 2016.

<sup>(16)</sup> *Procurement, The Unexpected Driver of Value Based Health Care*, Boston Consulting Group — MedTech Europe, 2015.

5.2. Rising costs should be an incentive for hospitals and health systems to move away from purchasing medical products on the basis of up-front purchase costs<sup>(17)</sup>. Important aspects are:

- Significant savings if short-term gains in purchasing are replaced by well-calculated long-term advantages
- Innovative solutions, promoting quality in combination with total lifecycle costs
- Sufficient specialised knowledge among purchasers that is often lacking
- Transparent and non-discriminatory negotiations between supply and demand.

5.3. Competent purchasers, focusing on the latest and proven innovations, should be considered essential to the output. To a certain extent, the purchaser may be seen as the link between the interests of the patient and the supplier, saving costs and fostering output.

5.4. Tenders must be considered from a holistic point of view that takes into consideration the quality and costs of products and services over their whole life-cycle. This will equally support the need for integrated care, supported by the Integrated Care Alliance<sup>(18)</sup>.

5.5. All stakeholders share responsibility for identifying the needs of users and partners in the tendering process. This is a difficult process due to the multi-faceted challenges associated with calculating costs and assessing quality across the broad range of areas in the medical sector. It requires the right mind-set among all stakeholders. Sharing best practices in Europe and open transnational discussions and exchanges at EU level will be a great help.

## 6. Digitalisation

6.1. Technological shifts and the disruptive, transversal effects of digitalisation require deep commitment and participation from all stakeholders in the health sector.

6.2. eHealth will allow professionals to interact remotely with patients and other colleagues. It helps spread specialised knowledge and facilitate research. It creates a wide variety of new solutions and is undoubtedly a factor for growth. It will also alleviate the burden on health budgets. mHealth is improving health care at home. It plays a critical role in promoting the mobility of patients, while data, patient privacy and security must be ensured.

6.3. The Commission considers that 'a big gap still remains between the potential of digital transformation and the reality of health and care systems today'<sup>(19)</sup>. The obstacles are manifold: national legislation, financing and payment systems, traditional approaches across the medical and public sector, market fragmentation and a lack of scaled-ups. Industry also has an interest in looking for the right implementation of transformation to avoid unsatisfactory outcomes and, possibly, a greater workload.

6.4. On the other hand, as health is a major sector (around 10 % of EU GDP), the prospects of massive digitalisation open big opportunities for further expansion<sup>(20)</sup>. Awareness of the impact of digitalisation, including artificial intelligence, is growing fast<sup>(21)</sup>. The Commission recently adopted a Communication that addresses three priorities in the digital single market strategy for the health and care sector:

- Secure access by the public to electronic health records and the possibility of cross-border sharing, as well as the use of e-prescriptions

<sup>(17)</sup> The health sector is by no means the only sector that suffers from such practices. The *lowest price syndrome* prevails in most public procurement across Europe. It is one main reason for European legislation, see notably the Public Procurement Directive of 2014.

<sup>(18)</sup> See, amongst others, the *European Blue Print*, DG CNECT (chapter 6, below) and [www.integratedcarealliance.org](http://www.integratedcarealliance.org)

<sup>(19)</sup> See European Industry: Working Group 2 — Digital Industrial Platforms, chapter 5, Overview of the Strategy in 'Digital Transformation of Health and Care'.

<sup>(20)</sup> See Working Group 2, p. 31.

<sup>(21)</sup> See, inter alia, *Blueprint on Digital Transformation of Health and Care for the Ageing Society, a Strategic Vision developed by Stakeholders*, Brussels, 5-8 December 2016.

- Support for data infrastructure for advanced research, disease prevention and personalised health and care in key areas
- Facilitation of feedback and interaction between patients and healthcare providers, supporting prevention and citizen empowerment, as well as quality and patient-centred care, focusing on chronic diseases and better outcomes of healthcare systems.

6.5. The *Blueprint* states that, unless the EU aligns effective innovation and economic and industrial policies with health and social care policies, as well as with users' and patients' needs, 'our social and economic models as well as the quality of life of our population are at risk. This is a crucial point we need to address' <sup>(22)</sup>. The OECD concludes that governments play a crucial role as a source of leadership in enabling the effective use of ICT in changing and redesigning health systems <sup>(23)</sup>. The OECD notes, however, that fragmentation and the rapidly evolving nature of technological solutions, combined with a lack of industry-wide standards and compliance with existing rules on ICT systems, may lead to a high risk of failure and poor returns <sup>(24)</sup>.

6.6. A broad spectrum of successful eHealth initiatives already exists. However, there are substantial differences between countries and regions. An overarching strategy of interaction and synergy was recently launched in the Digitising European Industry (DEI) project as well as 'a new model for linking up different EU initiatives, with clear industry commitments as well as support from Member States and regional strategies' <sup>(25)</sup>.

6.7. Following the example of *Industry 4.0*, the Commission has now launched *Health 4.0*. EU programmes are underway. Like-mindedness among all of the DGs concerned is needed in order to achieve synergies. Technology platforms that operate in parallel with national and regional initiatives as well as (cross-border) networking must be encouraged. The recently established taskforce should foster similar developments <sup>(26)</sup>.

6.8. A number of EU pilots and initiatives are not fully completed, while new initiatives have been started. A more sustainable method would be to have permanent mechanisms in place to support industry and innovation, including implementation.

6.9. Big data has great potential to further radical shifts in medical treatment. It is important that electronic health records are securely managed and protected in line with healthcare data management protocols complying with government regulations <sup>(27)</sup>. Effective CPD strategies <sup>(28)</sup> are important, especially in data management and privacy standards for patients, cloud environments and security investments in big data storage.

6.10. Statistics prove that the healthcare sector is particularly vulnerable to cyber attacks. Consequently, cyber security must also be a priority in new industrial applications.

6.11. Big data supports personalisation, including in the relationship between producers and patients. It affects the following areas:

- A shift from healthcare to home care
- A shift from generic solutions to personalised treatment
- A shift from cure to prevention
- The removal of restrictions in the case of illness or disability

<sup>(22)</sup> *Blueprint*, p. 6.

<sup>(23)</sup> *Improving Health Sector Efficiency, the role of Information and Communication technologies*, OECD 2010.

<sup>(24)</sup> *Ibid.* p. 16.

<sup>(25)</sup> Working Group 2, p. 35.

<sup>(26)</sup> Taskforce to take health and digital policies further, 27 February 2017.

<sup>(27)</sup> See also the 2012 framework for data protection.

<sup>(28)</sup> Continuing Professional Development Strategies.

6.12. Digitalisation and Big Data not only favour the proliferation of individual sensors and devices, they also play a key role in new diagnostics, research and prevention as well as in supporting patient-empowerment and self-management, while opening up optimal solutions for integrated care. The exchange of patients' data will be critical for interoperability.

6.13. European best practices and peer pressure as well as objective assessments and pilots will be helpful, provided these pilots are carried out in full.

## 7. Social impact and skills

7.1. The transformation in industry has a social impact both in the medical industry itself and in the health sector at large. As in other industrial sectors, the change of business models due to digitalisation requires an adjustment of working conditions and labour market mechanisms as well the involvement of the social partners at various levels.

7.2. Technology and innovation usually have a strong effect on the situation of workers in the health sector itself. In addition to and together with more closely connected stakeholders such as hospitals and clinics, the industry can help to prepare the workforce for changing environments and treatments.

7.3. Special approaches and tools are required to meet the needs of vulnerable, notably elderly people (retirement homes) who should benefit from specific personalised kinds of support and assistance. Professional nursing needs focused training in applying new technologies to this category of patients.

7.4. Health and care are among the biggest job providers in the EU. A predicted shortage of up to 2 million health workers and 20 million care workers in the EU by 2025 presents a challenge for a sustainable future development of the sector as a whole <sup>(29)</sup>.

7.5. An optimised health and care system will significantly benefit from the input and commitment of a highly skilled and motivated care system. Often health and care jobs are precarious, poorly paid and quite burdensome. The mismatch between needs and required work (quality) calls for a redesign of health- and care-related work and organisation.

7.6. ICT and smart organisations can help create more attractive and productive working conditions and better workplaces. Perceived risks and problems as well as all kinds of questions due to new technologies should be addressed by comprehensive information and consultation in line with the rights of health care personnel at various levels.

7.7. New skills, adjusted working methods and patient-empowerment have a big impact. These processes can only be successfully accomplished by the commitment of all parties concerned. These should result from national, sectoral or enterprise-based agreements and/or solutions that prepare employees and health organisations properly for upcoming changes. Since 2006, an EU sectoral social dialogue committee for the hospital/health care sector has been in place.

7.8. Education and practice, as well as ongoing training, are crucial. Common European education and training modules are desirable. Exchanges on awareness building and best practices in Europe on these issues between the parties concerned should be promoted. Education and training were covered in a Joint Declaration of the social partners in 2016 <sup>(30)</sup>.

7.9. EU-wide best practices in health and care concerning system developments and evaluation of smart organisations can also be helpful in promoting promising methods of worker participation.

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<sup>(29)</sup> *Blueprint*, p. 19.

<sup>(30)</sup> See Joint Declaration by HOSPEM and EPSU — social partners — on Continuing Professional Development and Life Long Learning for All Health Workers in the EU, November 2016. See for further information on the need for investment in the workforce of the health sector the Joint UN/ILO/WHO/OECD report *Working for health and growth: investing in the health workforce*.

7.10. The need to have an open mind to new ICT-enabled solutions requires all health and care professionals to be digitally literate and up-to-date with the latest technologies. In addition to the skills of the full range of professionals, patient-empowerment also requires the right mind-set and corresponding competences.

7.11. In parallel to healthcare professionals, there is a need to build medical knowledge in the IT business with a view to optimising the use of IT tools in health and care.

7.12. Employment in informal and social care must also be up-to-date. Informal care is increasing disproportionately, as is patient-empowerment. Both can greatly improve the mobility of the ageing generation for disabled and healthy elderly people alike. The term 'silver economy' is self-explanatory.

Brussels, 14 February 2018.

*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 role of Turkey in the refugee crisis’**

**(own-initiative opinion)**

(2018/C 227/03)

Rapporteur: **Dimitris DIMITRIADIS**

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| Plenary Assembly decision                    | 22.9.2016  |
| Legal basis                                  | Rule 29(2) of the Rules of Procedure<br>Own-initiative opinion |
| Section responsible                          | Section for External Relations                                 |
| Adopted in section                           | 7.11.2017  |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 227/6/12   |

## 1. Conclusions and recommendations

1.1. The EESC recognises that Turkey is playing a crucial and decisive role in managing the so-called refugee crisis in the Middle East and Mediterranean region and has endeavoured to tackle the problem using its own means, though with additional assistance from the EU and the international community.

1.2. In the view of the EESC, despite the explosive situation of the so-called ‘refugee crisis’, to this day the EU has failed to put in place a credible and effective common European immigration policy or a common European asylum system, owing to the unjustifiable refusal by some Member States to comply with either their legal obligations set out in international conventions or the EU Treaties, together with those agreed to in decisions adopted unanimously at summits or meetings of the Councils of Ministers. It therefore urges the Council and the Commission to work more resolutely on this issue, and to oblige those Member States which fail to comply with their European commitments to take the required measures immediately.

1.3. The EESC strongly condemns the xenophobic attitude of some Member States to the refugee crisis and considers this stance to be contrary to the fundamental values of the EU.

1.4. The EESC reaffirms its readiness to contribute in any way it can to addressing the refugee crisis, working with the European institutions and with civil society organisations (employers, workers and NGOs), as borne out by the significant work it has already carried both in the form of numerous opinions and in missions to the countries affected by this humanitarian catastrophe.

1.5. Since the signing of the EU-Turkey statement, there has been a significant and steady reduction in the number of people unlawfully crossing European borders or losing their lives in the Aegean. At the same time, however, a rapid increase is under way in flows to other southern countries, a source of particular concern to the EESC. The subsequent performance of the EU Member States in terms of both resettlement and relocation has continued to be disappointing. While the necessary foundations for implementing these programmes have been laid, the current pace is still slower than is required to meet the objectives set with a view to ensuring the resettlement and relocation of all eligible persons.

1.6. The EESC considers it necessary for Turkey to draw up a uniform system for granting international protection to asylum seekers, in accordance with international and European standards<sup>(1)</sup>, which does not discriminate against those applying for international protection on the basis of their national origin, granting uniform protection to all of them. Among other things, it suggests removing the geographical limitation for non-European asylum seekers and the distinction between Syrian and non-Syrian asylum seekers<sup>(2)</sup>. The principle of non-refoulement must also be guaranteed.

1.7. The EESC considers it necessary to improve accommodation conditions in Turkey, as well as the policies on the social and economic integration of recognised refugees, in particular with regard to access to employment, healthcare, education and housing. Special attention should be paid to the protection of unaccompanied minors and children, particularly as regards access to education and protection from forced labour and forced marriage<sup>(3)</sup>.

1.8. The EESC calls for a serious, independent monitoring and surveillance mechanism to be set up in respect of the EU-Turkey Statement on refugees in order to monitor — in cooperation with the Turkish authorities, international NGOs and specialised humanitarian organisations — both sides' implementation of and compliance with the terms agreed, pursuant to international and European law<sup>(4)</sup>.

1.9. The EESC considers it essential to strengthen the role of the European Border Guard Agency in order to dismantle trafficking networks and combat people smuggling, in line with international law<sup>(5)</sup>.

1.10. The EESC calls for full compliance on the part of the EU Member States that have not so far participated in the relocation and resettlement procedures, and for the relevant programmes to be speeded up. The judgements of the Court of Justice of the European Union and the efforts of the Commission to improve coordination between European institutions and the Member States represent a positive step in this direction. In its judgements, the CJEU directly condemns the behaviour of certain States that do not accept refugees on their territory which, as the Court points out, is contrary to the obligation of solidarity and fair burden-sharing incumbent upon the Member States of the Union in the area of asylum policy.

1.11. The EESC is deeply concerned about the general human rights situation in Turkey, especially since the failed coup d'état. We believe that the principles and values of the EU set out in Article 2 of the Treaty on European Union may be under attack by the current government of Turkey<sup>(6)</sup>. Specifically, it is concerned that civil society organisations cannot function unhindered in Turkey, particularly in the wake of the declaration of a state of emergency, and considers that they play a key role in the humanitarian situation of refugees in both the planning and implementation of programmes to integrate refugees into local communities.

1.12. The EESC is of the view that the social partners can and must play a prominent role in Turkey in order to address the refugee crisis.

1.13. The EESC is concerned at the tension that has recently marked EU-Turkey relations and the possible impact of any further heightening of tension both on the implementation of the agreement between Europe and Turkey and on European-Turkish relations in general. The EESC is still of the view that European-Turkish relations should be geared to maintaining Turkey's accession prospects, in full compliance with the European *acquis*.

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<sup>(1)</sup> European Commission, Turkey 2016 Report, Brussels, 9.11.2016, SWD (2016) 366 final, pp. 77-78, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf)

<sup>(2)</sup> EESC fact-finding missions on the situation of refugees as seen by civil society organisations, Mission Report on Turkey, 9-11 March 2016, p. 2, available at: [http://www.eesc.europa.eu/resources/docs/eesc-fact-finding-missions-refugees\\_turkey\\_en.pdf](http://www.eesc.europa.eu/resources/docs/eesc-fact-finding-missions-refugees_turkey_en.pdf)

<sup>(3)</sup> See footnote 2.

<sup>(4)</sup> Amnesty International, Europe's gatekeeper: unlawful detention and deportation of refugees from Turkey, p. 14, available at: <https://www.amnesty.org/en/documents/document/?indexNumber=eur44%2f3022%2f2015&language=en>

<sup>(5)</sup> See footnote 2.

<sup>(6)</sup> Article 2 TEU states that 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

## 2. Introductory comments: from the European Agenda on Migration to the Agreement of 18 March 2016

2.1. Following the outbreak of the war in Syria, which triggered a massive humanitarian crisis, and the explosive situation that has arisen in Iraq as a result of ongoing political instability, thousands of refugees began to cross the Turkish border, under inhuman conditions, with the ultimate aim of reaching the countries of the EU, those in central Europe in particular.

Turkey found itself 'hosting' some three million people who, at the risk of their lives, had passed through war zones and — again at the risk of their lives — attempted and continue to attempt to cross Europe's border irregularly into Greece.

2.2. As the first country of reception, Turkey has played and continues to play a particularly crucial role in the so-called 'refugee crisis', which has become one of the EU's main 'unresolved' problems.

2.3. The European Agenda on Migration, which emerged following difficult and protracted negotiations among the Member States in May 2015, represented the EU's first attempt to tackle the plight of the thousands of refugees who risk their lives transiting war zones and attempting to cross the Mediterranean. For the first time, concepts such as internal relocation and resettlement were introduced. The Agenda sets out both immediate and longer-term measures to deal with the substantial migration flows faced by the EU — and in particular the Mediterranean countries — and the problems thrown up when handling crises of this kind. They include tripling financial resources for Frontex, relocating refugees and migrants in EU countries according to specific criteria and quotas, activating — for the first time — the emergency response mechanism provided for in Article 78(3) TFEU to assist Member States confronted with a sudden influx of refugees, and launching an operation in the Mediterranean under the Common Security and Defence Policy to dismantle trafficking networks and combat people smuggling, in keeping with international law.

2.4. The picture also includes the EU-Turkey statement of 18 March 2016, intended to limit the refugee crisis and which, for procedural reasons was labelled as an informal agreement on irregular migration from Turkey to the EU, to replace irregular migration with legal channels for resettling refugees within the European Union <sup>(7)</sup>. Its provisions include:

- (i) All 'irregular migrants' arriving in Greece from Turkey will, as from 20 March 2016, be returned to Turkey on the basis of a bilateral agreement between the two countries.
- (ii) All those who do not apply for asylum or whose requests are considered unfounded or inadmissible will be returned to Turkey.
- (iii) Greece and Turkey, assisted by EU institutions and agencies, will enter into any necessary bilateral agreements, including one on the permanent presence of Turkish officials on Greek islands and Greek officials in Turkey from 20 March onwards, in order to implement these agreements.
- (iv) For every Syrian returned to Turkey from the Greek islands, another Syrian will be settled in the EU.
- (v) A mechanism will be set up to implement the 'one for one' principle — in cooperation with the Commission, EU agencies, the UN High Commissioner for Refugees and the Member States — as from the first day that returns start.
- (vi) Priority for resettlement in the EU will be given to Syrians in Turkey rather than in Greece, and of these, priority will be given to migrants who have not previously entered or tried to enter the EU.

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<sup>(7)</sup> European Council, Foreign affairs and international relations, 18.3.2016, <http://www.consilium.europa.eu/el/press/press-releases/2016/03/18-eu-turkey-statement/>

2.5. In its additional fact sheet on the EU-Turkey statement of 18 March 2016<sup>(8)</sup>, the Commission stresses the possibility of classifying Turkey as a ‘safe third country’<sup>(9)</sup>. The communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration leads to the same conclusion, arguing that in its view the concept of safe third country — as defined in the Asylum Procedures Directive — requires not that there should be no reservations or geographical limitations when implementing the Geneva Convention, but that in principle protection can be obtained under the terms of the Convention<sup>(10)</sup>.

2.6. For its part, EESC has expressed the view that the concept of safe country of origin should under no circumstances be applied in cases of infringement of press freedoms, undermining of political pluralism, or in countries where persecution takes place on the grounds of gender and/or sexual orientation, or of belonging to a national, ethnic, cultural or religious minority. In any case, the following (among other things) must be assessed regarding a country’s inclusion on the list of safe countries of origin: up-to-date information from sources such as the European Court of Human Rights, the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office (EASO), the Council of Europe (CoE) and other human rights organisations<sup>(11)</sup>.

2.7. Since the signing of the EU-Turkey statement, there has been a significant and steady reduction in the number of people unlawfully crossing European borders or losing their lives in the Aegean<sup>(12)</sup>. At the same time, however, a rapid increase is under way in flows to other southern countries, a source of particular concern to the EESC. The subsequent performance of the EU Member States in terms of both resettlement and relocation has continued to be disappointing. While the necessary foundations for implementing these programmes have been laid, the current pace is still slower than is required to meet the objectives set with a view to ensuring the resettlement and relocation of all eligible persons<sup>(13)</sup>.

<sup>(8)</sup> European Commission, Fact Sheet on the EU-Turkey Agreement, 19.3.2016, available at: [http://europa.eu/rapid/press-release\\_MEMO-16-963\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-963_en.htm)

<sup>(9)</sup> ‘On what legal basis will asylum seekers be returned from the Greek islands of Turkey? People who apply for asylum in Greece will have their applications treated on a case by case basis, in line with EU and international law requirements and the principle of non-refoulement. There will be individual interviews, individual assessments and rights of appeal. There will be no blanket and no automatic returns of asylum seekers. The EU asylum rules allow Member States in certain clearly defined circumstances to declare an application “inadmissible”, that is to say, to reject the application without examining the substance. There are two legal possibilities that could be envisaged for declaring asylum applications inadmissible in relation to Turkey: (1) first country of asylum (Article 35 of the Asylum Procedures Directive): where the person has been already recognised as a refugee in that country or otherwise enjoys sufficient protection there; (2) safe third country (Article 38 of the Asylum Procedures Directive): where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person’.

<sup>(10)</sup> ‘In this context, the Commission underlines that the concept of safe third country as defined in the Asylum Procedures Directive requires that the possibility exists to receive protection in accordance with the Geneva Convention, but does not require that the safe third country has ratified that Convention without geographical reservation. Moreover, as regards the question whether there is a connection with the third country in question, and whether it is therefore reasonable for the applicant to go to that country, it can also be taken into account whether the applicant has transited through the safe third country in question, or whether the third country is geographically close to the country of origin of the applicant’. Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, 10.2.2016, COM (2016) 85 final.

<sup>(11)</sup> Opinion of the European Economic and Social Committee, Establishing an EU list of safe countries of origin (OJ C 71, 24.2.2016, p. 82), points 2.4 and 2.11.

<sup>(12)</sup> The number of daily crossings from Turkey to the Greek islands has remained low since the Commission’s most recent report of an average of 75 arrivals a day. European Commission Brussels, 6.9.2017 COM(2017) 470 final Report from the Commission to the European Parliament, the European Council and the Council — Seventh Report on the Progress made in the implementation of the EU-Turkey Statement. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906\\_seventh\\_report\\_on\\_the\\_progress\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_statement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906_seventh_report_on_the_progress_in_the_implementation_of_the_eu-turkey_statement_en.pdf)

<sup>(13)</sup> According to the latest data, the overall number of relocations stands at 27 695 (19 244 from Greece and 8 451 from Italy), while a total of 8 834 Syrians have been resettled from Turkey to the EU under the EU-Turkey statement. With regard to financial support under the Facility for Refugees in Turkey, of the EUR 3 billion funding granted for the 2016-2017 period, contracts have already been signed for a value of more than EUR 1,66 billion and disbursements amount to EUR 838 million. The number of vulnerable refugees supported by the Emergency Social Safety Net has increased from 600 000 to 860 000 and is expected to rise to 1,3 million by the end of 2017. European Commission Brussels, 6.9.2017 COM(2017) 465 final Report from the Commission to the European Parliament, the European Council and the Council — Fifteenth report on relocation and resettlement. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906\\_fifteenth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906_fifteenth_report_on_relocation_and_resettlement_en.pdf)

### 3. The safe country mechanism: safe third country and first country of asylum

3.1. The concepts of 'safe country of origin', 'safe third country' and 'first country of asylum' are set out in Directive 2013/32/EU on common procedures for granting and withdrawing international protection, which lays down common procedural standards and guarantees for those seeking international protection in the EU Member States. More specifically, the Directive provides for four categories of safe country. These are first country of asylum (Article 35), safe third country (Article 38), safe country of origin (Article 37) and European safe third country (Article 39) <sup>(14)</sup>.

3.2. A joint reading of Directive 2013/32/EU's Article 39 on European safe third countries and Article 35 on the first country of asylum reveals a greater and a lesser status of international protection, with the safe third country regime under Article 38 lying in between. Article 39 provides the highest level of protection, referring to countries that have ratified the Geneva Convention without geographical limitations, offer the maximum protection provided by the Convention, implement Article 36 of the Convention in full in the country and are subject to the Convention's control mechanisms. Article 35 of the Directive, in stark contrast, is limited to providing protection to refugees or other sufficient protection, focusing on application of the principle of non-refoulement.

3.3. According to Article 38 of Directive 2013/32/EU, a country is considered to be a safe third country for a particular applicant if it complies overall with the following criteria: (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) the country in question respects the principle of non-refoulement in accordance with the Geneva Convention; (c) there is no risk of serious harm to the applicant; (d) the country prohibits the removal of a person to a country where they would be at risk of torture or cruel, inhuman or degrading treatment or punishment, as laid down in international law; (e) the possibility exists to request refugee status and, if recognised as a refugee, to receive protection in accordance with the Geneva Convention; and (f) the applicant has a connection with the third country concerned on the basis of which it would be reasonable for that person to go to that country. Consequently, in the event that the competent authorities judge that a country, such as Turkey, constitutes a first country of asylum or a safe third country for an applicant, they issue a decision rejecting the application for international protection as inadmissible, without examining the substance <sup>(15)</sup>.

3.4. The principle of non-refoulement is the cornerstone of the system of international refugee protection and is enshrined in Article 33(1) of the 1951 Geneva Convention <sup>(16)</sup>. UNHCR has observed that this article introduces a central principle into the Convention, one that has now entered into customary international law and is thus binding on all States

<sup>(14)</sup> It is argued that the safe country mechanism runs contrary to Article 31(1) of the Geneva Convention, since international law does not stipulate that the application must be submitted in the first country in which international protection might be granted. In this connection, see M. Symes and P. Jorro, *Asylum Law and Practice*, LexisNexis UK, 2003, p. 448; G. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, Oxford University Press, 2007, p. 392. For the opposite point of view, see K. Hailbronner, *The Concept of 'Safe Country' and Expeditious Asylum Procedures: A Western European Perspective*, *International Journal of Refugee Law*, 1993, 5(1): pp. 31-65.

<sup>(15)</sup> According to the Hellenic Union for Human Rights, from the first days of application of the EU-Turkey agreement on refugees, 'the EASO expert considered that Turkey was a safe third country with regard to the first applications for asylum that were examined [...]. This opinion, a standard text reproduced as grounds for all rejected applications, essentially denies claimants the necessary individual assessment and, worse still, places the burden of proving that Turkey is not a safe third country on the asylum seeker, completely counter to the spirit of the Directive. In these initial cases, the summary rejections are unjustified'. Hellenic Union for Human Rights, *Comments — critical remarks on the provisions and implementation of Law 4375/2016*, 21 April 2016, available at: <http://www.hlhr.gr/?MDL=pages&SiteID=1215> On 10 May 2016, however, the first Greek decision was made in which Turkey was not considered to be a safe third country. More specifically, following an appeal by a Syrian in Lesbos who was initially not granted asylum and who should then have been returned to Turkey, the refugee appeals board determined that Turkey was not a safe third country, meaning that the asylum application had to be re-examined in greater detail and with more facts. The 'precedent' set by the first decision that Turkey cannot be considered a safe third country has been followed by a large number of refugee appeal boards.

<sup>(16)</sup> Regarding the principle of non-refoulement see, inter alia, E. Lauterpacht & D. Bethlehem, 'The scope and content of the principle of non-refoulement: Opinion', in E. Feller, V. Tuerk & F. Nicholson (eds.), *Refugee Protection in International Law*, UNHCR's Global Consultations on International Protection, Cambridge University Press, Cambridge 2003, pp. 87-177. See also the Advisory Opinion of the UN High Commissioner for Refugees on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>

of the international community irrespective of whether or not they have ratified the Geneva Convention<sup>(17)</sup>.

3.5. Thus anyone who is a refugee under the 1951 Convention, or who meets the criteria of the definition of refugee set out in Article 1(a)(2) of the 1951 Convention, even though their status as a refugee may not have not been officially recognised, is covered by the protection afforded under Article 33(1)<sup>(18)</sup>. This is of particular importance for asylum seekers, as it is possible that they may be refugees and should therefore not be removed or expelled from the country of asylum until a final decision on their status has been taken<sup>(19)</sup>.

#### 4. Turkey as a 'safe third country'

4.1. Since 2011, Turkey has been hosting the highest number of refugees from Syria (more than three million — 3 222 000). At the same time, Lebanon, a country with a population of around 4,8 million, is hosting more than 1 million registered refugees. Jordan has the third largest number of refugees from Syria (654 582), whilst according to the latest official figures, Iraq and Egypt are hosting 244 235 and 124 534 registered refugees respectively<sup>(20)</sup>.

4.2. Turkey has ratified the Geneva Convention on Refugees and its 1967 Protocol, but retains a geographical reservation regarding non-European asylum seekers. In practice, it only recognises refugees from Europe, meaning countries that are members of the Council of Europe<sup>(21)</sup>. In April 2014, Turkey passed a new Law on Foreigners and International Protection. The law provides for four types of protected status in the country: (a) 'refugee status' for recognised refugees under the Geneva Convention who are citizens of one of the 47 Member States of the Council of Europe; (b) 'conditional refugee status' for recognised non-European refugees; (c) 'subsidiary protection', which can be granted to European and non-European citizens who do not meet the criteria of the Geneva Convention in order to be recognised as refugees but, if returned to their country of origin, would be at risk of the death penalty, torture or other inhuman or degrading treatment, or of suffering harm as a result of armed conflict in their country; and (d) 'temporary protection' granted in the event of mass influxes<sup>(22)</sup>.

4.3. The Syrians who arrived en masse were originally granted 'visitor' (*misâfir*) status, and then temporary protection, though without the right to submit a claim for refugee status. The aim of this provision is for them to stay in Turkey only while the war lasts in Syria, and subsequently return there when conditions improve.

4.3.1. Nationals of other countries (non-Syrians) may apply for asylum on an individual basis and are then processed in a parallel procedure under the new Law on Foreigners and International Protection which entered into force in April 2014. Under this procedure, applicants are sent to both the Directorate-General of Migration Management (DGMM), which

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<sup>(17)</sup> Note on international protection of 13 September 2001 (A/AC. 96/951, paragraph 16). See also UNHCR, The Principle of Non Refoulement as a Norm of Customary International Law, Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93. Also UNHCR, Note on the Principle of Non Refoulement (EU Seminar on the Implementation of the 1995 EU Resolution on the Minimum Guarantees for Asylum Procedures), 1.11.1997. See in addition paragraph 4 of the Preamble of the Declaration of the States Parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, adopted at the Ministerial Meeting of 12-13 December 2001, HCR/MMSP/2001/09, and the decision of the Court of Appeal of New Zealand in the case of Zaoui v Attorney General (No 2) [2005] 1 NZLR 690, 20.9.2004, paragraphs 34 and 136.

<sup>(18)</sup> Conclusion No 6 (XXVIII) — 1977 on the principle of non-refoulement, paragraph (c), Conclusion No 79 (XLVIII) — 1996 on international protection, paragraph (j), Conclusion No 81 (XLVIII) — 1997 on international protection, paragraph (i).

<sup>(19)</sup> UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 13.5.2001, paragraphs 4, 8, 13 & 50 (c) and E. Leuterpacht and D. Bethlehem, footnote 16 above, paragraphs 87-99.

<sup>(20)</sup> For more details see: <http://data.unhcr.org/syrianrefugees/regional.php>

<sup>(21)</sup> See footnote 2.

<sup>(22)</sup> The text of the law is available in English at: [http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf)

conducts the status determination procedure, and to UNHCR, which carries out a parallel status determination procedure and makes recommendations regarding relocation. Its decisions do not have legal force, however, but they are taken into account in the DGMM's assessment. It is thus clear that Turkish legislation in this field provides for different standards of protection and procedural rules for Syrians and nationals of other third countries, thereby introducing disparities in both access to, and the terms of, protection.

4.4. There are also serious obstacles, shortcomings and problems as regards access to work and basic services, such as health and welfare, education and, more generally, integration into society<sup>(23)</sup>. Although Turkey recognised the right of Syrians to work as of January 2016, in practice very few of them have received work permits, with most of them consequently engaging in undeclared work<sup>(24)</sup>. It should be added to the foregoing that beneficiaries of international protection are explicitly and categorically excluded from the possibility of long-term integration in Turkey (Article 25 of the Law on Foreigners and International Protection), and the free movement of refugees is restricted under Article 26 of the same law. Clearly, therefore, protection granted to people applying for international protection in Turkey falls below the legal guarantees and rights enjoyed by those recognised as refugees under the Geneva Convention, such as the right to move within the territory of the contracting State (Article 26 of the 1951 Convention), the right to naturalisation (Article 34 of the 1951 Convention) and the right to work (Articles 17, 18 and 19 of the 1951 Convention).

4.5. Furthermore, questions arise as to the classification of Turkey as a 'safe third country' regarding respect for the principle of non-refoulement enshrined in Article 33(1) of the Geneva Convention, Article 3 of the European Convention on Human Rights (ECHR) and Article 3(2) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment<sup>(25)</sup>. Aside from the fact that Turkey has a history of pushing back non-European asylum seekers, recent reports by international human rights organisations refer to instances of entry being denied and of collective push-backs into Syrian territory<sup>(26)</sup>. Significantly, only one day after the agreement had been signed, Amnesty International reported yet another occurrence of mass repatriation of Afghan refugees to Kabul<sup>(27)</sup>. Similarly, a resolution adopted by the Parliamentary Assembly of the Council of Europe on 20 April 2016 stated, amongst other things, that returns of both Syrians and nationals of other countries to Turkey are contrary to EU and international law<sup>(28)</sup>. It is therefore evident that there are insufficient guarantees to ensure compliance with the principle of non-refoulement in practice<sup>(29)</sup>.

Brussels, 14 February 2018.

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

<sup>(23)</sup> See footnote 2.

<sup>(24)</sup> Meltem Ineli-Ciger, Implications of the New Turkish Law on Foreigners and International Protection and Regulation No 29153 on Temporary Protection for Syrians Seeking Protection in Turkey, *Oxford Monitor of Forced Migration*, 2014, 4(2): pp. 28-36.

<sup>(25)</sup> See footnote 2.

<sup>(26)</sup> See, inter alia, the communication by Human Rights Watch of 23 November 2015, available at: <https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border>

<sup>(27)</sup> Amnesty International, Η ψευδαίσθηση της 'ασφαλούς χώρας' για την Τουρκία καταρρέει ('The illusion of Turkey as a "safe country" collapses'), 23 March 2016, available in Greek only at: <https://www.amnesty.gr/news/press/article/20243/i-pseydaisthisi-tis-asfaloyshoras-gia-tin-toyrkia-katarreei> For further reference, see O. Ulusoy, Turkey as a Safe Third Country?, 29 March 2016, available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third> E. Roman, Th. Baird, and T. Radcliffe, Why Turkey is Not a 'Safe Country', February 2016, *Statewatch*, <http://www.statewatch.org/analyses/no-283-why-turkey-is-not-a-safe-country.pdf>

<sup>(28)</sup> Resolution 2109 (2016) Provisional version, The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016, Author(s): Parliamentary Assembly of the Council of Europe, source — Assembly debate of 20 April 2016 (15th Sitting) (see Doc. 14028, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Tineke Strik). Text adopted by the Assembly on 20 April 2016 (15th Sitting).

<sup>(29)</sup> L. Reppeli (2015), 'Turkey's track record with the European Court of Human Rights'. *Turkish Review*, 1 January 2015 (Available online at: <http://archive.is/XmdO5>).

**Opinion of the European Economic and Social Committee on ‘Trade and sustainable development chapters (TSD) in EU Free Trade Agreements (FTA)’**

**(own-initiative opinion)**

(2018/C 227/04)

Rapporteur: **Tanja BUZEK**

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| Plenary Assembly decision                    | 19.10.2017   |
| Legal basis                                  | Rule 29(2) of the Rules of Procedure<br>Own-initiative opinion |
| Section responsible                          | REX  |
| Adopted in section                           | 26.1.2018  |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 133/1/9  |

## 1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the European Commission initiative to take stock of the implementation of Trade and Sustainable Development chapters (TSD) in EU trade agreements in the non-paper<sup>(1)</sup> and consult with civil society on the issue.

1.2. The EESC has played an important role in raising awareness of EU trade policy among civil society both in the EU and in third countries. EESC members have been and will continue to be committed to strengthening cooperation with civil society of third countries in monitoring the negotiation and implementation of EU trade agreements.

1.3. The EESC encourages the Commission to strengthen its dialogue with civil society to develop the functioning of TSD chapters in current and future trade agreements and, in particular, to reflect this in the review of the TSD chapter in the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

1.4. However, the EESC urges the Commission to be more ambitious in its approach, in particular with respect to strengthening effective enforceability of the commitments in TSD chapters, which is of crucial importance to the EESC. TSD chapters must be given equal weight to those covering commercial, technical or tariff issues.

1.4.1. The EESC recommends mandating DAGs to monitor the impact of all parts of trade agreements on human, labour and environmental rights, and the scope needs to cover consumer interests.

1.4.2. The EESC regrets the narrow approach of TSD chapters when it comes to consumers' interests and would welcome a consumer-specific chapter within the TSD framework, incorporating relevant international consumer standards and strengthening cooperation on the enforcement of consumer rights.

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<sup>(1)</sup> [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf)

1.5. The EESC believes TSD chapters play a crucial role in achieving the Commission's aims set out in its 'Trade for All' <sup>(2)</sup> and 'Harnessing globalisation' <sup>(3)</sup> strategy and considers the establishment of Domestic Advisory Groups (DAGs) to be a key achievement of the TSD chapters in order to empower civil society in third countries, encourage these to actively pursue values similar to those that we recognise as 'EU values', including social, consumer and environmental standards and cultural diversity, and to make the public face of the EU visible in those countries, as well as providing an important platform to monitor commitments to human, labour and environmental rights in trade agreements.

1.6. The EESC appreciates the mandate given to provide part of the membership and the secretariat of the DAGs. However, it stresses that financing and resources remain a crucial issue in operating current and future DAGs, and asks the Commission as well as the Council and the Parliament to work together with the EESC to urgently implement systemic solutions in this area.

1.7. The EESC believes action is required from the Commission to improve the effectiveness of TSD chapters, and of DAGs in particular as the bodies tasked with monitoring these commitments. Many recommendations of a practical nature could be implemented without changing the text of the current TSD chapters and therefore this should be done without delay.

1.7.1. Identified shortcomings include an unbalanced membership and delays in establishing DAGs, the need for joint meetings between EU DAGs and the DAGs of the partner countries and for their chairs to take part in meetings of the TSD committees, having the right to present the views of their groups, and the lack of adequate financing for DAGs both by the EU and the partner countries.

1.7.2. To this end the EESC suggests joint meetings of the EU's and partner countries' DAGs to be included in the text of the agreement in order to allow them to exchange experience on joint projects and prepare joint recommendations.

1.7.3. We strongly urge supporting capacity-building for civil society in the EU and especially partner countries before the entry into force of the agreement, and encouraging the prompt establishment of DAGs, with the necessary political, financial and logistical support, while ensuring a balanced membership.

1.7.4. We also draw the Commission's attention to outstanding issues of confusion of local civil society, resulting from the cross-cutting nature between the EU's Association Agreements and the deep and comprehensive free trade agreements (DCFTAs) with Georgia, Moldova and Ukraine, and the wider role given to civil society fora, notably in Latin America, weakening the core messages of the DAGs of each party.

1.7.5. Furthermore, the EESC criticises the lack of response by the Commission to complaints raised by the DAG. Therefore, monitoring mechanisms should be able to independently trigger investigations into violations of clear TSD commitments.

1.8. The EESC urges the Commission to establish a more transparent and streamlined complaint mechanism and further recommends that DAG chairs should participate in the TSD Committee meetings and that the TSD Committee should be required to respond to issues and recommendations raised by the DAGs, within a reasonable timeframe. It recommends a regular dialogue between the EU DAGs, the Commission, the EEAS, the European Parliament and the EU Member States.

1.9. With respect to the Sustainable Development Goals (SDGs), the EESC recommends including a specific clause to promote the SDGs in all future mandates for TSD chapters.

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<sup>(2)</sup> [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

<sup>(3)</sup> [https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf)

1.10. With respect to a strong commitment given by the EU Commission on strengthening labour provisions, partner countries should demonstrate full respect of the eight ILO Core Labour Conventions before the conclusion of a trade agreement. If a partner country has not ratified or properly implemented these Conventions, or demonstrated an equivalent level of protection, the EESC recommends that a roadmap on solid commitments is sought, to be included in the TSD Chapter to ensure this be achieved in a timely manner.

1.11. The EESC notes that the non-paper raises the issue of sanctions. We encourage the Commission to investigate further existing sanctions mechanisms in trade agreements, their usage hitherto and learn from their potential limitations, in order to assess and improve the effectiveness of an enforceable compliance mechanism that could be developed in TSD chapters. In doing so, the Commission should duly note that civil society groups have both expressed support for and serious concerns about their use.

1.12. The EESC is ready to help develop new ideas to assist the Commission to increase the effectiveness of independent enforcement mechanisms in TSD chapters, not least through the right to respond when its concerns are not met. Any possible resort to sanctions where necessary would however need to be nuanced if potential trade partners are to be open to such an approach: unlike GSP+ there can be no unilateral withdrawal of any provisions in the event of any dispute.

## 2. Background

2.1. Since the first inclusion of sustainable development provisions in the EU-Cariforum Economic Partnership Agreement (EPA) and the EU-Korea Free Trade Agreement (FTA), which entered into force in 2011, all EU trade agreements include a Trade and Sustainable Development (TSD) chapter. Currently, the EU also has agreements with TSD chapters with Central America, Colombia and Peru, Georgia, Moldova and Ukraine and future new agreements to come.

2.2. In recent years, interest in labour, environment and consumer provisions in trade agreements has intensified. Discussions are taking place within the European Parliament and the Council, in Member States and among civil society stakeholders, including the EESC.

2.3. The EESC has produced several opinions in recent years, covering, and providing its recommendations on, various aspects of trade and sustainable development in EU trade policy: most notably the opinions on the Trade for All strategy<sup>(4)</sup>; on the role of trade and investment in relation to the Sustainable Development Goals (SDGs)<sup>(5)</sup>; and very concretely on the TSD chapter in the EU-Korea FTA<sup>(6)</sup>. In July 2017, the EESC organised a conference on how to make a real impact with TSD chapters in FTAs, involving notably members of various Domestic Advisory Groups (DAGs)<sup>(7)</sup>.

2.4. There are a number of evaluations of the impact and efficiency of the TSD chapters. Despite the fact that there is overall strong support in the EU for including ambitious commitments on labour rights, environmental and consumer protection, as well as an active role for civil society, in current and future FTAs, there is also a need to prove that TSD chapters can deliver on the ambitions set in the 'Trade for All'<sup>(8)</sup> communication and the Commission's recent reflection paper on harnessing globalisation<sup>(9)</sup>.

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<sup>(4)</sup> EESC Opinion on 'Trade for All — Towards a more responsible trade and investment policy', rapporteur: Mr Peel (UK-I) (OJ C 264, 20.7.2016, p. 123).

<sup>(5)</sup> REX/486 — EESC Opinion on 'The core role of trade and investment in meeting and implementing the Sustainable Development Goals (SDGs)', rapporteur: Mr Peel (UK-I), co-rapporteur: Mr Quarez (FR-II) (*not yet published in the OJ*).

<sup>(6)</sup> EESC Opinion on 'EU-Korea Free Trade Agreement — Trade and Sustainable Development Chapter', rapporteur: Mr Fornea (RO-II) (OJ C 81, 2.3.2018, p. 201).

<sup>(7)</sup> Conference on *Trade and Sustainable Development Chapters in EU Trade agreements — How to make a real impact?* — Summary of main messages: [http://www.eesc.europa.eu/sites/default/files/files/summary\\_conference\\_on\\_tsd\\_chapters\\_in\\_eu\\_trade\\_agreements.pdf](http://www.eesc.europa.eu/sites/default/files/files/summary_conference_on_tsd_chapters_in_eu_trade_agreements.pdf)

<sup>(8)</sup> Op. cit.

<sup>(9)</sup> Op. cit.

2.5. In the framework of the European Parliament's consent to the CETA agreement, EU Trade Commissioner Malmström promised the Members of the European Parliament <sup>(10)</sup> to open a wide public consultation with MEPs and civil society, including the EESC, on trade and sustainable development chapters. This reflection on the implementation of TSD chapters is also needed in the framework of ongoing trade negotiations with Mexico and Mercosur and to set up the EU position for eventual review of the CETA chapter <sup>(11)</sup>, as was agreed by both parties in the Joint Interpretative Instrument to the CETA agreement <sup>(12)</sup>.

2.6. The Commission's non-paper, published on 11 July 2017 <sup>(13)</sup>, intended to open a discussion with the European Parliament, the Council and stakeholders from civil society in the subsequent months. It comprises a description and an assessment of current practice and presents two options to improve implementation of the TSD chapters, posing several questions for stakeholders. The present EESC opinion is designed to contribute to this process and to reflect on those questions.

2.7. The Member States received the non-paper and are submitting comments and proposals. The European Parliament held a debate at its plenary session in January 2018.

### 3. General comments

3.1. The EESC welcomes the European Commission initiative to take stock of the implementation of Trade and Sustainable Development chapters (TSD) in EU trade agreements <sup>(14)</sup> and DG Trade's non-paper opening a debate and consulting with civil society on how to improve it.

3.2. The EESC believes that TSD chapters play a crucial role in achieving the Commission's aim of promoting the UN Sustainable Development Goals in its 'Trade for All' strategy and 'Harnessing globalisation' reflection paper. They are equally important as meeting international commitments, such as those made under the Paris Agreement on climate change and those on trade in fossil fuels.

3.3. In the context of SDGs, the EESC would like to draw attention to its conclusions and recommendations in its opinion <sup>(15)</sup>, in particular to include in all future mandates for TSD chapters 'a specific clause requiring both parties of each civil society monitoring mechanism to work together to promote the SDGs' and that TSD chapters 'must be given equal weight to those covering commercial, technical or tariff issues'.

3.3.1. The Committee has already noted <sup>(16)</sup> that Sustainable Development Goal 17 specifically refers to the role of civil society, stating 'a successful sustainable development agenda requires partnerships between governments, the private sector and civil society'. For the first time in UN history as well, the SDGs specify that governments are answerable to the people.

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<sup>(10)</sup> Letter from Commissioner Malmström to the Chair of the INTA Committee Mr Lange, January 2017, <https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e5af9d7b2e&title=letter.pdf>

<sup>(11)</sup> Letter from Commissioner Malmström to the Canadian Minister of International Trade Mr Champagne, October 2017, [https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e5b568bc60&title=SIGNED\\_LETTER.pdf](https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e5b568bc60&title=SIGNED_LETTER.pdf)

<sup>(12)</sup> Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States (OJ L 11, 14.1.2017, p. 3).

<sup>(13)</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1689>

<sup>(14)</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements, published on 9 November 2017.

<sup>(15)</sup> REX/486 — EESC Opinion on 'The core role of trade and investment in meeting and implementing the Sustainable Development Goals (SDGs)', rapporteur: Mr Peel (UK-I), co-rapporteur: Mr Quarez (FR-II) (*not yet published in the OJ*).

<sup>(16)</sup> REX/486 — EESC Opinion on 'The core role of trade and investment in meeting and implementing the Sustainable Development Goals (SDGs)', rapporteur: Mr Peel (UK-I), co-rapporteur: Mr Quarez (FR-II) (*not yet published in the OJ*).

3.4. However, the EESC regrets the narrow approach taken in the current debate on TSD chapters and their overall scope with respect to consumers' interests. While the Trade for All strategy puts its distinct focus on consumers' confidence in safe products, the UN Guidelines on Consumer Protection<sup>(17)</sup> provide a much wider understanding including protection of consumers' privacy, their rights in e-commerce and the right to effective enforcement of consumer rights. Given the impact of trade liberalisation on consumers, the EESC would welcome a consumer-specific chapter on 'trade and consumers' within the TSD framework, incorporating relevant international consumer standards and strengthening cooperation on the enforcement of consumer rights.

3.5. The EESC would further welcome a commitment to include a gender dimension in its trade policy and more specifically in its TSD chapters. In many EU trading countries women make up the majority of the workforce in specific sectors such as the textile industry. Therefore, EU trade agreements should not increase gender inequalities. The EU Commission should ensure the full respect of international labour standards regarding gender equality and rights of female workers at work. In particular, the EESC calls for the respect of ILO Convention No 100 on equal remuneration, Convention No 111 concerning Discrimination in Respect of Employment and Occupation, which promotes non-discrimination in the workplace, and Convention No 183 on maternity protection.

3.6. The EESC encourages the Commission to step up its dialogue with civil society to develop the functioning of TSD chapters in current and future trade agreements. This should be reflected in the review of the TSD chapter in CETA<sup>(18)</sup>, in particular. As promised by Commissioner Malmström, the EESC welcomes an early review of the Agreement's Trade and Labour and Trade and Environment provisions and wants to be involved in this review.

3.7. The EESC has played an important role in raising awareness of EU trade policy among civil society both in the EU and in third countries. EESC members have been and will continue to be committed to strengthening cooperation with civil society of third countries in monitoring the negotiation and implementation of EU trade agreements. This proactive action of the EESC has been pivotal in empowering civil society organisations abroad and further democratising trade decision-making processes.

3.8. Despite the relatively short time of implementation of TSD provisions (six years after the first new-generation free trade agreement, the EU-Korea Free Trade Agreement, entered into force), the EESC has identified a number of achievements and shortcomings that should be analysed and used to inform the forthcoming review of CETA's TSD chapter, as well as other trade agreements.

3.9. One key achievement of the TSD chapters is their establishment of Domestic Advisory Groups (DAGs) to provide an important platform for civil society to monitor commitments to human, labour and environmental rights in trade agreements. However, the EESC thinks it is important to broaden the scope to also cover consumer interests.

3.9.1. As far as its competences allow the EU should also look to develop greater synergies between the wording of TSD chapters and the 27 mandatory environmental and ILO Conventions relevant to its GSP+ programme (as well as the requirements for the least developed countries (LDC) 'Everything But Arms' (EBA) arrangement).

3.10. The EESC appreciates the mandate given to provide part of the membership and the secretariat of the six DAGs set up to date by the following agreements: EU-Korea FTA, EU-Colombia/Peru FTA, EU-Central America Association Agreement, EU-Georgia DCFTA, EU-Moldova DCFTA, EU-Ukraine DCFTA, as well as for the Consultative Committee for the EU-CARIFORUM Economic Partnership Agreement. Furthermore, the EESC looks forward to continuing its work in future DAGs, such as that for CETA and the EU-Japan FTA.

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<sup>(17)</sup> [http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf)

<sup>(18)</sup> Letter from Commissioner Malmström to the Canadian Minister of International Trade, Mr Champagne, October 2017, op. cit.

3.10.1. We also draw the Commission's attention to outstanding issues of confusion, the first as a result of the cross-cutting nature between the EU's Association Agreements and the deep and comprehensive free trade agreements (DCFTAs) with Georgia, Moldova and Ukraine, which are difficult to differentiate for local civil society, and secondly to the wider role given to civil society fora, notably in Latin America, which has led to loss of focus and the weakening of the core messages of the DAGs of each party.

3.11. However, financing and resourcing remain a crucial issue. With seven monitoring mechanisms in place (six FTAs and the CARIFORUM EPA) and more anticipated, including in the key agreements with Canada and Japan, it will be challenging for the EESC to effectively operate current and additional future DAGs without additional resources. The Commission should urgently draw up systemic solutions together with the EESC, and, together with the Parliament and the Council, ensure there are adequate resources available for these monitoring mechanisms to function and involve the full participation of representative groups in civil society.

3.12. Effective enforcement mechanisms for TSD chapters are of crucial importance for the EESC, as indicated in a number of its opinions<sup>(19)</sup>. The DAGs, in their capacity of monitoring bodies, have an important role to play in ensuring that violations of TSD commitments are detected and effectively addressed. The EESC, as an active member of EU DAGs, has greatly contributed to their work and therefore urges the Commission to be more ambitious with regard to an effective enforcement mechanism. In the case of South Korea, the EESC notes that the EU DAG asked the Commission<sup>(20)</sup> to launch dispute proceedings but the Commission, despite their attempt to address the issue, has not done so yet. In this context, the EESC has reiterated that 'the implementation of the sustainable development aspects of the FTA, particularly labour issues, remains unsatisfactory'<sup>(21)</sup>.

3.13. The EESC believes businesses can play an important role in ensuring compliance with labour and social rights, by supporting and implementing laws that protect workers' rights and through social dialogue with trade unions to agree decent standards, both in their direct operations and throughout their supply chains. The EESC calls on the Commission to ensure trade agreements support good business behaviour, and prevent social dumping and undercutting social standards by developing Corporate Social Responsibility clauses incorporating solid commitments and in line with the OECD guidelines on business and human rights and including National Contact Points (NCPs)<sup>(22)</sup>, which should be independent and structured so as to involve the social partners as members of the NCPs, or the NCP oversight committee. They should be adequately trained, staffed and funded.

3.14. The EESC is ready to help develop new ideas to assist the Commission to increase the effectiveness of independent enforcement mechanisms in TSD chapters, not least through the right to respond when its concerns are not met. Any possible resort to sanctions where necessary would need to be based on a nuanced approach.

#### 4. Specific comments

4.1. The EESC believes action is required from the Commission to improve the effectiveness of TSD chapters to ensure that social, environmental, consumer and labour rights are upheld. A key part is linked with improving the effectiveness of DAGs as the bodies tasked with monitoring these commitments.

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<sup>(19)</sup> EESC Opinion on 'Trade for All — Towards a more responsible trade and investment policy', rapporteur: Mr Peel (UK-I) (OJ C 264, 20.7.2016, p. 123); EESC Opinion on 'The position of the EESC on specific key issues of the Transatlantic Trade and Investment Partnership (TTIP) negotiations', rapporteur: Mr de Buck, co-rapporteur: Ms Buzek (OJ C 487, 28.12.2016, p. 30). EESC Opinion on 'EU-Korea Free Trade Agreement — Trade and Sustainable Development Chapter', rapporteur: Mr Fornea (RO-II), (OJ C 81, 2.3.2018, p. 201).

<sup>(20)</sup> Letter to Commissioner Malmström on Government Consultations Pursuant to the EU-Korea FTA, December 2016, [http://ec.europa.eu/carol/?fuseaction=download&documentId=090166e5af1bf802&title=EU\\_DAG%20letter%20to%20Commissioner%20Malmstrom\\_signed%20by%20the%20Chair%20and%20Vice-Chairs.pdf](http://ec.europa.eu/carol/?fuseaction=download&documentId=090166e5af1bf802&title=EU_DAG%20letter%20to%20Commissioner%20Malmstrom_signed%20by%20the%20Chair%20and%20Vice-Chairs.pdf)

<sup>(21)</sup> EESC Opinion on 'EU-Korea Free Trade Agreement — Trade and Sustainable Development Chapter', rapporteur: Mr Fornea (RO-II), (OJ C 81, 2.3.2018, p. 201).

<sup>(22)</sup> Governments adhering to the Guidelines are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that may arise from the alleged non-observance of the guidelines in specific instances. NCPs assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines. They provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.

4.1.1. The EESC notes that various stakeholders have put forward proposals to improve the independence and effectiveness of TSD chapters in trade agreements and shares the view that robust encouragement of compliance with TSD commitments is needed. With respect to labour provisions, these include the proposal for an independent labour secretariat <sup>(23)</sup> and a collective complaints mechanism proposed in the model labour chapter <sup>(24)</sup>.

4.2. The EESC has evaluated its experience in TSD chapters. The following shortcomings have been noted, and the EESC calls on the Commission to address them:

- lack of balanced membership in the EU's and partner countries' DAGs;
- lack of political will in some partner countries to establish their DAGs in a timely way;
- lack of adequate financing for DAGs both in the EU and in the partner countries;
- need for joint meetings of the EU' and partner countries' DAGs to be included in the text of the agreement in order to allow them to exchange experience on joint projects and prepare joint recommendations;
- need for participation of DAG chairs in meetings of the TSD committees, with a right to present the views of their groups, so as to convey the messages of civil society to governments;
- lack of response by the European Commission to complaints raised by the DAG regarding violations of TSD commitments.

4.3. EESC members of DAGs as well as other organisations representing business, labour and the voluntary sector have made a number of recommendations for action by the Commission to address shortcomings of trade agreements and DAGs' effectiveness in ensuring that commitments to uphold social and labour rights and environmental provisions are upheld. The Commission should take an in-depth look at these recommendations. These include:

- support capacity building and better promotion and presentation of the content of the TSD chapters to civil society in the EU and partner countries before the entry into force of the agreement;
- establish an independent labour secretariat and a collective complaint mechanism;
- ensure there is adequate financing and resources for both the EU and partner countries' DAGs, so that civil society representatives can participate fully and provide funding for justified activities, including analytical work or workshops accompanying the joint annual meetings;
- encourage partner countries' governments to establish DAGs promptly and give necessary political and logistical support to their DAGs while ensuring a balanced membership of DAGs;
- establish a more transparent and streamlined complaint mechanism;
- establish a regular dialogue between the EU DAGs, the Commission, the EEAS, the European Parliament and the EU Member States;
- require the TSD Committee to respond to issues and recommendations raised by the DAGs, within a reasonable timeframe;

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<sup>(23)</sup> Non-paper based on a joint proposal by the European Trade Union Confederation (ETUC) and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), September 2016, <https://www.etuc.org/en/page/non-paper-introducing-independent-labour-secretariat-ceta>

<sup>(24)</sup> Draft Model Labour Chapter for EU Trade Agreements, developed by the Friedrich-Ebert-Stiftung (FES) in cooperation with the chair of the INTA Committee, Bernd Lange, June 2017, <http://www.fes-asia.org/news/model-labour-chapter-for-eu-trade-agreements/>

- mandate DAGs to monitor the impact of all parts of trade agreements on human, labour, environmental and consumer rights, not just the TSD chapter (the EESC notes with satisfaction that this proposal has been taken into account in the Commission report on the Implementation of the Trade for All communication);
- partner countries should demonstrate full respect of the eight ILO Core Labour Conventions before the conclusion of a trade agreement. Should a partner country have not ratified or properly implemented these conventions or demonstrated an equivalent level of protection, a roadmap on solid commitments should be sought in the TSD Chapter to ensure that this will be achieved in a timely manner;
- require both governments and companies operating in their territories to demonstrate respect for the standards in the ILO's Decent Work agenda<sup>(25)</sup> which goes beyond core labour standards to require commitments regarding other rights, such as those regarding gender equality and health and safety.

4.4. The EESC considers that the above recommendations of a practical nature can be implemented without changing the text of the current TSD chapters and that therefore this should be done without delay.

4.5. In order to be effective, the EESC considers it crucial that monitoring mechanisms are able to trigger investigations in their own right into abuses against TSD commitments. Should abuses be detected, a dispute settlement procedure should be started without delay, with a mandate to substantively enforce compliance. The EESC notes that a number of different models exist in trade agreements concluded by different countries, including the US and Canada, which envision the possibility of imposing material penalties in case of a breach of commitments.

4.6. The EESC regrets that the non-paper appears to suggest that the value of penalties or sanctions in trade agreements can be assessed solely on the basis of the single judicial case on Guatemala filed by the United States through the CAFTA Agreement<sup>(26)</sup>. However, the failure of the US to prevail in this case was not due to whether sanctions were available, but to the design of obligations in its labour chapter in the CAFTA Agreement. The chapter imposes a legal requirement that violations of labour rights occur 'in a manner affecting trade' in order to justify sanctions being imposed. In this case, the panel deemed that although there were clear breaches of ILO labour rights occurring, there was not enough evidence to indicate that it had been 'in a manner affecting trade'. The Commission needs to investigate further existing sanctions mechanisms in trade agreements, their usage hitherto together with their potential limitations, whilst duly noting that civil society groups have both expressed support for and serious concerns about their use.

4.7. There are other limitations to the US approach towards sanctions as regards admissibility, scope and length of procedure, resulting in only a very small number of cases having been solved by the sanctions approach. The Commission should learn from the limitations of the sanctions mechanisms in trade agreements concluded by the US as well as other countries such as Canada, in order to assess and improve the effectiveness of an enforceable compliance mechanism that could possibly be developed in TSD chapters. A potential limitation is the risk that the EU would discourage trading partners from engaging in negotiations or diminish its leverage in such negotiations.

4.8. The EESC stands ready to assist the Commission in the development of an effective mechanism that improves the implementation and monitoring of TSD chapters in EU FTAs and enforces full compliance, drawing on the experiences of other countries as well as proposals developed by business, environment, labour and other civil society groups.

Brussels, 14 February 2018.

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

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<sup>(25)</sup> [http://www.ilo.org/wcmsp5/groups/public/-dgreports/-integration/documents/publication/wcms\\_229374.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-integration/documents/publication/wcms_229374.pdf)

<sup>(26)</sup> See <https://www.ictsd.org/bridges-news/bridges/news/trade-dispute-panel-issues-ruling-in-us-guatemala-labour-law-case>

**Opinion of the European Economic and Social Committee on ‘Boosting climate actions by non-state actors’**

**(exploratory opinion at the request of the European Commission)**

(2018/C 227/05)

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## 1. Conclusions and recommendations

1.1. The shift towards a low-carbon and climate-resilient economy has been driven to a great extent by bottom-up initiatives led by citizens, innovative businesses and various civil society stakeholders, collectively referred to as non-state and sub-national actors.

1.2. These actors can make vital contributions to speeding up both low-carbon development and sustainable development. Immediate non-state action lowers the cost of the low-carbon transition and also alleviates the immediate impact of climate change that is already taking place.

1.3. In recent years, the number, scope and scale of non-state climate actions has grown rapidly <sup>(1)</sup>. However, non-state actors still encounter formidable obstacles that make it difficult for them to initiate and implement their climate actions successfully.

1.4. Moreover, there is growing diversity among non-state actors and their climate actions, as they operate in and across various environments featuring particular needs and resources. Properly analysing and understanding this diversity is a precondition for achieving the acceleration of climate action.

1.5. In recognition of the great potential of non-state actors to drive global efforts to abate climate change and adapt to its consequences, the EESC calls for a ‘European Dialogue on Non-State Climate Action’ (ED-NSCA) to strengthen and increase the scope and scale of European-based non-state climate action.

1.6. The EESC’s proposed European Dialogue should provide an overview of climate actions within the EU and help track the progress of climate actions at a global level.

<sup>(1)</sup> Yearbook of Global Climate Action 2017, Marrakesh Partnership, UNFCCC 2017.

1.7. The EESC stresses that recognising and highlighting effective, innovative, and creative climate actions can be a cost effective means of incentivising new actions and encouraging ongoing ones. The recognition of climate actions can be achieved via an online platform, high-level events and/or awarding prizes.

1.8. A European Dialogue for climate action should collect feedback on an ongoing basis and address regulatory challenges with public authorities, in order to progressively build an enabling governance environment for bottom-up climate action. The dialogue should build upon other similar initiatives, such as the European Energy Dialogue called for by the EESC and established to coordinate implementation of the energy transition.

1.9. The ultimate goal of the proposed dialogue is to accelerate climate actions by making it attractive for a multiplicity of non-state actors to engage in climate actions, and to make climate action the new 'business-as-usual'.

1.10. The EESC stresses that in our race to reduce emissions, protect the climate and promote social and economic justice, a social dialogue must be established for a just and rapid transition to a zero carbon and zero poverty world.

1.11. The EESC proposes that the purpose of the dialogue should be not only to highlight and showcase actions, but also to respond to the needs of non-state actors by inspiring new partnerships among state and non-state actors; facilitating peer learning, training and advice sharing among non-state actors; and facilitating access to finance.

1.12. The proposed European Dialogue would operate in a wider ecosystem of post-Paris climate governance. The organisation of the dialogue should be 'light-touch', prioritising the strategic linking of existing programmes, initiatives and institutions, rather than setting up new institutions. In this context, the EESC supports the proposal by the European Parliament to create national 'Multilevel Climate and Energy Dialogue Platforms'.

1.13. The EESC will play a leading role in initiating the dialogue and calls on the other EU Institutions, in particular the European Commission to join this effort to create an enabling environment for non-state climate action by cooperating in helping to operationalise the dialogue.

1.14. The first step for the European Dialogue for Non-State Climate Action should be an event in the first half of 2018, gathering all interested networks of actors as well as representatives of other EU Institutions and the Member States, organised in the spirit of the Talanoa <sup>(2)</sup> dialogue and serving to establish a clear Action Plan for the Dialogue.

1.15. Through such a dialogue, the EESC expects to significantly empower all non-state actors — businesses, including SMEs, social enterprises and cooperatives, civil society groups, communities, as well as local and regional authorities and other relevant stakeholders, so that they can make a real and tangible contribution to addressing climate change.

## 2. Background to the opinion

2.1. This is an exploratory opinion requested by the European Commission.

2.2. This opinion builds on the opinion on the 'Coalition to deliver commitments of the Paris Agreement' adopted in July 2016 and on the proceedings of the subsequent conference on 'Designing a framework for bottom-up climate action', which served to exchange best practices and identify challenges that slow down non-state efforts to abate climate change.

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<sup>(2)</sup> Talanoa is a traditional word used in Fiji and the Pacific to reflect a process of inclusive, participatory and transparent dialogue. The purpose of Talanoa is to share stories, build empathy and to make wise decisions which are for the collective good. The Talanoa dialogue to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to in Article 4 of the Paris Agreement will start in 2018 and the online platform for inputs will be made available for this purpose.

2.3. The shift towards a low-carbon and climate-resilient economy has been driven by bottom-up initiatives led by citizens, local authorities, consumers and innovative enterprises. However, their further progress is often hampered by administrative and regulatory barriers, lack of appropriate consultation mechanisms and inappropriate financial procedures.

### 3. The urgency of non-state climate action

3.1. The term 'non-state actors' refers to actors that are not Party to the United Nations Framework Convention on Climate Change (UNFCCC). This broad understanding includes various types of business, including small, medium-sized and micro-enterprises; investors; cooperatives; cities and regions; trade unions; communities and citizen groups; faith-based organisations; youth groups; and other non-governmental organisations. This opinion particularly brings attention to emerging bottom-up contributions by climate actors that are not yet fully recognised by the EU Institutions and Member States.

3.2. Climate action by non-state actors is becoming increasingly urgent for at least four reasons:

- greenhouse gas (GHG) concentrations in the atmosphere continue to rise, even when all governmental pledges are implemented, a gap of 11-13 gigatons (Gt) of CO<sub>2</sub>eq will remain <sup>(3)</sup>. Short-term state and non-state climate action can help close this gap, and is crucial to prevent more radical and costly measures,
- impacts of climate change that is already occurring are being felt around the world. These include an increasing number of extreme weather events, rising losses and damages and changing weather patterns, and also catalyse the displacement and migration of vulnerable communities <sup>(4)</sup>,
- current political turbulence — for instance in the United States — and the scarcity of public resources endanger the full implementation of governmental pledges. Even a number of European countries that are fully committed to the Paris Agreement still fall short of the ambitions needed to limit global warming to well below 2 °C,
- governments set the policy framework but actions are implemented on the ground by non-state and sub-national actors, many of whom are the true leaders of innovative and effective actions, in particular the smaller, emerging, bottom-up climate actors.

3.3. Non-state climate actors can make vital contributions to speeding up both low-carbon development and sustainable development. Immediate non-state action lowers the cost of the low-carbon transition and also alleviates the immediate impact of climate change that is already occurring. However, there is a general lack of recognition that bottom-up initiatives can help overcome the social problems linked to decarbonisation and the ecological transition.

3.4. According to the EU-funded TESS project looking at the impact of ecovillage communities within Europe, if five percent of EU citizens were to engage in effective community-led climate mitigation initiatives, the carbon savings would be sufficient for the EU-28 countries to achieve nearly 85 % of their agreed 2020 emissions reduction targets <sup>(5)</sup>.

3.5. Non-state climate action can also strengthen overall climate governance. For instance:

- non-state actions could inform more ambitious climate policies by demonstrating to governments that more ambitious climate targets are plausible,

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<sup>(3)</sup> The Emissions Gap Report 2017: A UN Environment Synthesis Report, UNEP 2017.

<sup>(4)</sup> Council Conclusions: European climate diplomacy after COP21: Elements for continued climate diplomacy in 2016.

<sup>(5)</sup> Towards European Societal Sustainability, <http://www.tess-transition.eu/about/>

- non-state actions could help governments implement national-level policies and contribute to meeting national requirements under the EU's nationally determined contribution (NDC),
- non-state actors could help to detect opportunities to strengthen the regulatory environment <sup>(6)</sup>.

3.6. Non-state action can also serve to demonstrate that the transition to a low-carbon, circular and climate-resilient economy is an opportunity for the EU to increase its competitiveness, benefitting the EU's businesses. Moreover, it provides an opportunity to address not only climate challenges, but also sustainable development, in particular the implementation of the SDGs.

3.7. In recent years the number, scope and scale of non-state climate actions has grown rapidly <sup>(7)</sup>. However, non-state actors still encounter formidable obstacles that make it difficult for them to initiate and implement their climate actions successfully. (See EESC opinion: Coalition to deliver commitments of the Paris Agreement <sup>(8)</sup>.)

3.8. Moreover, there is growing diversity among non-state actors and their climate actions, as they operate in and across various environments featuring particular needs and resources. Properly analysing and understanding this diversity is a precondition for achieving the acceleration of climate action.

#### 4. The EU needs a strategic approach to facilitate non-state climate action

4.1. The EU has been championing non-state action internationally:

- The EU has been advocating multi-stakeholder International Cooperative Initiatives that address mitigation in the context of the UNFCCC.
- The EU contributed to large multi-stakeholder climate initiatives <sup>(9)</sup>.
- Individual Member States have supported the international climate action agenda. For instance, France led large-scale mobilisation efforts on the road to the Paris Agreement. The Nordic countries and the Netherlands contributed to developing the Climate Initiatives Platform (currently hosted by UN Environment).
- European-based actors are leading an estimated 54 % of UNFCCC-registered cooperative initiatives for climate action <sup>(10)</sup>.

4.2. In stark contrast to its strong international leadership, the EU currently lacks a framework that creates an enabling environment that would help accelerate non-state climate actions inside Europe. Without such a framework the EU may be missing out on tangible contributions from frontrunners among non-state and sub-national actors. Current EU support for a few large-scale multi-stakeholder actions is not enough for the kind of transformation it has committed itself to under the Paris Agreement.

4.3. Much more focus needs to be given to emerging, yet unrecognised, bottom-up climate actors who are currently under-represented in initiatives supported by the EU. Their potential contributions cannot be overstated. Building an enabling environment for such climate actions is an effective and low-cost way to leverage their enormous societal potential.

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<sup>(6)</sup> For instance, through removing regulatory obstacles and/or through devising smart climate policies.

<sup>(7)</sup> Yearbook of Global Climate Action 2017, Marrakesh Partnership, UNFCCC 2017.

<sup>(8)</sup> OJ C 389, 21.10.2016, p. 20.

<sup>(9)</sup> Prominent examples include: the Global Covenant of Mayors for Climate and Energy; the Regional Covenant of Mayors; Mission Innovation; the Climate and Clean Air Coalition; the Africa Renewable Energy Initiative; InsuResilience; and, the NDC Partnership.

<sup>(10)</sup> Yearbook of Global Climate Action 2017, Marrakesh Partnership, UNFCCC 2017.

4.4. Moreover, by shaping an enabling environment, current imbalances among non-state climate actions can be addressed. For instance:

- micro-enterprises, small and medium-sized enterprises, social enterprises (including cooperatives) are currently under-represented in EU-supported initiatives, as well as in the context of the UNFCCC <sup>(11)</sup>,
- climate actions by rural communities and smaller and medium-sized cities are under-represented compared to those undertaken by large metropolitan cities <sup>(12)</sup>.

4.5. As current mobilisation efforts are mostly made at the level of international climate policies, focusing on particularly large and/or eye-catching examples, action is urgently needed at EU level to complement international efforts by activating and supporting more and different types of actors.

4.6. In recognition of the great potential of non-state actors to drive global efforts to abate climate change and adapt to its consequences, this opinion proposes a 'European Dialogue on Non-State Climate Action' (ED-NSCA) to strengthen and increase the scope and scale of European-based non-state climate action.

## 5. Priority areas for climate actions and examples and needs of actors on the ground

5.1. Thematic priority areas should be determined in consultation with civil society.

5.2. Close correspondence with thematic areas in the context of the UNFCCC, in particular the Marrakech Partnership for Global Climate Action, could ensure a strong linkage with the goals of the Paris Agreement.

5.3. Priority areas could include: agriculture and food; forestry, land-use and a sustainable bio economy; coastal protection and development; water; cities and regions; transport; energy; and the circular economy and industry.

5.4. Cross-cutting themes that could be addressed in the proposed dialogue include: climate and sustainable development trade-offs and synergies; the role of digitisation; participatory approaches; and a just transition.

5.5. Social entrepreneurship, citizens' initiatives and community work are only some examples of how climate action can be realised via bottom-up approaches. Many successful initiatives already exist, while many others were initiated but failed or were discontinued for various reasons. Both categories of projects can be used to provide valuable knowledge for both non-state actors and decision-makers.

5.5.1. The case of decentralised renewable energy is an excellent example. It should take place via local or regional structures, meaning that value creation from using wind, solar and biomass energy would take place locally. However, the EU does not make sufficiently comprehensive use of civil society's potential in this area and too often regulatory, financial and structural barriers exist to local actors' engagement. In 2015 the EESC successfully called for a European Energy Dialogue led by civil society to be established to coordinate implementation of the energy transition <sup>(13)</sup> — itself the biggest single action on climate stabilisation to be undertaken by the EU.

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<sup>(11)</sup> Even though they represent more than 99 % of all enterprises in the EU, and about 58 % of economic output measured by gross value added, [https://ec.europa.eu/growth/smes\\_en](https://ec.europa.eu/growth/smes_en)

<sup>(12)</sup> In the EU, approximately 35 % of the population live in intermediate urban-rural areas, and more than 22 % live in predominantly rural areas. (Eurostat (2014) Eurostat Regional Yearbook 2014. Available at: <http://ec.europa.eu/eurostat/en/web/products-statistical-books/-/KS-HA-14-001>, retrieved 16 January 2018.)

<sup>(13)</sup> EESC opinion *The development of the governance system proposed in the context of the 2030 climate and energy framework* (OJ C 291, 4.9.2015, p. 8).

5.5.2. More than 1 000 local and regional governments from 86 countries, representing 804 million people, have reported their emissions reduction targets on the carbonn Climate Registry, which, once achieved, could result in a reduction of 5,6 gigatons of CO<sub>2</sub> equivalent (GtCO<sub>2</sub>e) by 2020 and 26,8 GtCO<sub>2</sub>e by 2050, compared to levels going as far back as 1990. The aggregate impact of the 7 494 cities and local governments, representing over 680 million people, committed to the Global Covenant of Mayors for Climate and Energy, could collectively cut 1,3 GtCO<sub>2</sub>e per year from business as usual in 2030, achieving a cumulative total of 15,64 GtCO<sub>2</sub>e between the years 2010 and 2030<sup>(14)</sup>.

5.5.3. Community-supported agriculture in Europe has been growing in recent years. In 2016, more than six thousand broadly defined civil society initiatives in 22 European countries were producing food for 1 million people<sup>(15)</sup>. Such initiatives range from partnerships between consumers and farmers to the creation of community gardens and farms. They establish closer links between producers and consumers, create opportunities for local businesses and new jobs, and reconnect communities with their food, thus changing the mechanisms of food production and consumption, and empowering citizens to deliver more participatory forms of governance.

5.5.4. The just transition concept unites workers, communities, employers and governments in the context of the social dialogue with the purpose of establishing concrete plans, policies and necessary investments to ensure that the transformation is fast and fair. It focuses on jobs and livelihoods and aims to ensure that no one is left behind in our race to reduce emissions, protect the climate and promote social and economic justice. To guarantee and establish the social dialogue for a just transition, the International Trade Union Confederation and its partners have established a Just Transition Centre. The centre will gather and support unions, businesses, companies, communities and investors in the framework of the social dialogue to develop plans, agreements, investments and policies for a fast and fair transition to zero carbon and zero poverty.

5.5.5. The implementation of energy, emissions and water saving practices are embodied in voluntary programmes and consumption reduction initiatives on the part of the industry. These business achievements are audited and frequently disclosed. Benchmarking among companies and countries can also be developed with these kinds of best practice.

5.6. In order to understand the important diversity among non-state actors, their varied needs and resources, the EESC conducted a survey<sup>(16)</sup> which showed that among the most pressing needs, non-state actors list:

- supportive policy/legislative environment,
- financial needs: access to public funds and fiscal incentives,
- technical support: to facilitate mutual learning, capacity-building, exchange of knowledge and good practices and to raise awareness,
- wider credibility, visibility, understanding and recognition of their contributions,
- improved collaboration among the various actors in the private and public sphere.

## 6. Functions of the proposed European Dialogue on Non-State Climate Action

6.1. In order to shape an environment that is conducive to non-state climate action, and to strengthen and increase the scope and scale of European-based action, the European Dialogue should be responsive to the policy and operational requirements of non-state actors, and should possibly address the following interconnected functions: (1) **Assessing actions**; (2) **Recognising actions**; (3) **Improving governance**; (4) **Accelerating actions**; and (5) **Supporting actions (ARIAS)**

<sup>(14)</sup> <https://www.cities-and-regions.org/lgma-at-the-apa-resumption/>

<sup>(15)</sup> <https://urgenci.net/new-report-european-csa-overview-released-by-the-european-csa-research-group/>

<sup>(16)</sup> EESC Survey 'Boosting non-state climate actors'.

6.2. **Assessing and tracking actions** — The EU and its Member States benefit from a better understanding of the contributions of non-state climate actions. The proposed dialogue can provide an overview of climate actions within Europe and also help track the progress of climate actions at a global level in the context of the UNFCCC.

A better understanding of mitigation-related and other contributions is beneficial in multiple ways:

- it can be a first step towards including non-state actions in the implementation of national and EU-level climate policies,
- in-depth studies of particular climate actions can help in drawing up public policies and identifying regulatory obstacles, scalable solutions and the circumstances under which particular measures are effective,
- it can generate practical knowledge for non-state actors to effectively engage in climate action.

6.2.1. The proposed framework should allow for the tracking of progress of at least some actions by non-state and sub-national actors, especially when they commit to quantifiable emissions reductions. This could take the form of aggregate assessments of European-based climate actions, as well as voluntary reporting mechanisms. Safeguards against 'greenwashing' (presenting 'business-as-usual' as clean and compatible with the goals of the Paris Agreement) should be considered. However, at the very least it should prove that the initiatives are more than commitments on paper, without imposing heavy reporting and monitoring obligations on them. In the framework of monitoring and evaluation practices, a more qualitative, story-telling approach could possibly complement quantitative approaches, to demonstrate what it is possible to achieve.

6.3. Currently, the bulk of climate actions in Europe are not or hardly recognised at the European level. The opportunity to **recognise and highlight** particularly effective, innovative, and creative climate actions, however, can be a cost-effective means of incentivising new actions and encouraging ongoing ones. The recognition of climate actions can take several forms, including:

- the broad recognition of new and existing commitments through an online platform,
- opening up possibilities for emerging climate actors to feature at (high-level) events, both at European level and in the context of international negotiations,
- the awarding of prizes to particularly accomplished climate actions, for instance in specific thematic areas.

6.4. **Improving and enhancing governance** — frontrunners across non-state actor groups are likely to identify obstacles and opportunities to improve governance. Their insights can help identify regulatory obstacles at European, national, regional or local level and initiate their removal, as well as create an adapted regulatory framework conducive to climate action. A European Dialogue for Non-State Climate Action should collect feedback on an ongoing basis and address challenges with public authorities, in order to progressively build an enabling governance environment for bottom-up climate action. This will not happen without addressing the policy vacuum between non-state actors and decision-makers.

6.5. **Accelerating climate action** — the ultimate goal of the proposed dialogue is to accelerate climate actions by making them attractive for a multiplicity of non-state actors, and to make climate action the new 'business-as-usual'. In practical terms, this should imply the following:

- a growing number of new non-state climate commitments. To help speed up initiatives, the dialogue — possibly in cooperation with the UNFCCC and other partners — should publicise new commitments,

- rapid uptake of solutions and lessons learned emanating from non-state climate actions at European level. To aid this acceleration the dialogue could include the organisation of regional technical expert meetings, modelled on — and feeding into — similar meetings held in UNFCCC sessions,
- the organising partners can occasionally also broker new partnerships and climate actions in particularly promising or urgent areas, using the dialogue process and their own convening power,
- sometimes sectorial or territorial initiatives may compete among themselves if the right approach to promoting collaboration is not identified and fostered. A ‘birds eye’ view is needed to identify gaps and potential collaborations and to broker new partnership.

6.6. **Support climate actions** — the proposed dialogue should not only highlight and showcase actions, but also respond to the needs of non-state actors. Different types of support can be envisaged, including:

- the provision of a network environment that is conducive to brokering new partnerships among state and non-state actors,
- the facilitation of peer learning and advice sharing among non-state actors by helping them to overcome regulatory obstacles,
- the provision of education and learning as well as stimulating innovation, e.g. through massive open online courses (MOOC), webinars and workshops on specific issues <sup>(17)</sup>,
- the facilitation of access to finance, for instance, through mapping existing channels; exploring innovative financing instruments (including peer-to-peer, crowd, and micro financing); proposing simplification of fiscal rules and the creation of new financing windows — e.g. to facilitate access to private, international and multilateral funds.

## 7. Operationalising the proposed European Dialogue for Non-State Climate Action

7.1. The proposed European Dialogue would operate in a wider ecosystem of post-Paris climate governance. Other regional and national action agendas and frameworks are emerging (for instance in Latin America and the USA). A European dialogue could benefit from collaborating with, and learning from, these platforms.

7.2. The organisation of the dialogue should be ‘light-touch’, prioritising the strategic linking of existing programmes, initiatives and institutions, rather than setting up new institutions. The EESC will play a clear role in initiating the dialogue and seeking the support of and partnership with the European Commission as well as other EU Institutions. This institutional set-up would lend it credibility in addressing climate action at European level. In this context, the EESC supports the proposal by the European Parliament to create national ‘Multilevel Climate and Energy Dialogue Platforms’ for wide discussions in each Member State on the future of the country’s climate and energy policies.

7.3. An online platform under the European Dialogue can act as a clearing house, recording and providing an overview of European-based climate actions, and can provide a comprehensive data repository that can support strategic analysis and feed into local, national and EU policies. To optimise the usability of the clearing house, the website should be accessible and searchable. Such a website could be connected to platforms that exist in the context of the UNFCCC, including the NAZCA platform <sup>(18)</sup>.

<sup>(17)</sup> For instance, ‘How to make an action plan?’, ‘How to raise support?’, ‘How to motivate constituencies to take action?’, etc.

<sup>(18)</sup> <http://climateaction.unfccc.int/>

7.4. The proposed European Dialogue should initiate events to support recognition, feedback, learning and networking functions for non-state actors. Part of these events already exist, but would gain new relevance. For instance:

- existing expert meetings of the EESC's Sustainable Development Observatory could gain additional relevance by being connected to the UNFCCC process as 'Technical Expert Meetings' or thematic and regional dialogues to take stock of existing climate actions,
- the European Day of Sustainable Communities — organised by ECOLISE in cooperation with the EESC — could draw attention to local communities and recognise their contributions to climate action,
- annual events supported by the EU institutions (e.g. Green Week, EU Sustainable Energy Week, European Sustainable Development Week, etc.) could feature sessions devoted to non-state climate action.

7.5. The proposed dialogue could benefit from nominating sectoral or thematic 'ambassadors for climate action'. Ambassadors could be tasked with brokering cooperation between multiple stakeholders; setting strategic/thematic priorities; convening events; and incentivising new climate actions. They can also act as focal points for non-state climate actions, e.g. vis-à-vis the European Commission, Member States and the UNFCCC.

7.6. The proposed process should support access to finance for non-state actions. This could involve:

- the mapping of funding opportunities,
- advice on fundable plans,
- analysing current dialogue and consultation procedures with non-state actors, with a view to establishing new techniques and best practices to enhance the use of existing European and international funds,
- advocating for the upcoming Multiannual Financial Framework of the EU to serve the higher climate ambitions of, and incentivise actions by, non-state actors,
- the exploration of innovative funding (peer-to-peer, crowd, micro, green bonds, etc.).

7.7. To ensure credibility and a light-touch institutional framework, the following prospective contributors should be invited as organisational partners:

- to support the 'assessment' function, the initiators of the dialogue should engage with existing research groups, climate action tracking initiatives and data platforms,
- to support the 'recognition' function, cooperation with existing awarding initiatives should be sought, for instance UNFCCC's Momentum for Change awards, and the SEED awards<sup>(19)</sup>, EESC Civil Society Prize, etc.,
- to support the 'improving governance' and 'acceleration' functions, communication channels should be established, for instance with facilitative dialogues and technical expert processes within the UNFCCC, as well as with relevant EU and Member State level processes such as the European Environment and Sustainable Development Advisory Councils (EEAC),
- for the support function, links with existing programmes should be established. For instance, access to financing and best practices can be coordinated with the EU LIFE programme, a funding instrument for environmental and climate action, EIB grant aid or loans and/or other European programmes, while the compilation of Horizon 2020 research findings relevant to non-state practitioners can be disseminated broadly among participants to the dialogue.

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<sup>(19)</sup> Awards for Entrepreneurship in Sustainable Development.

7.8. The first step for the European Dialogue for Non-State Climate Action should be an event in the first half of 2018, initiated by the EESC in partnership with the European Commission, gathering all interested networks of actors as well as representatives of other EU Institutions and the Member States.

7.8.1. This event should contribute to the Talanoa dialogue ahead of the COP24 in the context of which Parties and non-Party stakeholders are invited to cooperate in convening local, national, regional or global events to prepare and make available relevant inputs on where we are, where do we want to go and how do we get there.

7.8.2. The event should also serve to establish an Action Plan for the ED-NSCA for the period 2018-2020 in order to operationalise it, including a detailed plan for fulfilling the ARIAS function of the Dialogue.

Brussels, 15 February 2018.

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

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## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

532ND EESC PLENARY SESSION, 14.2.2018-15.2.2018

**Opinion of the European Economic and Social Committee on:****Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Making public procurement work in and for Europe***(COM(2017) 572 final)***Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Helping investment through a voluntary *ex-ante* assessment of the procurement aspects for large infrastructure projects***(COM(2017) 573 final)***Commission Recommendation of 3 October 2017 on the professionalisation of public procurement — Building an architecture for the professionalisation of public procurement***(C(2017) 6654 final — SWD(2017) 327 final)**(2018/C 227/06)*Rapporteur: **Antonello PEZZINI**

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|---------------------------|--|
| Consultation              | European Commission, 17.11.2017                                    |
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| Section responsible       | Single Market, Production and Consumption                          |
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| Plenary session No        | 532  |
| Outcome of vote           | 107/1/1  |
| (for/against/abstentions) |  |

**1. Conclusions and recommendations**

1.1. The European Economic and Social Committee (EESC) firmly believes that the system of public procurement in the internal market must be transparent, open and competitive if it is not only to ensure efficient public expenditure, but also to provide high quality goods and services for Europeans, by developing a genuine **European culture of innovative, smart, sustainable and socially responsible procurement**.

1.1.1. In this regard, the EESC recommends promoting the use of the 'most economically advantageous tender' as the selection criterion, in particular in the case of intellectual services.

1.2. The Committee welcomes the new public procurement package and stresses the need to:

- promote quality and innovation in public procurement,
- include environmental and social aspects, and
- make public procurement smarter and more efficient.

1.3. The Committee would stress the importance of making smart use of public procurement to help tackle global challenges such as climate change, resource scarcity, inequality and the ageing society. This approach supports social policies, accelerates the transition to more sustainable and competitive supply chains and business models, and can facilitate access for SMEs and social economy enterprises.

1.3.1. The EESC considers it important to foster an increasingly open attitude among the Member States towards voluntary prior assessment mechanisms for large-scale infrastructure projects.

1.3.2. The Committee points to the need to make the new voluntary *ex ante* assessment mechanism attractive, by awarding the contracting authority a certificate of conformity. The EESC supports increasing the professionalism of all stakeholders here and increasing the participation of social enterprises, with a view to combating fraud and corruption by stepping up the digital transformation of procurement.

1.4. The Committee particularly welcomes the efforts to increase the access of SMEs and social economy enterprises to public procurement markets and points out that there are still many obstacles to their full participation; it recommends that chambers and/or professional bodies play a role here in providing protection and support.

1.4.1. Social and environmental aspects have become crucial in the requirements of public procurement, and the EESC emphasises their value and usefulness. It recommends including specific social and environmental content in all national and EU training programmes.

1.4.2. A campaign should be launched promoting the inclusion of technical and regulatory standards — in the environmental (ISO 14000), social (ISO 26000, SA8000:2014, and relevant ILO conventions<sup>(1)</sup>), and management and production quality (UNI 11648:2016 on project managers and ISO 9000) fields — or similar technical quality requirements under national legislation in tender specifications. Small businesses should be helped to achieve those standards through the European Social Fund.

1.5. The EESC believes it is essential to strive for a high degree of professionalism within contracting authorities and give clear recognition to any new skills acquired; they should be equipped with a common European framework for technical and IT expertise that would enable a common approach throughout the European internal market.

1.6. The EESC considers that it would have been preferable for the Commission to adopt a directive rather than a recommendation in order to provide an effective, consistent framework for the professionalisation of public procurement.

1.7. The Committee believes that a public electronic register of contracts needs to be established, inter alia, to both widen out the potential pool of interested companies and better assess the efficiency and integrity of the procurement process.

1.8. In the Committee's view, strong EU action is vital to improve access to third-country public procurement markets on the basis of reciprocity and on an equal footing with domestic companies, including for businesses in the accession countries and the partner countries of the EU's neighbourhood policy.

1.9. The EESC considers that the European Commission's country-specific recommendations should be accompanied by a strong boost to training measures, aimed at access to programmes and Structural Funds, and technical and regulatory digitisation standards, with the adoption, at EU level, of a code of procurement ethics.

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<sup>(1)</sup> ILO Core Conventions, ILO Convention 155 (Occupational Safety and Health) and ILO Conventions 131, 1 and 102.

1.10. The EESC recommends promoting the inclusion and use of social measures as strategic instruments for promoting advanced policies in this area.

1.11. The EESC recommends that consideration be given to adopting a common set of rules, as a '28th system', for cross-border procurement, which contracting authorities could adopt voluntarily, with the guarantee that the same procedures would apply throughout the European Economic Area.

## 2. Background and current situation

2.1. Public procurement provides a huge potential market for innovative products and services if used in a strategic way to stimulate the economy and unlock investment — in particular via the Investment Plan for Europe — improve productivity and inclusion and respond to the structural and infrastructural changes needed to promote innovation and growth.

2.2. Public procurement accounts for a substantial part of public purchasing and investment in Europe's economy: every year, public authorities in the EU spend around 19 % of GDP on the purchase of services, works and supplies.

2.2.1. Unfortunately, 55 % of procurement procedures use lowest price as the award criterion and thus do not pay particular heed to quality, sustainability, innovation and social inclusion.

2.3. Nine out of ten large-scale infrastructure projects do not go according to plan, either concerning the budget and/or the time-frame, and cost overruns of up to 50 % are common <sup>(2)</sup>.

2.4. The regulatory framework for public procurement has traditionally looked rather complex and multi-faceted; the institutional set-up is also extremely fragmented, given that it is managed by a whole range of players at central, regional and sectoral levels, whose tasks and functions are not always clearly demarcated.

2.5. The management of purchasing and infrastructural investment processes requires public administrations at all levels to have particularly developed expertise, whereas they generally have a range of shortcomings, such as: differing abilities as regards planning and identifying appropriate tools and resources in good time; a lack of professionalism within contracting authorities; the multitude of public administrations involved in each area of expenditure; the lack of structured collection of supporting information, with non-standardised databases administered by a range of players which often have different levels of data quality and reliability.

2.6. This complexity was not fully resolved by the 2014 public procurement package.

2.7. The uptake of digital tools to support public procurement is slow in the EU: only four countries had gone digital by 2016 <sup>(3)</sup>. Clearly, more use needs to be made of new technologies to simplify and accelerate procurement procedures.

## 3. The Commission's proposals

3.1. The package presented by the Commission contains four main strands:

3.1.1. **identifying priority areas** for improvement — to develop a strategic approach to procurement policies, focusing on six priorities;

3.1.2. **voluntary ex ante assessment of large infrastructure projects** — a helpdesk is to be established — along with notification and information-exchange mechanisms — in order to provide assistance at an early stage regarding projects with an estimated value of over EUR 250 million and projects of high importance for the Member State concerned, with a value above EUR 500 million;

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<sup>(2)</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2017\\_grow\\_046\\_ex\\_ante\\_voluntary\\_assesment\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_grow_046_ex_ante_voluntary_assesment_en.pdf)

<sup>(3)</sup> COM(2017) 572 final, Section 2.

3.1.3. **a recommendation on the professionalisation of administrations and public buyers** to ensure that they have the business skills, technical knowledge and procedural understanding needed to comply with the rules, and ensure high levels of innovation and sustainability and the best value for money, including in terms of social responsibility;

3.1.4. **guidance on boosting innovation through the procurement of goods and services.**

#### 4. General comments

4.1. The Committee welcomes the new public procurement package and would underline the points it made previously on the need to promote 'quality and innovation in public procurement, reducing unnecessary bureaucracy, including environmental and social aspects, protecting jobs and working conditions as well as persons with disabilities and other disadvantaged groups', and encouraging, alongside the most economically advantageous tender, the possibility in the case of intellectual services of a single tender, considered the best, even if not cheaper.

4.2. The use of environmental and social criteria would 'encourage smarter and more efficient public procurement, highlighting the need for greater professionalisation, increasing the participation of SMEs, including social economy enterprises, combating favouritism, fraud and corruption, and promoting European cross-border contracts in public procurement' <sup>(4)</sup>.

4.3. The Committee would particularly stress the importance of making smart use of public procurement to help tackle global challenges such as climate change, resource scarcity and the ageing society. This approach supports social policies, accelerates the transition to more sustainable and competitive supply chains and business models and can facilitate SMEs' access to procurement opportunities.

4.4. The EESC considers it important to foster, on a voluntary basis, an increasingly open attitude among the Member States towards:

- ensuring a wider uptake of strategic public procurement, with voluntary *ex ante* assessment mechanisms for large-scale infrastructure projects,
- developing the systematic exchange of best practice in strategic procurement, and
- promoting up-to-date guidance on green, social and innovative procurement.

4.5. The EESC believes it is essential to strive for a high degree of professionalism within contracting authorities — with certification of mandatory minimum requirements — and equip them with a common European framework for technical and IT expertise that would enable a common approach throughout the European internal market on the basis of a single centre of expertise and an interactive database.

4.5.1. Given the huge importance that social and environmental considerations have acquired in public procurement and the value, as well as the guarantee, that compliance with these aspects can entail for the achievement of the objectives of social inclusion and social and environmental sustainability, the EESC proposes and recommends that all training programmes aimed at increasing the professionalism of staff involved in public procurement include specific content on social and environmental legislation and, in particular, on the social and environmental aspects provided for in the legislation on public procurement.

4.5.2. The inclusion of those aspects responds to the new challenges of making full use of the potential to make a strategic contribution to cross-cutting policy objectives and societal values such as innovation, social inclusion and economic and environmental sustainability.

4.5.3. The EESC therefore points to the need to ensure strict compliance with such measures, where they are binding, and to promote a wider uptake of these measures where they are optional for contracting authorities. The EESC strongly calls for a campaign promoting the inclusion of technical and regulatory standards — in the environmental (ISO 14000) and social (ISO 26000, SA8000:2014, eight ILO Core Conventions, ILO Convention 155 (Occupational Safety and Health), ILO Conventions 131, 1, and 102) fields and in the management and production field (UNI 11648:2016 on project managers and ISO 9000 on production quality). In the application of these standards and the technical specifications of

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<sup>(4)</sup> OJ C 191, 29.6.2012, p. 84.

new-generation calls for tender, substantial support must be given to SMEs and social economy enterprises, so as to prevent their exclusion and alleviate their costs.

4.5.4. The integration of innovation criteria requires — especially in large-scale infrastructure projects — a common strategic vision to purchase products on the basis of both cost-effectiveness quality-based criteria and the most economically advantageous tenders, taking an approach which may include social, environmental and other criteria such as those regarding the circular economy.

4.5.5. Similarly, given that the Member States make very little use of the possibilities offered by public contracts to establish social criteria and measures as strategic instruments to promote sustainable social policy objectives, the Committee proposes and recommends vigorously promoting the inclusion and use of such social criteria and measures supported by EU public procurement law.

4.5.6. The Committee particularly welcomes the efforts to increase access to public procurement markets for SMEs and social economy enterprises and points out that there are still many obstacles to their participation.

4.5.7. The EESC believes that more emphasis should be placed on removing these barriers, including by strengthening the remedy system. In this respect, it would be useful and necessary to encourage and empower chambers and/or professional bodies to resolve collective disputes involving smaller companies.

4.5.8. A public electronic register of contracts should be established, inter alia, to widen out the potential pool of interested companies and to better assess the efficiency and integrity of the procurement process.

4.5.9. It would also be important to launch pilot projects to boost the participation of SMEs through business intermediaries and innovation brokers, as well as EU pilot training projects for professionalising European SMEs aimed at improving the language and procedural skills of small companies in central purchasing bodies.

4.6. The EESC strongly supports the promotion of joint cross-border public procurement, particularly for innovative projects and transnational infrastructure networks. The participation of small businesses here should be boosted through business intermediaries and innovation brokers, and high levels of quality should be required in subcontracting, though this should only be used to a limited extent.

4.7. The Committee stresses the importance of strong EU action to improve access to third-country public procurement markets on the basis of reciprocity and on an equal footing with domestic companies, including for businesses in the accession countries and the partner countries of the EU's neighbourhood policy; it advocates appropriate clauses to this end in bilateral and multilateral free trade agreements.

4.8. The EESC is in favour of establishing a publicly accessible EU register of contracts, which would be fully interoperable with national registers, in order to increase transparency with regard to contracts awarded and modifications thereto, while fully safeguarding sensitive and personal data; the digital transformation should be harnessed here, with the introduction in 2018 of mandatory e-procurement.

4.9. The Committee reiterates the importance of structured dialogue with civil society on the basis of the availability of open and transparent data in order to create better analytics for needs-driven policy-making and warning systems to signal and tackle corruption, including through better use of project financing.

4.10. A user-friendly information exchange mechanism should be developed as a knowledge management tool to be used by national authorities and contracting authorities for sharing best practices, mutual learning from experiences and creating an EU platform on various aspects related to the projects.

4.10.1. Training of contracting authority members should be markedly increased.

## 5. The partnership between the European Commission, national and regional authorities and businesses: the *ex ante* mechanism

5.1. The EESC feels that the new *ex ante* mechanism proposed by the Commission may constitute a useful tool if it is kept flexible and voluntary and if it allows for its three components to be used in isolation:

- a helpdesk,
- a notification mechanism for infrastructure projects with a value exceeding EUR 500 million, and
- an information exchange mechanism.

These components must be easy to use, and it must be possible to use them independently for each project, with due regard to the confidentiality requirements.

5.2. The EESC deems it important that the standard notification form remain simple and streamlined and that the electronic procedure ensure the confidentiality of sensitive information.

5.3. The EESC believes that the helpdesk system should be structured in the form of a network of sub-helpdesks at national/regional level to ensure that the assistance is provided locally, building on networks such as BC-Net and Solvit.

5.4. The information exchange mechanism should provide an interactive database that is user-friendly and designed on the basis of user needs, with a special steering and oversight committee comprising representatives of the contracting authorities and Member States' businesses.

5.5. With regard to the *ex ante* assessment mechanism, the Committee stresses the need to make it attractive by means of a certificate of conformity, which would result from the Commission's assessment.

## 6. An architecture for the professionalisation of public procurement

6.1. The EESC can fully support the Commission's recommendation to the Member States. However, to provide an effective, consistent framework for the professionalisation of public procurement, it would have preferred the Commission adopt a directive rather than a simple non-binding recommendation.

6.2. To ensure that these recommendations are properly followed up, the Committee would advocate the following:

6.2.1. a pilot joint-training initiative to develop the professionalism of the various public and private players involved in the procurement process, starting with the cross-border players, not least to establish the capabilities and skills that every public procurement professional should possess;

6.2.2. mandate CEN-Cenelec-ETSI to develop technical and regulatory standards for digitising procurement to ensure transparency, accessibility and full interoperability;

6.2.3. rapidly roll out pilot projects to boost the participation of SMEs and social economy enterprises through business intermediaries and innovation brokers;

6.2.4. give procurement practitioners access to the Justice programme 2014-2020 as regards the judicial training aspect, including language training on legal terminology, with a view to fostering a common legal and judicial culture in procurement and mutual learning;

6.2.5. incorporate joint professionalisation measures within the programming strands of the Structural Funds, in particular the Social Fund, for procurement practitioners at national, regional and local levels;

6.2.6. launch 300 EU scholarships for relevant courses in the European Institute of Public Administration in Maastricht and in the Academy of European Law in Trier;

6.2.7. adoption of a code of procurement ethics by procurement practitioners at EU level as part of a dialogue with civil society, with the aim, inter alia, of ensuring compliance with high social and environmental standards.

6.3. The EESC would like to see consideration given to an additional single set of rules for large trans-European procurement, which contracting authorities would be free to adopt as a '28th system', with equal conditions and procedures throughout the single market.

Brussels, 14 February 2018.

*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 the Council on setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union’s integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles and amending Regulation (EC) No 715/2007’**

(COM(2017) 676 *final* — 2017/0293 (COD))

(2018/C 227/07)

Rapporteur: **Dirk BERGRATH**

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|--|---|
| Consultation                                 | European Parliament, 5.2.2018<br>Council, 9.2.2018                    |
| Legal basis                                  | Article 192(1) of the Treaty on the Functioning of the European Union |
| Section responsible                          | Section for the Single Market, Production and Consumption             |
| Adopted in section                           | 24.1.2018   |
| Adopted at plenary                           | 14.2.2018   |
| Plenary session No                           | 532   |
| Outcome of vote<br>(for/against/abstentions) | 124/1/3   |

## 1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s proposals in principle as a balanced compromise between the objectives of climate-neutral mobility, the innovation capacity of the European automotive industry and preserving quality jobs.

1.2. In particular, the EESC considers the planned interim target for 2025 of a 15 % reduction in emissions compared to 2021 to be very demanding as the required changes are to be made to combustion engines at the cutting edge of technology. The EESC expects the Commission to monitor type approvals of new vehicles on an ongoing basis, in order to prevent impermissible engine components from being installed in future. Achieving the reduction target by 2025 will be especially difficult for light commercial vehicles with longer production and development cycles. Despite this, the EESC views the market development towards zero-emission vehicles and low-emissions vehicles and hybrids as an opportunity.

1.3. The EESC welcomes the improved market surveillance consisting of measuring and monitoring real fuel consumption, based on an obligation for manufacturers to fit new vehicles with standardised devices.

1.4. The structural transition towards alternative powertrains will — together with digitalisation, autonomous driving and other things — be associated with dramatic changes in automotive value chains. The EESC welcomes the Commission’s position on establishing the electric vehicle value chain in Europe (EU Battery Alliance), but calls for more affirmative action.

1.5. The threat to jobs and employment depends on the pace of this structural transition. The EESC calls on the Commission to ensure that this structural transition is accompanied by industrial policy measures, as a thorough social and economic impact assessment is lacking. The EESC rejects mass redundancies.

1.6. In the EESC’s opinion, the mid-term review anticipated for 2024 should examine to what extent the climate, innovation and employment goals have been achieved. That will essentially depend on how the market for alternative powertrains has developed by 2024, the number of charging points that have been built and the extent to which electricity grids have been converted and upgraded to meet the noticeable increase in electricity demand.

1.7. The EESC calls for a mid-term review to include the state of play regarding the qualification and (re)training of staff as well as an updated analysis of the areas in which (additional) action is required in order to further improve the skills and qualifications of employees in the automotive industry for the structural transition.

1.8. The EESC believes that any fines, under both the existing and the new regulation, should be used to support the sector and its workers through the transition towards low-carbon products. Additional financial resources are expected to be provided in order to guarantee employees' access to the labour market.

## 2. Introduction

2.1. In October 2014, the EU heads of state or government <sup>(1)</sup> set a binding goal of reducing emissions produced across the EU's entire economy by at least 40 % compared with 1990 levels, and to do so by 2030. This target is based on global projections that comply with the medium-term timescale of the Paris Agreement on climate change (COP 21) <sup>(2)</sup>. Many countries are now introducing measures for low-emission transport, including in the form of vehicle standards, often in conjunction with measures to improve air quality.

2.2. The European Strategy for Low-Emission Mobility <sup>(3)</sup> published in June 2016 sets the target of having at least 60 % fewer greenhouse gas emissions from vehicles by 2050 compared to 1990 and of being firmly on the path towards zero. The strategy made it clear that the use of low-emission/emission-free vehicles would have to increase in order to achieve a significant market share by 2030 and set the EU on a consistent long-term path towards zero-emission mobility.

2.3. As a first step, the strategy was part of a legislative package presented in May 2017 <sup>(4)</sup> and was implemented with the communication 'Europe on the move — An agenda for a socially fair transition towards clean, competitive and connected mobility for all' <sup>(5)</sup>, also published in May 2017.

2.3.1. The purpose of this communication is to improve road safety; promote fairer tolling; reduce CO<sub>2</sub> emissions, air pollution, traffic congestion and red tape for businesses; combat illegal employment; and ensure decent conditions and rest periods for workers.

2.3.2. This communication makes it clear that the EU seeks to develop, offer and manufacture the best low-emission, connected and automated mobility solutions, equipment and vehicles, and to have the most advanced supporting infrastructure. It also emphasises that the EU needs to play a leading role globally in steering ongoing change in the automotive industry and to build on the major progress already made.

2.4. The proposal for a regulation is part of a broader mobility package <sup>(6)</sup> that also includes demand-side measures in support of the supply-side measures contained in this proposal. Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles is intended to support the market for clean and energy-efficient road transport vehicles. The proposed amendment <sup>(7)</sup> ensures that the directive covers all relevant procurement practices and sends clear long-term market signals; using its provisions is also made simpler and effective. The aim is also to increase the transport sector's contribution to the reduction of CO<sub>2</sub> emissions and air pollutant emissions and to boost the competitiveness and growth of the sector.

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<sup>(1)</sup> European Council conclusions of 24 October 2014.

<sup>(2)</sup> [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

<sup>(3)</sup> COM(2016) 501 final.

<sup>(4)</sup> OJ C 81, 2.3.2018, p. 95; OJ C 81, 2.3.2018, p. 181; OJ C 81, 2.3.2018, p. 188; OJ C 81, 2.3.2018, p. 195.

<sup>(5)</sup> COM(2017) 283 final.

<sup>(6)</sup> COM(2017) 675 final, COM(2017) 647 final, COM(2017) 648 final, COM(2017) 652 final, COM(2017) 653 final.

<sup>(7)</sup> COM(2017) 653 final.

### 3. The proposal for a regulation <sup>(8)</sup>

3.1. The Commission's aim with its proposal for a regulation is to achieve the targets set out in the Paris climate agreement, reduce fuel costs for consumers, boost the competitiveness of the automotive industry and create additional employment. The road towards decarbonisation, in particular using alternative powertrains, is described as irreversible.

3.2. The Commission expects the proposal to provide a reduction in CO<sub>2</sub> emissions of around 170 million tonnes in the period from 2020 to 2030, thereby improving air quality. Gross domestic product is expected to grow by up to EUR 6,8 billion by 2030 and an additional 70 000 jobs are expected to be created.

3.3. For consumers buying a new car, the Commission expects average annual cost savings of EUR 600 in 2025 and EUR 1 500 in 2030 (over the life cycle of the vehicle). Annual fuel cost savings across the EU are expected to amount to EUR 18 billion, a total of 380 million tonnes of oil in the period from 2020 to 2040.

3.4. The key elements of the Commission proposal on reducing CO<sub>2</sub> emissions from passenger cars and light commercial vehicles are:

3.4.1. A further 30 % reduction in CO<sub>2</sub> by 2030, based on the targets for 2021 of 95 g/km for cars and 147 g/km for light commercial vehicles by 2021 (NEDC test cycle). As an interim target, CO<sub>2</sub> emissions are to be reduced by 15 % to enable the overall target to be achieved as quickly as possible (which also means investment certainty for industry).

3.4.2. From 2021 onwards, emission values will be based on the WLTP lab test (Worldwide Harmonised Light Vehicle Test Procedure), which has been applicable since 1 September 2017. As a result of the change in lab test, the targets for 2025 and 2030 are given in percentages.

3.4.3. In principle, the project is open to all kinds of technology. A distinction is made between zero-emission vehicles (ZEVs) and low-emission vehicles (LEVs), which emit less than 50 g CO<sub>2</sub>/km, in particular plug-in hybrid vehicles (PHEVs — vehicles that have an electric powertrain in addition to a combustion engine). Benchmarks of 15 % by 2025 and 30 % by 2030 are set out for both types of vehicle. Manufacturers that exceed these benchmarks will receive a bonus on their manufacturer-specific targets of a maximum of 5 g/km. When determining this percentage, the emission performance of the vehicles concerned is taken into account, with zero-emission vehicles having a higher rating than low-emission vehicles. No penalty rule is planned.

3.5. So-called eco-innovations, which are not reflected in the official lab tests, will also be taken into account (up to a cap of 7 g CO<sub>2</sub>/km). A revision of this special scheme is planned for 2025. From 2025 onwards, energy-efficient air conditioning units will be considered eco-innovations.

3.6. Exceeding the manufacturer-specific (interim) targets will result in a penalty of EUR 95 per g CO<sub>2</sub>/km per vehicle. The monitoring of CO<sub>2</sub> emissions from newly registered cars is carried out by the European Environment Agency. Manufacturers with fewer than 1 000 new vehicle registrations a year are excluded from the scope of the regulation.

3.7. In addition to the draft regulation, numerous references to complementary activities, initiatives and priorities are listed. Of particular interest here is the factsheet entitled 'Driving Clean Mobility: A Europe that defends its industry and workers'. Here the Commission points out that between 2007 and 2015 EUR 375 million were invested in battery research. A further EUR 200 million are due to be funnelled from the Horizon 2020 programme in 2018-2020. In particular, the next generation of batteries is to be promoted and a roadmap for an EU Battery Alliance is due to be presented in early 2018. The aim is to establish the entire battery production value chain in Europe <sup>(9)</sup>.

<sup>(8)</sup> This section is based on COM(2017) 676 final and the *Proposal for post-2020 CO<sub>2</sub> targets for cars and vans* ([https://ec.europa.eu/clima/policies/transport/vehicles/proposal\\_en](https://ec.europa.eu/clima/policies/transport/vehicles/proposal_en)).

<sup>(9)</sup> European Commission: *Driving Clean Mobility: A Europe that defends its industry and workers*.

#### 4. General comments

4.1. The EESC welcomes the Commission's proposals in principle as a balanced compromise between various objectives. The proposal is an important step towards climate-neutral mobility, while also promoting the innovation capacity of the European automotive industry, retaining high-quality employment and facilitating a gradual social transition to new production patterns. The goal of reducing CO<sub>2</sub> emissions by 30 % corresponds to the target for the non-ETS sector under the EU's 2030 climate and energy framework.

4.2. With its proposal, the EU is opening up a new chapter on mobility, which appears to be increasingly finding favour with the population at large. This shift in public attitude is also taking place particularly in the light of the diesel crisis. It also includes changes in mobility patterns, the improvement of public transport and finally the goal of developing and implementing comprehensive and integrated transport policies.

4.3. The EESC considers the interim target of a 15 % reduction in emissions by 2025 compared to 2021 to be very demanding since it requires changes to combustion engines that are at the cutting edge of technology. This is especially the case for light commercial vehicles with longer production and development cycles. An assessment should therefore be carried out in 2024, on the basis of which it will be determined whether or not the targets for 2030 are to be retained or whether they can be amended. With the way market uptake of ZEVs, LEVs and PHEVs is currently evolving, the interim target looks to be a challenge, albeit an achievable one.

4.4. The EESC welcomes the supplementary rule under which market surveillance is strengthened by measuring and monitoring real fuel consumption, based on an obligation for manufacturers to fit new vehicles with standardised devices. The data collected will be made available not only to manufacturers, but also to independent third parties for the purpose of carrying out evaluations. This could be a functional equivalent to measuring emissions in real driving conditions, which is not workable for reasons relating to the comparability of test results.

4.5. The EESC notes that, despite all of the benefits, the tailpipe approach opted for in the draft regulation is still only of limited value. For example, CO<sub>2</sub> emissions are generated in the production of vehicles, batteries and electricity and are also influenced by driving performance and driving behaviour. The EESC also notes that the efforts in vehicle technology could be undermined by other modes of transport, such as the projected increase in air transport.

4.6. The EESC draws attention to its work on the structural transition in the automotive industry towards alternative (green) powertrains, digitalisation and networking, and autonomous driving, with the potential risk for employment, which could lead to trends for new qualifications. Among its recommendations here are that the European Commission should put together a legal and regulatory framework that allows for the rapid use of support schemes in the restructuring process<sup>(10)</sup>. Examples here include first and foremost the EU's structural funds, such as the Globalisation Fund and the European Social Fund (ESF). Other projects based on the Airbus model can also be envisaged.

4.7. The European car industry currently employs around 2,3 million workers directly in the area of vehicle manufacturing and accounts for 8 % of total value added. Ten million are indirectly employed in this highly innovative sector, accounting for 20 % of industrial research funding in Europe.

4.8. The EU is among the world's biggest manufacturers of motor vehicles and is the largest private investor in research and development (R & D). The industry is also a world leader in terms of product innovation, production technologies, premium design and alternative powertrains, among other things. As a result, one car in four worldwide was produced in European assembly plants in 2016 and the automotive sector accounts for 4 % of European GDP<sup>(11)</sup>.

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<sup>(10)</sup> Information report CCMI/148, (point 1.5).

<sup>(11)</sup> Information report CCMI/148, (point 2.1).

4.9. The EESC welcomes the Commission's proposed desire to make the transformation of the automotive sector socially acceptable. The structural transition towards alternative powertrains will — together with digitalisation, autonomous driving and other things — be associated with dramatic changes in automotive value chains. One question this raises is which components are produced by manufacturers themselves and which are bought in. To date, the added value of e-components has been predominantly a supplier's business, with the area of battery cells still dominated by Asian producers. The EESC therefore welcomes the Commission's position on establishing the electric vehicle value chain in Europe (see point 3.7 on the EU Battery Alliance). It is still unclear what the next generation of battery cell will be like in technological terms and how the price-performance ratio will develop over time. Here the EESC recommends that the Commission monitor developments on an ongoing basis.

4.9.1. The pursued transition from traditional to alternative powertrains entails a structural change. Traditional products must be heavily modified or replaced by new ones. In the case of purely electric vehicles this concerns the internal combustion engine, the entire gear system and tailpipe units, among other things. In addition, there are also the electric motor and the battery, including the manufacturing of battery cells. However, these components account for significantly different proportions of the automotive sector value chain and, consequently, have a varying impact on the demand for employment and skills.

4.9.2. A study carried out by FEV <sup>(12)</sup> concluded that battery powered electric cars — conceived as mid-range cars — entailed manufacturing costs of around EUR 16 500. The main components are electric motors (EUR 800), power electronics (EUR 1 400) and the battery (EUR 6 600). For the battery alone, which represents 40 % of the cost, 70 % goes towards producing the cells. Electric cars are substantially less complex and producing them requires extensive changes to employees' qualifications: electrical engineering/electronics, electrochemistry, coating technology, thermal management, steering and control technology in the area of engineering, handling high-voltage technology and active principles of electricity as well as the behaviour of materials and other things in the context of assembly and repairs.

4.9.3. Although the Commission assumes there will be a beneficial impact on employment, there are also dangers. A current study <sup>(13)</sup> by Fraunhofer IAO is examining the quantitative effects on employment through a scenario based on a 25 % share of EVs and a 15 % share of PHEVs, which roughly reflects the Commission's proposal. Initial results show that, in the best case scenario, around 10-12 % of jobs involving powertrains will be lost by 2030 as part of the technological switchover. That would amount to between 25 000 and 30 000 jobs in Germany alone. The lower the actual share of PHEVs turns out to be, the more pronounced this negative effect will be (with a 5 % share of PHEVs the reduction will be 15-18 %). The same would be true for an accelerated phasing out of diesel technology, which, due to the greater complexity particularly of the supplied parts, has a 30-40 % greater bearing on employment than petrol engine parts. Risks to employment are also emerging in parallel due to the effects of digitalisation and the increased localisation of production in major regions of the world.

4.9.4. Generally speaking, it is to be expected that these effects will be felt asymmetrically over time and geographically. Final manufacturers and large suppliers are better placed than small, highly specialised part suppliers when it comes to taking countermeasures through innovations and new business models. In addition, jobs in the area of new technologies and services will more frequently be located in urban centres and less in peripheral regions. This must be taken into consideration when designing the relevant framework programmes.

4.9.5. The threat to jobs and employment depends on the pace of this structural transition. The EESC therefore welcomes the Commission's proposal, which now includes investment certainty for industry, enabling it to initiate and prepare for this structural transition right away. The EESC calls on the Commission to ensure that this structural transition is accompanied by industrial policy measures, in order to avoid upheaval among employees. Tripartite and bipartite dialogue is crucial in this connection.

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<sup>(12)</sup> Frankfurter Allgemeine Zeitung (FAZ) of 16.12.2016 (FEV = Forschungsgesellschaft für Energietechnik und Verbrennungsmotoren (Research Organisation for Energy Technology and Combustion Engines)).

<sup>(13)</sup> Fraunhofer IAO 2017: ELAB 2.0 — Effects of vehicle electrification on employment, Stuttgart (preliminary results).

4.9.6. The EESC notes that the first steps have already been taken, with some individual manufacturers announcing additional electric car models by 2025 and having begun their planned share of newly registered car fleets — albeit still on a modest scale.

4.10. In order to support the sustainable and regionally balanced decarbonisation of the transport sector, the Commission plans to provide EUR 800 million under the Connecting Europe Facility for the deployment of interoperable charging stations. This should trigger substantial additional public and private investment (200 000 charging points are currently operational in the EU, while 800 000 are needed). A further EUR 200 million will be made available to set up a public-private partnership for the development of next generation batteries. Finally, the Commission wishes to support the introduction of alternative powertrains through targets for public authorities to include more ZEVs/LEVs in their procurement.

4.11. The EESC believes that any fines, under both the existing and the new regulation, should be used to support the sector and its workers through the transition towards low-carbon products. At present, only a minority of car manufacturers are on track to achieve the reduction targets for 2021.

4.12. While the reduced dependency on oil imports is to be welcomed, new dependencies could arise, such as access to raw materials (lithium, cobalt and nickel from remote areas). The EESC also expects a sufficient electricity supply from renewable energy sources to be guaranteed.

#### 4.13. *Mid-term review of the regulation*

4.13.1. In 2024, the Commission will carry out a mid-term review of the regulation, in order to verify whether the path followed is proving effective.

4.13.2. As the structural shift from internal combustion engines to alternative powertrains is currently still uncertain in quantitative terms, it will be necessary to see how the market for alternative powertrains has developed by 2024, the number of charging points that have been built (a restricting condition) and the extent to which electricity grids have been converted and upgraded to meet the noticeable increase in electricity demand.

4.13.3. The EESC expects this mid-term assessment to provide information on what has been done regarding employees' qualifications and (re)training. In what areas is (additional) action required in order to further improve the skills and qualifications of staff in the automotive industry for the structural transition? How far do the proposed measures go (see Automotive Skills Council) in ensuring the implementation of the changes to qualifications? In this connection, the EESC believes first and foremost that the sector's unions have a responsibility to further promote industrial tripartite dialogue. In addition, the necessary resources should be provided to enable employees to remain on the labour market.

Brussels, 14 February 2018.

*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 ‘Amended proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council’**

(COM(2017) 637 final)

(2018/C 227/08)

Rapporteurs: **Christophe LEFÈVRE**

**Jorge PEGADO LIZ**

**Lech PILAWSKI**

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| Consultation                                 | European Council, 17.11.2017<br>European Parliament, 13.11.2017             |
| Legal basis                                  | Articles 114 and 304 of the Treaty on the Functioning of the European Union |
| Section responsible                          | Single Market, Production and Consumption                                   |
| Adopted at plenary                           | 15.2.2018   |
| Plenary session No                           | 532   |
| Outcome of vote<br>(for/against/abstentions) | 160/5/13  |

## 1. Conclusions and recommendations

1.1. Differences in contract laws in the different Member States do not encourage consumers to buy in other EU countries.

1.2. In addition, entrepreneurs' confidence in selling cross-border is still not improving. According to the latest EU-wide survey, 58 % of all EU retailers declare being confident selling online; however, only 28 % are confident selling online to other EU countries <sup>(1)</sup>.

1.3. The positions adopted both by the European Parliament (EP) and by the Council on the proposals presented by the Commission in 2015 <sup>(2)</sup> concerning the sale of goods online and face-to-face showed that, as the EESC stated in its opinion on these proposals <sup>(3)</sup>, the rules applicable to the sale of goods should be the same, regardless of the sales channel.

1.4. The EESC welcomes the fact that this amended proposal extends the scope of the proposal for a directive on certain aspects concerning contracts for the online sales of goods to cover face-to-face sales as well.

1.5. The EESC however calls on the Commission to take a number of recommendations into account in its proposal, namely:

- (a) the proposal should not lead to shorter guarantee periods in certain Member States or the creation of a hierarchy of rights;

<sup>(1)</sup> The analysis carried out in the context of the Fitness Check of EU consumer and marketing law shows that 46 % of retailers using distance sales channels consider the costs of compliance with varying consumer protection and contract law rules as important barriers to cross-border sales. For 72 % of consumers, differences in consumer rights for faulty products are a very important factor when deciding to buy face-to-face in another EU country.

<sup>(2)</sup> COM(2015) 634 final and COM(2015) 635 final.

<sup>(3)</sup> OJ C 264, 20.7.2016, p. 57.

- (b) derogation from the mandatory effect of the directive merely by an agreement between the contracting parties should only be possible if the agreement guarantees genuine consumer protection and autonomy;
- (c) the proposal should allow consumers to initiate legal proceedings directly against the producer;
- (d) the durability requirement (stock of replacement parts) should be included in the provisions of the directive;
- (e) the proposal should include rules on extension of guarantees to cover the time a product is unavailable because it is being repaired or while a service is unavailable;
- (f) the proposal should include information on payment platform security and the joint liability of online marketplaces in the event of deception or implementation of the guarantee;
- (g) producer and seller should be jointly liable in cases where the consumer chooses to repair or replace the goods, without prejudice to the right of redress already provided for in Article 16 and of prior contacting of the seller;
- (h) the provisions concerning the fourteen-day deadline for return and refund should be made clearer.

1.6. Lastly, the EESC calls on the Commission to take into account the comments set out in this opinion.

## 2. Aim and history of the amended proposal for a directive

### 2.1. Aim of the amended proposal for a directive

2.1.1. The amended proposal for a directive of the European Parliament and the Council <sup>(4)</sup> aims to extend the scope of the proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods to cover face-to-face sales as well.

2.1.2. It should also facilitate rapid progress in a field which lies at the heart of the single market strategies, in line with the conclusions of the June 2016 European Council.

2.1.3. Applying to all sales, the amended proposal is geared towards the same objective and contributes more to it than the previous proposals <sup>(5)</sup>: it responds to the uncertainties and negative effects stemming from differences in national contract laws.

2.1.4. The revised proposal complements and is consistent with a number of horizontal and sector-specific legislative instruments already in force in the EU <sup>(6)</sup>, as well as legislative proposals currently under consideration.

### 2.2. Overview of previous proposals for directives <sup>(7)</sup>

2.2.1. In its earlier proposals, the Commission had justified its decision to adopt two legislative instruments by arguing that the specificity of digital content means that different rules are needed from those for other products.

2.2.2. With these two proposals, the Commission intended to achieve five goals:

- (a) reducing costs resulting from differences in contracts;
- (b) legal certainty for businesses;

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<sup>(4)</sup> COM(2015) 635 final.

<sup>(5)</sup> COM(2015) 634 final and COM(2015) 635 final. EESC opinion: OJ C 264, 20.7.2016, p. 57.

<sup>(6)</sup> See, in particular, Directive 2011/83/EU, Regulation (EU) No 1215/2012 and Regulation (EC) No 593/2008.

<sup>(7)</sup> COM(2015) 634 final and COM(2015) 635 final.

- (c) encouraging online cross-border shopping in the EU;
- (d) reducing damages suffered with respect to defective digital content;
- (e) overall, balancing the interests of consumers and businesses and improving everyday life.

2.2.3. According to the Commission, its proposals would provide an appropriate balance between a high level of consumer protection at EU level and significantly increased opportunities for businesses.

### 2.3. *The EESC opinion on the initial proposals* <sup>(8)</sup>

2.3.1. In its opinion of 27 April 2016, the EESC criticised the decision to opt for two directives instead of one: in doing this, the Commission created a difference in the treatment of online and offline sales of goods, leading to a lack of clarity for consumers and entrepreneurs when it came to enacting them at national level.

2.3.2. The EESC also noted the failure to respond to a whole series of questions which it considered essential to harmonise: minors' ability to conclude digital contracts, the definition of categories of specific unfair terms for online contracts for which there is no provision in Directive 93/13/EEC, the recent practice of 'pay now' buttons, and the inclusion of a standard clause on co-regulation.

2.3.3. Lastly, the EESC noted that the fundamental approach of its opinions on consumer rights in digital matters has always been that the rights recognised in the physical environment of face-to-face sales should be consistent with the environment of online or distance sales, whatever the form of digital transaction, and has always aimed to strengthen, rather than undermine, such rights.

2.3.4. The positions of the European Parliament and the Council in the discussions on these proposals confirmed the EESC's position as regards the need to prevent legal fragmentation.

## 3. **General comments**

3.1. The Commission's amended proposal presents a number of proposals and options which are consistent with the EESC's earlier positions, such as the option for a single regime for the sale of goods online and offline, mentioned above.

3.2. Other changes introduced by the new proposal also deserve to be endorsed by the EESC. In particular, this applies to:

- (a) Article 2 — the introduction of the concept of 'producer' and clarification concerning the replacement of goods 'free of charge';
- (b) Article 8 — establishment of a period when lack of conformity is presumed to exist which is equal to the guarantee period, since the opposite would in practice reduce the guarantee period, given that the consumer is not able, in most cases, to prove the non-conformity of the goods;
- (c) various improvements and clarifications relating to the legal terminology used.

3.3. However, the EESC considers that the provision made in Article 18 of the proposal for derogation from the mandatory effect of the directive merely by an agreement between the contracting parties should only apply if the agreement in question ensures genuine consumer protection and guarantees the decision-making autonomy of the consumer.

3.4. Moreover, the EESC considers that the amended proposal should:

- (a) include rules allowing the consumer to initiate legal proceedings directly against the producer in the event of lack of conformity between the goods and the contract, as required by numerous national laws;

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<sup>(8)</sup> OJ C 264, 20.7.2016, p. 57.

- (b) include the durability requirement in its provisions, as the EESC has called for on several occasions in its opinions <sup>(9)</sup>;
- (c) establish a maximum time period for repair <sup>(10)</sup> in accordance with good professional practice;
- (d) require producers to maintain an adequate stock of spare parts for the average lifetime of goods, as is the case in several national laws <sup>(11)</sup>;
- (e) include other guarantees offered by the seller (brand/producer/equipment insurance, etc.) for goods and services;
- (f) include in the mandatory content of the guarantee statement detailed information on whether or not cost is involved, charges and the form of payment;
- (g) specify that where ownership of the goods or service is transferred and under normal conditions of use, the rights deriving from the guarantee are also transferred in full;
- (h) provide for the direct joint and several liability of producer and seller with regard to the consumer in cases where the consumer chooses to repair or replace the goods, without prejudice to the right of redress laid down in Article 16 and of prior contacting of the seller;
- (i) provide for the joint and several liability of online platforms, while excluding mere intermediaries, where consumers have purchased goods through an online marketplace, without prejudice to the right of redress.

#### 4. Specific comments

##### 4.1. Article 1

4.1.1. The EESC questions the grounds for the exclusion provided for in paragraph 4 concerning contracts for the sale of second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person.

##### 4.2. Article 9

4.2.1. The EESC draws attention to its comments in the previous opinion <sup>(12)</sup>, bearing in mind that this proposal — and limiting the rights of consumers, initially to repair or replacement only — means that consumer rights in some Member States will be less protected than under the existing regimes.

4.2.2. The arrangements referred to in paragraph 3 (b) and (d) also make application of the regime dependent on poorly-defined concepts. In fact, interpretation of the term 'impossible' is left to the discretion of the seller. It would therefore be desirable to replace this term with 'technologically impossible'.

##### 4.3. Article 10

4.3.1. The EESC recommends that the exception provided for in paragraph 1 be made subject to the same conditions as set out in point 3.3 above.

##### 4.4. Article 11

4.4.1. The EESC points out once again that the right to repair or replacement is limited by the seller's assessment of whether in a certain, specific individual situation the exercising of one of these rights would impose disproportionate costs on them, taking into account all the circumstances.

##### 4.5. Article 13

4.5.1. The EESC thinks the provisions concerning the fourteen-day deadline for return and refund should be made clearer.

4.5.2. The EESC asks whether the provisions of subparagraph (d) of this article only apply, as would appear to be the case, to situations of loss and destruction of the goods.

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<sup>(9)</sup> OJ C 264, 20.7.2016, p. 57 (point 4.2.5.4).

<sup>(10)</sup> OJ C 264, 20.7.2016, p. 57 (point 4.2.5.7).

<sup>(11)</sup> OJ C 264, 20.7.2016, p. 57 (point 4.2.5.7).

<sup>(12)</sup> OJ C 264, 20.7.2017, p. 57.

4.6. *Article 14*

4.6.1. The EESC calls for the longer guarantee period applying in certain Member States to be preserved, as otherwise this would be a step backwards for consumer rights in these Member States.

Brussels, 15 February 2018.

*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 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market’**

*(COM(2017) 536 final — 2017/0230 (COD))*

**and the**

**‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)’**

*(COM(2017) 537 final — 2017/0231 (COD))*

**and the**

**‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board’**

*(COM(2017) 538 final — 2017/0232 (COD))*

*(2018/C 227/09)*

Rapporteur: **Daniel MAREELS**

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| Consultation                                 | Council of the European Union, COM(2017) 538 final: 23.10.2017, COM(2017) 536 final: 22.11.2017 and COM(2017) 537 final: 29.11.2017<br><br>European Parliament, COM(2017) 538 final: 26.10.2017, COM(2017) 536 final: 16.11.2017 and COM(2017) 537 final: 16.11.2017 |
| Legal basis                                  | Articles 114 and 304 of the Treaty on the Functioning of the European Union  |
| Section responsible                          | Section for Economic and Monetary Union and Economic and Social Cohesion   |
| Adopted in section                           | 29.1.2018  |
| Adopted at plenary                           | 15.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 156/0/5  |

## 1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s proposals aimed at strengthening supervision in the Capital Markets Union (CMU), the objectives of which it fully supports. These proposals are not only a new, important step in the efforts to achieve greater integration and convergence by increasing integrated supervision in the CMU, but they also contribute to the achievement of broader objectives.

1.2. In fact they first provide new building blocks for the realisation of a CMU in the EU, the rapid establishment of which is highly desirable. The CMU, together with the Banking Union, should in turn contribute to the further deepening and completion of the EMU. In more general terms, this should help to strengthen the position of the EU and its Member States in a changing global environment.

1.3. The importance of a smoothly operating CMU should not be underestimated, as it can make an important contribution to private, cross-border risk-sharing. This should make the Member States more resilient to asymmetric shocks in times of crisis. In order to achieve that goal, the markets need to be secure, stable and resilient to shocks. More integrated supervision, at both micro- and macro-prudential level, plays a crucial role in this.

1.4. It is therefore very important and a priority to further pave the way for more cross-border market transactions; it must be possible to conduct these without national and other obstacles, barriers and inequalities, and at a lower cost. A level playing field is essential and regulatory arbitrage has no place in it. Companies must be able to make easier and more effective use of financing, with reduced administrative burdens and at a lower cost.

1.5. For their part, consumers and investors need more and better choice and greater protection. Ultimately, the Committee believes, the aim must be for all stakeholders, including the supervisory authorities, to have more confidence in the markets. That confidence can also be boosted by moving towards more sustainable financing, in line with international activities and agreements. This should also be reflected in the system of supervision.

1.6. The new supervisory environment should be based on a permanent concern to ensure the greatest possible clarity and legal certainty for all. The challenge is to find the right balance between the competences of national and European supervisors and, where possible, to apply the subsidiarity and proportionality principles, especially now, in the build-up phase of the CMU and in the interest of the diversity of market operators, particularly the small ones. This also applies to local transactions. At the same time, action is needed to tackle lack of clarity, overlaps and other shortcomings in supervision that hinder or seriously impede the realisation of the union.

1.7. It is also important to keep the future in mind, so as to ensure that new developments and modern technologies, such as FinTech, can be correctly and safely applied in the financial environment, with a level playing field for all operators.

1.8. In developing integrated supervision, it is important to work towards convergence and coordination, with effectiveness and efficiency being the guiding principles, in line with the REFIT approach. Strengthening the capacity of the European Supervisory Authorities to carry out their own impact assessments could be helpful to this end. Close attention should also be paid to costs. Where part of the costs is directly borne by the private sector, care should be taken to exercise budgetary discipline and avoid duplication. Any alterations must be made in a transparent way and there must be appropriate control of overall resources. The industry should be appropriately involved.

1.9. As in the past, all future steps should be based on dialogue and consultation with all bodies and other stakeholders, as well as on public consultations of all interested parties. Such an approach is considered very important by the Committee, since it makes it possible to achieve the best possible results in any given situation, based on the broadest possible consensus.

1.10. These proposals represent a major step forward, but they are not the end of the story. In the EESC's view, we must continue to pursue the ultimate objective of a single European capital markets supervisor, as stated in the Five Presidents' Report. Once the current proposals have been implemented, it is important to work on them steadily and intelligently, bearing in mind the points set out above.

1.11. The Committee fully supports the proposal to transfer certain supervisory powers in the area of insurance from national supervisors to the European level, thus contributing to supervisory convergence and a level playing field for all market participants.

## 2. Background <sup>(1)</sup>

2.1. Concerning the establishment of a CMU, it can currently be noted that Europe already has consistent banking sector supervision via the Single Supervisory Mechanism in the Banking Union, in which 19 Member States participate, while the supervision of capital markets in the EU, with certain exceptions, is conducted at national level.

2.2. It is clear that this situation is not in line with the principles on which the CMU — as well as the Banking Union — are based. It should also not be forgotten that the pursued financial integration will benefit not only the EMU but also the Member States.

2.3. Since the completion of the CMU is a priority for the current European Commission, work is being done as a matter of priority in order to bring supervision more into line with the principles of the CMU and financial integration in a changing environment. Moreover, this initiative was already announced in the recent mid-term review of the CMU <sup>(2)</sup>.

2.4. Specifically, on 20 September 2017, the Commission presented a communication <sup>(3)</sup> and three legislative proposals which provide for amendments to two directives and nine regulations <sup>(4)</sup>. The proposed measures apply to all Member States.

2.5. These proposals aim to strengthen and further integrate the current EU supervisory framework, in particular through:

2.5.1. better coordination of supervision, through:

2.5.1.1. targeted strengthening across the EU of macroprudential supervision, which is managed by the European Systemic Risk Board;

2.5.1.2. greater supervisory convergence, by strengthening the existing powers of the European Supervisory Authorities (ESAs);

2.5.1.3. enhancing the European Supervisory Authorities' procedures for issuing guidelines and recommendations to reflect the importance of these tools;

2.5.1.4. allowing the European Securities and Markets Authority (ESMA) to receive transaction data directly from market participants;

2.5.1.5. increasing the role of the European Insurance and Occupational Pensions Authority (EIOPA) in coordinating the authorisation of insurance and reinsurance companies' internal risk measurement models.

2.5.2. Extending the direct supervisory powers of ESMA;

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<sup>(1)</sup> The text is inspired by several official publications issued by, among others, the Council and the Commission. See, among others, <http://data.consilium.europa.eu/doc/document/ST-13447-2017-INIT/en/pdf> and [http://europa.eu/rapid/press-release\\_IP-17-3308\\_fr.htm?locale=EN](http://europa.eu/rapid/press-release_IP-17-3308_fr.htm?locale=EN)

<sup>(2)</sup> Communication from the Commission on the Mid-Term Review of the Capital Markets Union Action Plan, COM(2017) 292 final.  
<sup>(3)</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, and the Committee of the Regions on Reinforcing integrated supervision to strengthen Capital Markets Union and financial integration in a changing environment, COM(2017) 542 final.

<sup>(4)</sup> See [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision\\_en#reviewoftheesfs](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision_en#reviewoftheesfs)

2.5.2.1. the new areas of capital market supervision focus on those areas where direct supervision can remove cross-border barriers and promote further market integration. This can be seen as a step towards having a common supervisory authority.

2.5.3. Improving the governance and financing of supervisory authorities;

2.5.3.1. with regard to the governance structure, a distinction is made between the powers of national authorities and those of the European Supervisory Authorities. The former continue to determine the general approach and decide on regulatory issues, while the latter will be responsible for EU-related decisions concerning coordination and supervisory practices.

2.5.3.2. Diversification is pursued with regard to financing. The aim is for sector and market operators to also contribute part of the funding, alongside public authorities.

2.5.4. Requiring the European Supervisory Authorities to take account of environmental, social and governance factors, as well as issues related to FinTech, when performing tasks within their respective mandates;

2.5.4.1. as a first step, the role of European Supervisory Authorities in assessing environmental, social and governance risk is clarified and strengthened, in order to achieve long-term stability of the European financial sector and the advantages for a sustainable economy<sup>(5)</sup>.

2.5.4.2. With regard to FinTech, regulators and supervisors should be given the opportunity to familiarise themselves with these technologies and should have the chance to develop new rules and supervision, including by working together with these firms<sup>(6)</sup>.

2.6. A proposal<sup>(7)</sup> has also been announced that provides for the transfer to the European Supervisory Authorities of certain supervisory powers currently vested with the national competent authorities. This mainly applies to the insurance sector.

2.6.1. With regard to ESMA, this essentially involves the transfer of the power to authorise and supervise data reporting service providers, as well as to collect information in that area.

2.6.2. With regard to EIOPA, the proposals concern assigning it a greater role in contributing to supervisory convergence in the area of applications for the use of internal risk measurement models, changes with respect to information sharing regarding such model applications, and the possibility for it to issue opinions in that connection and to assist in the settlement of disputes between supervisory authorities.

### 3. Comments

3.1. The present Commission proposals are by and large part of the broader approach to implementing a CMU, the major importance and relevance of which is beyond doubt. In that respect, the EESC 'strongly supports this union and is ambitious regarding its implementation'. Its prompt establishment is of great importance<sup>(8)</sup>. The European Council<sup>(9)</sup> and the European Parliament<sup>(10)</sup> have also regularly called for work to be done on completing the CMU.

3.2. For the Committee, the CMU must in turn be placed within the wider context of Europe's international position in a changing global context, the further deepening and completion of the EMU and, last but not least, further financial integration between all EU Member States.

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<sup>(5)</sup> An action plan with regulatory measures will be published in 2018.

<sup>(6)</sup> An action plan in this area has also been announced by the Commission for 2018.

<sup>(7)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) 537 COM(2017) 537 final.

<sup>(8)</sup> OJ C 81, 2.3.2018, p. 117, point 1.1.

<sup>(9)</sup> Conclusions of the European Council meeting of 22-23 June 2017.

<sup>(10)</sup> European Parliament Resolution of 9 July 2015 on Building a Capital Markets Union. See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0268+0+DOC+XML+V0//EN>

3.3. The further financial integration referred to is particularly important since it facilitates and supports cross-border private risk-sharing. As proven by the recent crisis, it is necessary to make Member States more resilient to asymmetric shocks in times of crisis.

3.4. The CMU can also *'make a substantial contribution to consolidating the economic recovery, thereby helping to ensure growth, investment and jobs. This will benefit both the individual Member States and the EU as a whole. (...) This in turn should contribute to the desired increase in stability, security and resilience of both the economic and the financial system'* <sup>(11)</sup>.

3.5. The Committee therefore welcomes the present proposals to strengthen and integrate the European supervisory mechanism, and the fact that they have been delivered quickly. Now it is time to implement them. Attention can be drawn to other previous initiatives which also contribute to these objectives, and on which the EESC has also commented in positive terms. These include the proposals for a more integrated supervisory mechanism for central counterparties <sup>(12)</sup> and the PEPP <sup>(13)</sup>, which provides for a key role for EIOPA.

3.6. As already stated, *'the Committee is pleased that supervision will be a key part of efforts to develop the CMU. **Supervision at European level has a crucial role to play, both as regards safety and stability and when it comes to achieving the desired market integration and eliminating obstacles, barriers and inequalities in the single market'*** <sup>(14)</sup>. These objectives go to the heart of the context mentioned above and as a result should always be present and should take priority.

3.7. For the Committee, it is essential that the envisaged rules make a tangible and direct contribution to achieving the objectives and that they deliver beneficial results for all parties concerned in all Member States.

3.8. In this respect, the Committee endorses what is stated to this effect in the Communication, namely that *'it is crucial to strengthen the capacity of the European Supervisory Authorities to ensure consistent supervision and uniform enforcement of the single rulebook. This will support well-functioning capital markets by reducing barriers to cross-border investment, simplifying the business environment and reducing compliance costs for firms operating on a cross-border basis resulting from divergent implementation of the rules. From an investor's perspective, consistent supervision and uniform enforcement of the rules contributes to enhancing investor protection and the building confidence in capital markets'* <sup>(15)</sup>. Similar supervisory standards in all EU Member States are necessary in order to achieve these objectives.

3.9. When extending supervisory powers, it is also necessary to aim for the greatest possible clarity and legal certainty for all, both European and national supervisors, and the businesses under supervision. The planned control measures must be appropriate.

3.10. It is necessary to seek the right balance in the powers of national and European Supervisory Authorities. The priority aim is to enable cross-border transactions and operations to take place in the best possible conditions. Obstacles preventing this should be removed. In other cases, the possibility of retaining local supervision needs to be considered, particularly during the current build-up phase of the CMU and in view of the diversity of market operators, particularly the small ones. Proportionality and subsidiarity should, where possible, be taken into account. This also applies to local transactions, where national supervisory authorities are closer to the market. Regulatory arbitrage, duplication of supervision, specific national rules and gold-plating should be avoided as much as possible, particularly when they prevent or seriously impede the implementation of the CMU.

3.11. It is also necessary to seek a good balance between the possibility of offering cross-border financial services and instruments, which is very important (see cross-border private risk-sharing above), and the protection of investors and consumers. The importance of this is growing, with more and more transactions taking place *'at a distance'* <sup>(16)</sup> instead of via the traditional face-to-face method. Ultimately, (potential) customers should be able to enjoy the same level of information and protection, irrespective of where the provider of the service (or instrument) is established and the way in which the transaction is handled.

<sup>(11)</sup> OJ C 81, 2.3.2018, p. 117, point 1.3.

<sup>(12)</sup> OJ C 434, 15.12.2017, p. 63.

<sup>(13)</sup> OJ C 81, 2.3.2018, p. 139.

<sup>(14)</sup> OJ C 81, 2.3.2018, p. 117, point 1.12.

<sup>(15)</sup> Communication COM (2017) 542 final, page 5.

<sup>(16)</sup> For example via the internet.

3.12. European supervision must have a strong focus on the protection of consumers and investors. They must have more and better choice and greater protection. Risk-free basic products must therefore also be offered. Attention should be paid to ensuring coherence with other initiatives <sup>(17)</sup> and the implementation of new regulations must not be detrimental to the consumer. Ultimately, the Committee believes, the aim must be for all stakeholders, including the supervisory authorities, to have more confidence in the markets. That confidence can also be boosted by moving towards more sustainable financing, in line with international activities and agreements.

3.13. Similarly, it is also important to keep the future in mind, so as to ensure that new developments and modern technologies, such as FinTech, can be applied in the financial environment. Their potential must be harnessed, but not at the expense of safety. A level playing field is needed for all operators, irrespective of the nature of their activities.

3.14. The extensive work done by the European Supervisory Authorities on the development of legislative standards must be highlighted and acknowledged. In this respect, it is important that in the future even greater efforts are made to achieve convergence and harmonisation, in order to make best possible use of the funds available. Nor should the importance of proper application of European legislation be forgotten.

3.15. When developing these and future rules, inspiration should be drawn from the REFIT approach in this area: effectiveness and efficiency should be a primary consideration, along with seeking the most cost-effective way of achieving the desired results. REFIT keeps things simple, removes unnecessary burdens and adapts legislation without compromising on policy objectives.

3.16. In this context, strengthening the ability of the European Supervisory Authorities to carry out their own impact assessments could be considered, as this would give them the opportunity to analyse the implementation costs and efficiency of the standards they draw up, where possible taking account of the proportionality principle. For these studies, more extensive and more structured use could be made of various existing stakeholder groups, in order to gather knowledge and experience from the business community.

3.17. In order to be able to fulfil their remit properly, the European Supervisory Authorities need to be able to rely on the funds necessary to perform their tasks. Currently, these come partly from the EU budget and partly from national supervisors. Any amendment, including those aiming to make the private sector directly responsible for part of the costs for indirect supervision, should take fiscal discipline into account, and the double counting of transactions should be avoided. Under the current structure, financial entities already contribute to the financing of the European Supervisory Authorities through the contribution of their national supervisor. The financial entities' contribution to the national and European Supervisory Authorities must therefore be reallocated, and a further overall increase in supervisory costs should be avoided. Any subsequent changes should be based on the greatest possible degree of transparency, and rigorous control mechanisms need to be put in place. Proper control of overall resources also needs to be ensured. The financial sector should be appropriately involved in this.

3.18. Undoubtedly, these proposals represent a major step forward, but they are not yet the end point. The Committee endorses the statement on this in the recent reflection paper on the deepening of the EMU <sup>(18)</sup>, in particular that '*the gradual strengthening of the supervisory framework should ultimately lead to a single European capital markets supervisor*'. The final objective is also put forward in the Five Presidents' Report <sup>(19)</sup> of mid-2015.

3.19. The current proposals are based on a phased approach. This approach seems particularly appropriate, especially in the phase of constructing the CMU <sup>(20)</sup>, and taking into account both the diverse situation and ambitions in the Member States, and the many global economic, technological and other policy challenges and developments that are emerging.

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<sup>(17)</sup> Reference can be made here, inter alia, to the Commission's recent Consumer Financial Services Action Plan: Better Products, More Choice. See the EESC's opinion on consumer financial services, OJ C 434, 15.12.2017, p. 51.

<sup>(18)</sup> Document of 31 May 2017, p. 21. See [https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf)

<sup>(19)</sup> Document of June 2015, point 3.2, p. 14. See [https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf)

<sup>(20)</sup> Thirty-eight further building blocks for the CMU to be in place by 2019 are listed in the Communication from the Commission on the Mid-Term Review of the Capital Markets Union Action Plan of 7 June 2017, COM(2017) 292 final.

3.20. The Committee is also pleased that the proposals are based on the operational experience of the European Supervisory Authorities, the work done by the Commission and the recommendations of the European Parliament, as well as the intensive dialogue with all stakeholders and a broad public consultation with all interested parties. The Committee believes that this approach is correct and appropriate. It makes it possible to obtain the best possible results, taking account of specific circumstances, which can draw on the broadest possible acceptance. It therefore explicitly suggests continuing to use the approach in the future, both to regularly review the rules, as well as when new steps are taken towards the final objective (see above).

3.21. At all times, the focus should be on creating a level playing field in EU financial markets, both in the euro area and for the other Member States. A level playing field should also be provided vis-à-vis other providers from outside the EU. This is only possible if the rules and supervision in force in those third countries pursue the same objectives as those in the EU.

3.22. The proposal to transfer certain supervisory powers in the area of insurance from national supervisors to the European level ties in with the desire to extend EU supervision of financial markets and thus contribute to the realisation of the CMU. This will contribute to greater supervisory convergence and a level playing field for all market participants.

Brussels, 15 February 2018.

*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, the Committee of the Regions and the European Investment Bank: Investing in a smart, innovative and sustainable Industry — A renewed EU Industrial Policy Strategy’**

(COM(2017) 479 *final*)

(2018/C 227/10)

Rapporteur: **Bojidar DANEV**

Co-rapporteur: **Monika SITAROVÁ HRUŠECKÁ**

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| European Commission Consultation             | 9.10.2017  |
| Legal basis                                  | Article 304 of the Treaty on the Functioning of the European Union |
| Body responsible                             | Consultative Commission on Industrial Change (CCMI)                |
| Adopted in CCMI                              | 23.1.2018  |
| Adopted at plenary                           | 15.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 166/1/2  |

### 1. Conclusions and recommendations

The EESC welcomes the Communication on smart, innovative and sustainable development and its approach of empowering people and businesses. However,

- the longer-term continuity and predictability of the policy must be assured. The Commission should develop the present policy, or rather set of policies, into a coherent, longer-term strategy;
- the EESC also addresses the Council, because Member States are competent for most industrial policy issues and must therefore be committed to coherent actions. No Member State has alone the capacity to meet the global challenges facing industry;
- shared objectives and a common framework for industrial policy could be the core of the future of Europe. EU governance to this end must be improved to provide results;
- action is urgent, because the challenges of digital technology, de-carbonisation and global political changes are unprecedented and unpredictable.

#### **Regarding the Communication, the EESC concludes that**

1.1. the Commission has taken the approach of mainstreaming actions in several policy areas in order to create conditions conducive to industrial competitiveness and development, in line with what the EESC has proposed for years;

1.2. the paradigm shift of the digital era is having disruptive, transversal effects upon all businesses and society;

1.3. enterprises are challenged in an unprecedented way to swiftly transform new technologies into innovations and successes in ever more competitive markets. A central position in a global value chain is of great importance for many;

1.4. people are at the core of change. Labour market policies need to adapt to changing circumstances. A fair transition means support to people and regions confronted with structural change;

1.5. education and training are necessary facilitators and drivers of the industrial transition. All workers need upgraded skills, especially digital abilities, and many need new professions;

1.6. meeting environmental, climate change and other sustainability goals entails significant change for the whole economy. New business opportunities are occurring. At the same time, industrial non-carbon transition requires huge investment in fundamentally new, non-carbon technologies and much more clean electricity at competitive prices;

1.7. the level of investment in European industry is low, but there are some signs of a positive development. In any case, investors are attracted only by the right framework conditions for industry;

1.8. access to global markets is crucial to industry, and therefore the network of trade agreements must be further built out, based on the principle of fair trade.

***The EESC recommends that***

1.9. the overall objective of EU action should be to further develop a well-functioning toolbox of horizontal policies and a predictable legal framework in order to incentivise innovation, support investments and help industry provide solutions to societal challenges. This should add value with measurable impacts on growth and employment, be delivered with a minimum of administrative burden and spread benefits to society as a whole;

1.10. all actions should be taken to complete the Single Market, with emphasis on implementation by Member States. A vigilant implementation of competition policy, which is necessary as a driver of innovation and fairness, should however not hinder EU companies from growing;

1.11. the Digital Market strategy must be implemented urgently, accompanied by a focused employment policy;

1.12. an open and realistic attitude should be adopted towards new, disruptive technologies and business models, with emphasis on giving society, including enterprises, the opportunity to benefit from new possibilities;

1.13. social dialogue and dialogue with civil society should be renewed and strengthened at all levels to facilitate change, manage social problems and avoid conflicts;

1.14. flexible pathways are needed between work and education, such as apprenticeships and work-based learning. In many Member States, vocational training should be given better appreciation;

1.15. leadership in low-carbon and circular economies should benefit our economies. Policies should support the development of innovative new businesses as well as the costly transformation of energy-intensive manufacturing in order to avoid investment and carbon leakage;

1.16. obstacles to turning present, big private savings surpluses into productive investments in industry and infrastructure should be explored;

1.17. EU support should mainly be directed at boosting innovation, scaling up SMEs, helping regions in trouble and empowering people. The leverage effect on private finance should be an important criterion;

1.18. R&D and innovation policies must be guaranteed additional resources in the next financial framework. These policies should be aimed more at the uptake of new technologies, scaling up and market successes and should not exclude companies of any size;

1.19. official statistics should better reflect the changed features of the economy, such as the blurring of sectoral borders and new forms of economic activity. A common method of calculating value added from industry and services is needed;

1.20. most relevant targets and indicators for industrial policy, both at macroeconomic and less aggregate levels, need further open reflection, in addition to the 20 % target;

1.21. governance must be improved in order to mainstream policies and ensure coherence through the decision-making process, whether with a stronger Competitiveness Council or otherwise;

1.22. the annual Industry Day and the High Level Industrial Roundtable should be welcomed as they increase ownership of the strategy among stakeholders. Dialogue with industry should, however, not be limited to these arrangements.

## 2. Introduction

2.1. **The backbone** of the European economy is industry. It provides 24 % of EU jobs — 32 million directly and 21 million indirectly, mainly in services. These jobs come with relatively high wages for both high-skilled and less skilled workers. Manufactured goods account for 75 % of exports. Industrial growth spreads to all parts of the economy. Industry is also the cradle of innovations in all sectors, including solutions to many societal challenges. However, increased interlinkages of manufacturing and services as well as integration within value chains form the essence of value added in our economies.

2.2. After many years of decline, industrial output, exports and employment in Europe now seem to be on a path to recovery. Still, this recovery is incomplete and the **competitiveness** of European industry is unsatisfactory. Relatively high taxes and energy prices, insufficient investment, both real and intangible, slow productivity growth, innovation gaps with competitors, skill shortages as well as subdued internal demand are frequently reported.

2.3. **Megatrends** with a bearing on industry are, in particular:

- revolutionary technological development; digitalisation with all its applications, but also nanotechnology, new materials, life science-based technologies etc.;
- growing environmental requirements, including mitigating climate change;
- spread of higher living standards, ageing populations and urbanisation;
- globalisation, with open markets and value chain production, but also aggressive state entrepreneurship and protectionism.

These well-known trends offer vast opportunities for European industry. They could also constitute severe risks for society and industry if not reacted to properly and successfully.

## 3. General comments

3.1. **The EESC welcomes** the Commission's Communication and largely agrees with its analysis of the situation and challenges facing European industry. The Communication is mainly an update to existing proposals, with a number of new actions to be tabled by the current Commission. However, the longer-term continuity and predictability of the policy must be assured. The Commission should urgently develop a longer-term strategy, to which all Member States should also be fully committed.

3.2. **The EESC notes with satisfaction** that the Commission is consistent in presenting an approach to industrial policy that the Committee has proposed for years. Instead of developing legislation in numerous policy areas affecting industry with little concern for their impacts on and inputs from industry, the approach is now to mainstream these policy areas with industrial development as a priority.

3.3. The EESC has during the last few years **presented opinions** on the Commission's proposals for different industrial sectors and policy areas <sup>(1)</sup>. These opinions are still mainly relevant in the context of this Communication. In this opinion the EESC wishes to underline some currently relevant aspects of industrial policy and add some new comments.

3.4. **Enterprises** are facing an unprecedented need to adapt, often radically. They have to swiftly grasp new technologies and transform them into better productivity and innovations, succeeding in ever more competitive markets. Positioning oneself well, preferably at the core of an international value chain, is imperative for many companies. SMEs can and should strive to play an important, innovative role in these chains, which are mostly built around big companies with required resources and networks.

3.5. New **industries** will emerge. Digitalisation gives rise to innumerable new networks and interactions, fostering new spectrums of products and services, which are ever more fine-tuned to customers' needs. The scale-up of production, product and services technologies as well as the growth of start-up companies must be enabled by relevant policies at EU level, because value chains are not limited to single states. On the other hand, differences between Member States and regions require tailor-made measures.

3.6. **All enterprises** have to upgrade their operations continually. Outdated and unprofitable companies cannot be preserved by subsidies. However, Europe needs a wide range of industries to meet societal needs, and specific strategies for sectors with particular challenges should therefore be developed.

3.7. **People** are at the core of change. Without qualified and devoted workers there is no industry. The opportunities provided by new technologies and innovations must be exploited, but digitalisation and other game-changing technologies will impact the structure of the labour market, with less manufacturing jobs and more IT specialists. Also work organisation and management concepts will change, with implications for the quality of jobs, which will become less hazardous but also more intense and flexible.

3.8. The **employment impact** of technological disruptions needs to be properly assessed and the toolbox for anticipating change needs to be strengthened. The challenge of adjusting labour markets to structural change will be enormous: providing employment security or new job options as far as possible, social protection of those in need and preventing the decline of whole regions. The European Globalisation Adjustment Fund needs more resources and its scope must be widened so it also applies to the impact of technological change. Industrial relations at all levels, and in particular social dialogue at company level, involving workers, are vital facilitators for industrial change while helping acceptance of change and avoidance of conflicts.

3.9. **Education and training** are necessary instruments and drivers of the industrial transition. All workers need to upgrade their skills, especially digital abilities. Many need training in quite new professions. The speed of technological development is a big challenge to keeping educational curricula and numbers in line with industry's changing needs. Work-based learning solutions, such as Germany's successful dual system, should be applied much more widely. At least in some Member States, the appreciation of vocational training should be reinstated. Likewise, the attractiveness of STEM subjects should be enhanced.

3.10. **Macroeconomic** and industrial policy are mutually reinforcing. The current economic upswing creates a window of opportunity to modernise transport, energy and digital infrastructure, upgrade R&D and its transformation into successful innovations, and balance regional development. The right combination of macroeconomic and industrial policy should prolong the recovery and protect the economy and industry against any future downturn.

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<sup>(1)</sup> For example, OJ C 327, 12.11.2013, p. 82, OJ C 12, 15.1.2015, p. 23, OJ C 389, 21.10.2016, p. 50, OJ C 311, 12.9.2014, p. 47, OJ C 383, 17.11.2015, p. 24.

3.11. **Investments** in European industry are still at a worryingly low level, while there is a big savings surplus in the EU that has not turned into productive investment. The reasons for this should be thoroughly studied, especially because industrial transformation requires enormous investments. One thing is, however, clear: both domestic and international investors are attracted only by framework conditions that are conducive to sufficient competitiveness.

3.12. Nevertheless, there are some signs of **possible positive trends** in investments. In a world faced with huge political instability, the EU is a safe and stable place to invest. Due to growing demand, production in some industries is reaching full capacity utilisation. This will trigger investments in new capacity, hopefully in Europe.

3.13. **Environmental** and climate constraints, notably the Paris Agreement on climate change, affect all enterprises. Many new business opportunities are occurring in low-carbon and circular economies. The EU's frontrunner ambitions can help European industries in global markets. Energy- and resource-intensive industries, in particular, have to perform fundamental technological changes, requiring ambitious policy support in order to avoid investment and carbon leakage. The non-fossil transformation of manufacturing and transport will significantly increase the demand for electricity at competitive prices.

3.14. **Cooperation** between all players — the EU, Member States' governments, authorities, regions, universities and schools, stakeholders and enterprises — could and should be better. For example, collaboration between enterprises and universities must to be improved. Schools should turn to enterprises for help with timely curricula and apprenticeships. Most importantly, Member States should cooperate by promptly implementing and enforcing agreed policies and legislation.

3.15. Present **statistical methods** do not produce a timely, useful picture of the industrial situation in Europe. The sectoral division into manufacturing, services and other productive activities is outdated. A considerable part of economic activity is not included in the calculation of GDP. Statistics on imports and exports do not describe industrial activity well in an era when roughly half of industrial production is part of global value chains. A common method of calculating value added and interlinkage of industry and services is urgently needed.

3.16. The EESC is of the opinion that the target of 20 % of GDP for industry needs to be complemented by more relevant **targets and indicators**, which better reflect all aspects of industrial development.

3.17. **Governance** of the mainstreaming of policies affecting industrial competitiveness and development as well as between Member States, needs to be strengthened. Better regulation — i.e. predictable, cost-effective and evidence-based — and *ex-ante*, transparent impact assessments are important. Coherence throughout the decision-making process should be ensured by strengthening the role of the Competitiveness Council or other institutional arrangements. Silo thinking at EU and national levels must be removed to respond to increased dynamics in the global economy.

#### 4. Specific comments

4.1. **Making Europe's industry stronger:** The EESC agrees with the need for a holistic and forward-looking vision of Europe's industry. To make Europe's industry stronger the overall objective of EU action should be to create a well-functioning and predictable legal framework, that incentivises innovation and helps industry provide solutions to societal challenges. It should add value with measurable impacts on growth and employment, be delivered with a minimum of administrative burden and spread benefits to society as a whole.

4.2. **The Single Market:** The EESC welcomes the approach of empowering people and businesses and agrees with the proposed actions to strengthen the Single Market, including the capital market. Enhancing standardisation and self-regulation are important areas of action. Most importantly, Member States must fulfil their obligation of compliance and enforcement. Vigilant implementation of competition policy is essential for innovation and price formation. The Commission's vigilance concerning big global players is highly appreciated. European enterprises should, however, not be hindered from growing — the size of the median EU (excl. UK) listed firm is only about half of the size of the median US firm. It is a question of the interpretation of the definition of the relevant market in competition law enforcement.

4.3. **Digital age:** Digitalisation entails a real paradigm shift with effects on society as a whole, and even containing geopolitical features. The EESC has presented its detailed views on digitalisation in other opinions. These have dealt with big data, 5G, advanced manufacturing, robotics etc. EU strategies for a digital Single Market, digitising European industry, cybersecurity and artificial intelligence are paramount. An important question of principle is how to strike the right balance between, on the one hand, utilising and benefiting from new disruptive technologies and, on the other hand, ensuring security and fairness. The emphasis should be on giving society, including enterprises, the opportunity to benefit from new possibilities by having an open and realistic attitude.

4.4. **Low-carbon and circular society:** Maintaining leadership in these areas is a big challenge in an environment of increasing competition. Leadership should, however, not be an aim in itself; rather, it should benefit our economies and societies. The energy transition needs to be supported but energy prices must be competitive for industry.

4.5. **Investments:** The numerous EU instruments to support investments — both real and intangible — should mainly be directed at boosting innovation, helping SMEs scale up, supporting regions in trouble, upgrading infrastructure and empowering people through education and training. SMEs still need more help to find their way to the right source amongst the numerous different possibilities, and much easier processes for application and reporting. One important criterion should be the leverage effect on private investment. All proposals, including those expected from the HLG on Sustainable finance, that re-orient allocation of capital towards long-term investments and contributions to sustainable growth, are welcome <sup>(2)</sup>.

4.6. **Innovation:** The EESC agrees that policies should be aimed more at the uptake of new technologies, scaling up and market successes as well as at collaboration within and between regional clusters. No companies of any size should be excluded. Horizon 2020's successor should be allocated radically more resources in the next financial framework. Whenever possible, the first industrial application of publicly funded R&D should take place inside the EU. The potential of public procurement should be fully exploited by integrating innovative, green and social criteria in public tenders, applying the MEAT-principle systematically.

4.7. **The international dimensions:** Trade must be open but fair and sustainable. Access to global markets and raw materials is crucial for industry and therefore the network of trade agreements must be further built out. The EESC urges the Commission to actively use available instruments to tackle unfair trade practices. Special attention should be paid to new forms of protectionism on the part of non-EU countries. The EU should promote its environmental and social standards in the context of trade agreements. As for the screening of foreign direct investment, it is important to identify risks of threats to security or public order. Simultaneously, when more investment is needed in EU businesses, foreign direct investments should be welcomed — they are also signs of Europe's potential.

4.8. **Partnerships:** The EESC welcomes the introduction of an annual Industry Day and the High Level Industrial Roundtable and announces its strong interest in participating in both. This approach should cover all areas of industrial policy in order to increase ownership of the strategy with stakeholders. Dialogue with industry should however not be limited to these arrangements. More transparency and collaboration are needed, especially when starting impact assessments.

Brussels, 15 February 2018.

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

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<sup>(2)</sup> OJ C 246, 28.7.2017, p. 8.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Decision of the European Parliament and of the Council amending Council Decision 2003/17/EC as regards the equivalence of field inspections carried out in Brazil on fodder plant seed-producing crops and cereal seed-producing crops and on the equivalence of fodder plant seed and cereal seed produced in Brazil, and as regards the equivalence of field inspections carried out in Moldova on cereal seed-producing crops, vegetable seed-producing crops and oil and fibre plant seed-producing crops and on the equivalence of cereal seed, vegetable seed and oil and fibre plant seed produced in Moldova’**

(COM(2017) 643 final — 2017/0297 (COD))

(2018/C 227/11)

Rapporteur: **Emilio FATOVIC**

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| Consultation                                 | European Parliament, 16.11.2017   |
| Legal basis                                  | Articles 43(2), 114(1) and 304 of the Treaty on the Functioning of the European Union |
| Committee Bureau decision                    | 5.12.2018   |
| Section responsible                          | Agriculture, Rural Development and the Environment                                    |
| Adopted in section                           | 6.2.2018  |
| Adopted at plenary                           | 14.2.2018   |
| Plenary session No                           | 532   |
| Outcome of vote<br>(for/against/abstentions) | 140/0/8   |

## 1. Background and Commission proposal

1.1. Council Decision No 2003/17/EC grants equivalence to certain non-EU countries as regards field inspections and the production of seed of certain species <sup>(1)</sup>.

1.2. The provisions governing seed harvested and controlled in these countries afford the same assurances as regards the seed's characteristics and the arrangements for examining it, for ensuring seed identification, for marking and for control as the provisions applicable to seed harvested and controlled within the European Union.

1.3. As Brazil and Moldova are not among the non-EU countries covered by Decision No 2003/17/EC, seed harvested there cannot be imported into the EU. Both countries thus submitted requests to the Commission for their production of seed of certain species to be brought under this decision (in Brazil's case: fodder plant and cereal seed; for Moldova: cereal, vegetable and oil and fibre plant seed) and thus to be granted equivalence and be allowed to export the seed concerned into the EU.

1.4. In response to these requests, the Commission examined the legislation of Brazil and of Moldova on the subject. It then audited the field inspection and certification systems for seed in those countries. The Commission concluded that their requirements and systems are equivalent to the EU's and provide the same assurances <sup>(2)</sup>.

1.5. In the case of both Brazil and Moldova, the Commission thus considered it appropriate to recognise the seed concerned as equivalent to the same type of seed harvested, produced and controlled in the EU. This may be done through a decision to be adopted by the European Parliament and the Council.

<sup>(1)</sup> In accordance with Directives 66/401/EEC, 66/402/EEC, 2002/54/EC and 2002/57/EC.

<sup>(2)</sup> Already in line with ISTA rules (International Seed Testing Association).

## 2. Considerations and recommendations

2.1. The EESC takes note of the positive outcome of the audits carried out by the Commission in Brazil and Moldova in accordance with the requirements set out in Annex II to Decision No 2003/17/EC, in order to recognise the equivalence of their legal requirements and official controls for seed certification.

2.2. The EESC, in keeping with its previous opinions<sup>(3)</sup> on this subject and in line with what has already emerged from discussions between the Commission, stakeholders and Member States, endorses this legislative measure. Moreover, the Committee agrees that this recognition of equivalence may benefit EU seed companies operating in Brazil and Moldova, potential EU importers of seed from these countries, and EU farmers, who will henceforth have access to a wider range of seed.

2.3. The Committee would, however, express reservations about one aspect: the proposal to grant Moldova equivalence for vegetable seed. These seeds, which are governed by Directive 2002/55/EC, are marketed solely as 'standard' category, which does not require the official certification in order to be placed on the market, but rather self-certification by the manufacturer and, only after the marketing stage, any post-controls on the characteristics and quality of the product. This system is based on the assumption of responsibility by the producer, which can be easily identified and traceable when based in the EU. Traceability and control is certainly not a simple matter in the case of products of non-EU origin. It is because of this problem that the EU has up to now decided not to grant recognition of equivalence for vegetable seed to any third country. The Committee therefore highlights the problems here, and would like to see a more thorough review by the Commission.

2.4. The Committee acknowledges, as pointed out by the Commission, that the recognition of certification procedures for the products in question is a technical measure. However, given that opening the EU market to third-country products will have an economic and social impact, the Committee recommends carrying out an impact assessment to check that European producers, and specifically micro and small enterprises, will not be adversely affected by this measure.

2.5. The EESC reminds the Commission that today more than 60 % of the seed market is dominated by just a few large multinationals. Opening the market to non-EU countries, in which the products are under the control of the same companies, could compound the situation for small producers and cooperatives, and have a significant impact on the economic and social resilience of many local farming communities. In the most serious cases, this could lead to the depopulation of rural communities, which would also have consequences for the biodiversity of European agri-food crops and produce, in that it is often precisely those small farms that keep certain types of old and traditional seeds from extinction<sup>(4)</sup>.

2.6. The EESC again calls on the Commission to take a holistic approach to assessing the production processes deployed in third countries, pointing out that products at more competitive prices often conceal cases of worker exploitation, including child labour. Such an approach seems essential at a time when the EU is actively involved in achieving the United Nations' 2030 Sustainable Development Goals. Indeed, the EU is the world's largest exporter and importer of agricultural products and should bring to bear its role within the framework of bilateral and multilateral trade agreements in order to foster a higher quality of life and work for individuals and workers in third countries, not least with the aim of eradicating unfair competition<sup>(5)</sup>.

2.7. Finally, the EESC hopes that the entry into force of this decision will be contingent on full reciprocity of equivalence and recognition for the same products coming from the EU, so that businesses in this sector can have more opportunities for growth and development. This would be in line with specific requests already made by stakeholders in the consultation phase.

Brussels, 14 February 2018.

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

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<sup>(3)</sup> OJ C 74, 23.3.2005, p. 55, OJ C 351, 15.11.2012, p. 92.

<sup>(4)</sup> This point is reinforced by the fact that the Commission's online public consultation received only three responses, two of which were from private individuals, confirming that the decision-making processes were shared only with the major European stakeholders.

<sup>(5)</sup> OJ C 173, 31.5.2017, p. 20, point 1.6.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union’**

(COM(2017) 495 *final* — 2017/0228(COD))

(2018/C 227/12)

Rapporteur: **Jorge PEGADO LIZ**

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| Referrals                                    | European Parliament, 23.10.2017<br>Council of the European Union, 24.10.2017 |
| Legal basis                                  | Article 114 of the Treaty on the Functioning of the European Union           |
| Section responsible                          | Transport, Energy, Infrastructure and the Information Society                |
| Adopted in section                           | 5.2.2018   |
| Adopted at plenary                           | 15.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 163/3/4  |

## 1. Conclusions and recommendations

### 1.1. Conclusions

1.1.1. The EESC, in several previous opinions, has already agreed that there is a need for a legislative initiative on the free flow of non-personal data, since this is a basic prerequisite for securing the objectives of the Digital Agenda and of achieving the Digital Single Market.

1.1.2. This Commission proposal today represents the most important legal aspect of the future of European policy for developing the data economy and its repercussions on economic growth, scientific research, the fostering of new technologies, particularly in the domain of artificial intelligence, cloud computing, metadata and the Internet of Things (IoT), industry and services in general and public services in particular.

1.1.3. The EESC considers, however, that the proposal is rather overdue, over and above the fact that the limited nature of its scope of application, the fluidity and lack of assertiveness of the mechanisms laid down and, most of all, the lack of ambition and political will and determination are likely to undermine its objectives.

1.1.4. Indeed with regard to the first and most important objective — to improve the cross-border mobility of non-personal data in the single market — the EESC, unlike the Commission does not consider it to be sufficient merely to require Member States to notify it, only 12 months after the entry into force of the Regulation — which is not due to happen before the end of 2018 in the best case scenario — of ‘any draft act that contains a new data localisation requirement or modifies an existing data localisation requirement’, with a view to obliging Member States to ‘ensure that any data localisation requirement that is not in compliance’ with the rule on the non-prohibition or non-restriction of free flow of the data concerned ‘is repealed’, except for reasons of public security.

1.1.5. With regard to its second objective of ‘ensuring that the powers of competent authorities to request and receive access to data for regulatory control purposes, such as for inspection and audit, remain unaffected’, the EESC does not agree that the proposal should be limited, putting forward only a procedure for cooperation between competent authorities of each Member State, with the creation of a network of single contact points to liaise with the single points of contact of other Member States and the Commission regarding the application of this Regulation.

1.1.6. Finally, in relation to its third objective of ‘making it easier for professional users of data storage or other processing services to switch service providers and to port data’, the EESC rejects the proposal that the Commission limit itself to undertaking to ‘encourage and facilitate the development of self-regulatory codes of conduct at Union level’, a matter for which only legislative measures should consequently be considered. It does not even consider drafting ‘guidelines’ on the development of the aforementioned self-regulatory codes.

1.1.7. For all these reasons, the EESC cannot endorse the current version of the document. The EESC is only willing to endorse this proposal if and insofar as the latter is amended in accordance with the suggestions outlined in this document and is clearly understood as a highest common standard acceptable to both Member States and stakeholders, but always viewed as a first step in the future development of more ambitious ways of securing genuinely free movement of non-personal data in the European Union’s digital market.

1.1.8. The EESC’s endorsement is also on condition that these developments take due account of the international aspects of a global economy, of which this initiative should necessarily be a part.

## 1.2. *Recommendations*

1.2.1. To this end, the EESC recommends that the Commission revisit its proposal with a view to bringing it significantly closer to the terms defined by option 3 which the EESC favours, moving away from the selected sub-option 2a.

Moreover, the Committee strongly urges the Commission to incorporate in particular in its proposal the suggestions outlined in points 3.4.1 (date of entry into force), 3.4.2 (the absence of an obligatory procedure in cases of non-compliance), 3.6 (the absence of guidelines for drawing up codes of conduct), 3.7 (failure to take into account the classification of metadata) and 3.8 (failure to take account of the global, trans-European nature of the digital economy), especially as regards the need to provide for a specific procedure for cases where Member States do not comply.

1.2.2. The EESC also urges the Commission to look favourably upon the various proposals for improvement it has made, especially those relating to the various articles of the draft regulation under analysis.

1.2.3. It likewise strongly recommends that the Commission incorporate in its proposal the amendments suggested in the stance adopted by the December Council Presidency, with which the EESC agrees, because of the intrinsic improvements they would bring and the fact that they could make the proposal viable.

## 2. *Brief summary and general background*

### 2.1. *Summary of the proposal and the thinking behind it*

2.1.1. The Commission justifies the necessity and proportionality of this proposed regulation <sup>(1)</sup> on the basis of the following arguments:

- ‘Improving the mobility of non-personal data across borders in the single market, which is limited today in many Member States by localisation restrictions or legal uncertainty in the market’,
- ‘Ensuring that the powers of competent authorities to request and receive access to data for regulatory control purposes remain unaffected’, and
- ‘Making it easier for professional users of data storage or other processing services to switch service providers and to port data’.

2.1.2. The Commission believes that this proposed regulation complies with the subsidiarity rule in that, by ensuring the free movement of data within the Union, it aims to guarantee ‘the smooth functioning of the internal market for the abovementioned services which is not limited to the territory of one Member State and the free movement of non-personal data within the Union [and which] cannot be achieved by the Member States at national level, as the core problem is cross-border data mobility’.

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<sup>(1)</sup> COM(2017) 495 final, 13.9.2017.

2.1.3. However, it also considers it proportional in that it 'seeks a balance between EU regulation and public security interests of Member States — as well as a balance between EU regulation and self-regulation by the market'.

## 2.2. Policy and legal context

2.2.1. **From a legal viewpoint**, the Commission considered **three options**, summarised in the Explanatory Memorandum, summing up the *ex ante* impact assessment studies and the stakeholder consultations carried out during preparation of the legislative text <sup>(2)</sup>, which can be encapsulated as follows:

**Option 1** consisted of guidelines and/or self-regulation to address the different identified problems and entailed strengthening of enforcement vis-à-vis different categories of unjustified or disproportionate data localisation restrictions imposed by Member States.

**Option 2** would lay down legal principles concerning the different identified problems and would envisage the designation by Member States of single points of contact and creation of an expert group, to discuss common approaches and practices, and provide guidance on, the principles introduced under the option.

**Option 3** consisted of a detailed legislative initiative, to establish, inter alia, pre-defined (harmonised) assessments of what constitutes (un)justified and (dis)proportionate data localisation restrictions and a new data porting right.

2.2.2. Given the differences with the Regulatory Scrutiny Board, which issued two negative opinions on the Commission's proposals, and although the majority of stakeholders consider the legislative initiative option (option 3) to be the most suitable one, purely for reasons of political strategy the following sub-option was then devised:

**Sub-option 2a** — 'to allow for the assessment of a combination of legislation establishing the free flow of data framework and the single points of contact and an expert group as well as self-regulatory measures addressing data porting'.

The Commission deems that this option 'would ensure the effective removal of existing unjustified localisation restrictions and would effectively prevent the future ones', would 'also promote cross-border and cross-sector use of data storage or other processing services and the development of the data market' and would consequently 'help transform the society and economy and open up new opportunities for European citizens, businesses and public administrations'.

2.2.3. To that end, it put forward a proposal for a **regulation** which could 'ensure that uniform rules for the free flow of non-personal data are applicable throughout the Union at the same time', which would turn out to be 'particularly important to remove existing restrictions and prevent new ones to be enacted by Member States.

2.2.4. The present proposal is rooted in recent digital technological developments which allow for large quantities of data to be stored and used increasingly efficiently, generating economies of scale and benefiting users with rapid access, increased connectivity and greater autonomy.

2.2.4.1. In its communication on **Building a European Data Economy the Commission** <sup>(3)</sup> specifically denounced the link between obstacles to the free movement of data and the delay in developing the European market. Hence the need the Commission felt to put forward a proposal with a legal framework which did away with the idea of 'border controls'.

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<sup>(2)</sup> See document SWD(2017) 304 final.

<sup>(3)</sup> See COM(2017) 9 final, 10.1.2017, and accompanying working document SWD (2017) 2 final, of the same date, on which the EESC delivered its opinion *Building a European Data Economy* (OJ C 345, 13.10.2017, p. 130).

It should be noted that only around half of the Member States endorsed the Non-paper on the Free Flow of Data initiative <sup>(4)</sup>; neither Germany nor France nor any of the southern EU countries endorsed this paper.

2.2.4.2. This subject was revisited in the Commission communication on the Mid-Term Review of the Digital Single Market Strategy — A **Connected Digital Single Market for All** <sup>(5)</sup>, where the Commission announced the publication in 2017 of two legislative initiatives, one on the **Free flow of non-personal data** across borders, which is the subject of this opinion — and another on the accessibility and re-use of public and publicly funded data and data collected using public funds, which is still under preparation at the Commission.

2.2.4.3. Lastly, the EESC's opinion Digital Single Market: Mid-term review <sup>(6)</sup> 'considers that the European data economy is one of the sectors in which the gap between the EU and global digital innovation leaders is clearest' and to this end '**supports the proposal to establish a legislative framework**, provided that this framework is also geared to cloud computing, artificial intelligence and the Internet of Things, takes account of contractual freedom — removing obstacles to innovation — and receives appropriate EU funding', which would equate to option 3.

2.2.4.4. This Commission proposal today represents **the most important legal aspect** of the future of European policy for developing the data economy and its repercussions on economic growth, scientific research, the fostering of new technologies, particularly in the domain of artificial intelligence, cloud computing, metadata and the Internet of Things (IoT), industry and services in general and public services in particular <sup>(7)</sup>.

### 3. General comments

3.1. The EESC notes the objective of this initiative, which it has already supported in many previous opinions, since it is a basic prerequisite for securing the objectives of the Digital Agenda and of achieving the digital single market.

3.2. It does, however, feel it must express its disappointment at the overly limited scope of the initiative, the lukewarm nature of its proposals, the vagueness and lack of assertiveness in the announced mechanisms and, especially, the lack of political ambition, will and determination.

Let us now look more closely.

3.3. With the idea of a 'free flow' of non-personal data, the Commission is intending to counter the majority of those policies and practices in force in the Member States which create, impose or authorise barriers in relation to the localisation of data for storing or otherwise processing such kinds of data which it, also quite rightly, believes must not be prohibited or restricted, except where warranted for reasons of public security <sup>(8)</sup>, by establishing rules on:

- (a) data localisation requirements;
- (b) data availability for competent authorities;
- (c) data porting for professional users.

3.4. With a view to the first of the abovementioned points — **data localisation requirements** — the Commission has deemed it sufficient, in an initial phase, to require Member States to notify it of 'any draft act which introduces a new data localisation requirement or makes changes to an existing data localisation requirement'.

<sup>(4)</sup> <http://www.brukselaue.ms.gov.pl/resource/76f021fe-0e02-4746-8767-5f6a01475099:JCR>

<sup>(5)</sup> COM(2017) 228 final of 10 May 2017 and the attached Working Document, SWD (2017) 155 final.

<sup>(6)</sup> Digital Single Market: Mid-term review (not yet published in OJ).

<sup>(7)</sup> COM(2017) 495 final, Explanatory Memorandum p. 4.

<sup>(8)</sup> This concept is laid down in Article 4(2) of the TEU as being the sole responsibility of the Member States, but for a definition reference must be made to the case-law of the Court of Justice — see for all purposes the Judgment of the Court of Justice of 21 December in Joined Cases C-203/15 and C-698/15 *Tele2 Sverige AB v Post-Och Telestyrelsen and Secretary of State for the Home Department v Tom Watson, Peter Brice and Geoffrey Lewis*, in <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1513080243312&uri=CELEX:62015CJ0203> (paragraphs 11 and 88/89) and of the Human Rights Court.

3.4.1. Only 12 months after the regulation enters into force — which is not to occur before the end of 2018 — Member States will be obliged to ‘ensure that any data localisation requirement that is not in compliance’ with the rule on the non-prohibition or non-restriction of free flow of the data concerned ‘is repealed’, except where they consider it to be warranted for reasons of public security. In this case, the Member State concerned should notify the Commission, giving its reasons for deeming the measure to be in compliance with the rule concerned and for considering that it should remain in force.

3.4.2. **No specific procedure is being established for cases where Member States do not comply.**

3.5. As regards the second point, **on data availability for competent authorities**, the proposal does not alter the powers of competent authorities to request and receive access to data for the performance of their official duties in accordance with Union or national law.

**It nevertheless adds an important stipulation:** ‘Access to data by competent authorities may not be refused on the basis that the data is stored or otherwise processed in another Member State’.

3.5.1. However, in seeking to guarantee that this right is implemented, the proposal confines itself to putting forward a cooperation procedure between the bodies responsible in each Member State, along the lines of others existing in different domains, in order to create a **network of single points of contact** to liaise with the contact points of the other Member States and with the Commission regarding application of the regulation, without, however, assessing the effectiveness of these points of contact or the viability of the costs involved.

3.5.2. Nevertheless, in the end, application by the requested authority of the coercive measures needed to obtain access to any premises of a natural or legal person, including the equipment and resources for storage or other data processing, will always come under the **procedural law of each Member State**.

3.5.3. That is to say, in the very likely event of lack of compliance, the only recourse will be through Member States’ ordinary courts and subject to the notoriously lengthy procedures of the legal system, its exorbitant costs and uncertainty about the outcome.

3.6. Lastly, on the third point — **data porting for professional users** — the Commission will confine itself to ‘**encourag[ing] and facilitat[ing] the development of self-regulatory codes of conduct at Union level**, in order to define guidelines on best practices in facilitating the switching of providers and to ensure that they provide professional users with sufficiently detailed, clear and transparent information before a contract for data storage and processing is concluded’, in relation to a series of genuinely structural and essential issues<sup>(9)</sup>.

3.6.1. Therefore it is a highly questionable approach to simply leave up to self-regulation mechanisms **the regulation of fundamental aspects which only should be dealt with by legislative measures**.

The EESC, although it has always advocated co-regulation as a particularly important supplementary resource as part of the Union’s legal framework, does not agree that standards and principles which are essential to the consistency and harmonisation of Union law should be left simply up to self-regulation, without any guidelines or guiding parameters.

More serious, especially as regards porting, has been the limitation of responsibility and the introduction of periods of loyalty for data subjects, with the possibility of deleting content in the event of non-compliance.

3.6.2. More questionable still is the fact that the Commission has not at the very least proposed **a co-regulation mechanism** in line with the model and parameters defined previously by the EESC<sup>(10)</sup>.

To this end, the EESC deems that the regulation in hand should at least lay down a series of basic rules inherent to contractual relations between service providers and users, as well as a blacklist of prohibited clauses as a result of the limitation of the right to porting, in keeping with the parameters set out in its opinion on self-regulation and co-regulation in particular.

<sup>(9)</sup> See Article 6(1)(a) and (b).

<sup>(10)</sup> See information report INT/204 of 25.1.2005 on the *Current state of co-regulation and self-regulation in the Single Market* and own-initiative opinion *Self-regulation and co-regulation* (OJ C 291, 4.9.2015, p. 29).

3.6.3. It is however inadmissible that the Commission should not even have proposed devising ‘**guidelines**’ for drafting the codes of conduct referred to in the proposed regulation, as has been done in other domains, with the EESC’s support.

In fact, as regards data porting, some companies’ conduct has been damaging to users’ rights, namely limitations on data ownership or on intellectual property of the content of cloud services, consent to the collection and processing of data — introduction of presumed consent rules — as well as hidden payments or the right to suspend a service based on a company’s unilateral decision.

3.6.4. Lastly, the Commission promises, **without any other alternative of a legislative nature**, to ‘review the development and effective implementation of such codes of conduct and the effective provision of information by providers no later than two years after the start of application of the regulation’. **And then what?**

3.7. Moreover, confining this proposal to the three situations referred to above does not take into account growing concerns about metadata, deemed to be non-personal data, which, apart from a few exceptions, ought to benefit from the same protection as personal data, namely in terms of the access, correction, deletion and objection rights of the subject.

3.7.1. In fact, companies devoted to analysing metadata carry out forward and proactive data-based analyses, identifying trends and conditions for companies to be able to adopt decisions in the future.

3.7.2. Moreover, it is not clear whether the future regulation only applies to data obtained in electronic format, since Article 3(2) defines storage as any **storage of data in electronic format**, and Article 2 itself refers to the regulation applying to ‘the storage or other processing of **electronic data**’. A case in point would be an anonymous questionnaire carried out in the physical presence of data subjects and stored physically: the implication of the afore-mentioned definition might be that this would not be covered by the regulation.

3.7.3. On the other hand, with the Internet of Things, the proliferation of electronic appliances, particularly household electronics devices that collect and cross-check non-personal data, may in future give rise to a variety of questions on security and privacy; for this reason the European Commission should crucially have done more to deal with non-personal data, safeguarding people’s fundamental rights.

3.7.4. Lastly, and taking into account the grey zone between personal and non-personal data — since certain data can easily become personal — maintaining completely separate arrangements for this type of data may lead to bodies trying to qualify the data obtained as non-personal in order to thus evade enforcement of Regulation (EU) 2016/679 of 27 April 2016.

3.8. Moreover, the proposal does not take due account of the global, trans-European nature of the digital economy, being concerned only with regulating the internal market and neglecting the fact that this market exists within a global market, with no guarantee that other countries and continents follow the rules that it is now trying to implement and without the power to impose them in international negotiations.

3.9. For all the above reasons, the EESC is not in favour of sub-option 2a proposed by the Commission without valid or consistent arguments to the detriment of option 3, which has the EESC’s support.

3.10. Should the proposal incorporate the EESC’s suggested amendments as well as those resulting from the Council Presidency’s position set out in its declaration of 19 December 2017, which the EESC endorses, the EESC would be willing to support this proposal, thus amended, provided that it is clearly understood as a highest common standard acceptable to both Member States and stakeholders, and also with a view to future moves towards more ambitious ways of securing genuinely free movement of non-personal data in the European Union’s digital market.

#### 4. Specific comments

##### 4.1. Article 2 — Scope

4.1.1. The EESC has questions about the nature of indent (a), and what is meant by ‘**provided as a service to users**’, particularly whether free or paid legal transactions are involved.

In fact it is important to highlight that today there are a variety of services provided for free, including Google Analytics. Nevertheless, the fact that these companies do not require users to pay for these services has allowed them to introduce unfair terms in their service provision contracts, avoiding responsibility if data is lost, mislaid or destroyed, or even assuming the right to delete data without the data subject’s consent.

4.1.2. On the other hand, the EESC feels it that, along the lines of Regulation (EU) 2016/679, the regulation in hand must also apply to a country outside the European Union where the legislation of a Member State applies under private international law.

##### 4.2. Article 3 — Definitions

###### 4.2.1. The concept of ‘non-personal data’

4.2.1.1. There is no Aristotelian type of definition of the concept of non-personal data; all that can be said is that it concerns, *prima facie*, data other than personal data, defining it in the negative, as can be inferred from the 7th Whereas clause of the Preamble and from Article 1 of the proposal.

4.2.1.2. However, more in-depth analysis reveals that this concept only excludes personal data subject to specific legal protection, i.e. protection currently accorded in the EU under Regulation (EU) 2016/679 of 27 April 2016, Directive (EU) 2016/680 of the same date, Directive 2002/58/EC of 12 July 2002<sup>(11)</sup> and the national legislation transposing these legislative acts.

4.2.1.3. Thus this proposal seems to cover not only data relative to legal persons (and which, in contrast to the view expressed repeatedly by this Committee, does not enjoy the same protection as that granted to natural persons, whereas it does in several national legal systems), but also ‘anonymous’ personal data, to which only one reference is found, in the 26th Whereas clause of the General Data Protection Regulation.

4.2.1.4. In order to ensure consistency, concordance and legal clarity of the EU’s legislative acts, and given the imprecise wording of the text, the EESC highlights the need for an express definition of non-personal data to be given in this regulation, not as a subsidiary or generic definition to the definition in Regulation (EU) 2016/679, since many courts have had different interpretations of what is meant by personal and non-personal data.

##### 4.3. Article 4 — Free movement of data within the Union

4.3.1. Out of concern for legal certainty and security, the EESC believes that deadlines should be set for Member States for notifying measures which entail maintaining or introducing rules which, for reasons of public security, might run counter to this regulation.

4.3.2. It is also important for the European Commission to notify the other Member States to see whether these measures will, or will not, have a direct or indirect impact on the movement of non-personal data in their countries.

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<sup>(11)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37), recast by the Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (COM(2016) 590 final, 12.10.2016), and by the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) (COM(2017) 10 final — 2017/0003 (COD)).

#### 4.4. Article 9 — Review

4.4.1. The Commission has undertaken to carry out a review of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee **only five years after it enters into force**.

4.4.2. Since it is expected that the latter will not occur before the end of 2018 in the best case scenario, the Committee deems it more appropriate for this review to be carried out within **three years**, given the manifestly fragile nature of the mechanism and the rapidly changing nature of the subject it deals with.

#### 4.5. The Council presidency position

4.5.1. While this opinion was being drawn up, the European Council presidency issued an amended text on 19 December which made substantial amendments<sup>(12)</sup> to the Commission's proposal, precisely along the lines of the EESC's current recommendations.

4.5.2. This concerns the following, set out in brief:

- (a) Article 2 — scope — and Recitals 7a and 8a: clarification of what remains outside the scope of the regulation;
- (b) Article 3 — definitions: introduction of a new paragraph 2a clarifying the meaning of 'processing';
- (c) Article 3(5): explicit inclusion of administrative practices in the definition of 'data localisation requirement' and consequent amendment to Article 4(1);
- (d) Article 5(2a): establishment of a binding obligation to provide data and, under Article 5(3a) a provision for Member States to impose sanctions on users in case of fraud linked to the provision of data, as recommended in this opinion;
- (e) Article 6: establishing guidelines on drawing up codes of conduct;
- (f) Article 7: a definition of the role of 'single points of contact' and speeding up the process of communication between authorities;
- (g) the deletion of Article 8, thus removing the Free Flow of Data Committee;
- (h) various articles: improving compatibility with the Transparency Directive<sup>(13)</sup>;
- (i) recitals 10 and 10a: providing necessary details on the issue of mixed data sets and anonymous data, as called for in this opinion;
- (j) recital 12a: clarifying the concept of public security set out in Article 4, based on Court of Justice case-law, as recommended in this opinion.

4.5.3. The EESC comes out clearly in favour of all the Presidency's suggestions and strongly urges the Commission, European Parliament, and Member States to take them into proper consideration.

Brussels, 15 February 2018.

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

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<sup>(12)</sup> Interinstitutional file: 2017/0228 (COD) 15724/1/17REV 1 of 19 December 2017.

<sup>(13)</sup> OJ L 294, 6.11.2013, p. 13.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on ENISA, the “EU Cybersecurity Agency”, and repealing Regulation (EU) No 526/2013, and on Information and Communication Technology cybersecurity certification (“Cybersecurity Act”)**

(COM(2017) 477 final/2 2017/0225 (COD))

(2018/C 227/13)

Rapporteur: **Alberto MAZZOLA**

Co-rapporteur: **Antonio LONGO**

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| Consultation                                 | European Parliament, 23.10.2017<br>Council of the European Union, 25.10.2017 |
| Legal basis                                  | Article 114 of the Treaty on the Functioning of the European Union           |
| Section responsible                          | Section for Transport, Energy, Infrastructure and the Information Society    |
| Adopted in section                           | 5.2.2018   |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 206/1/2  |

## 1. Conclusions and recommendations

1.1. The EESC considers that ENISA’s new permanent mandate as proposed by the Commission will significantly contribute to enhancing the resilience of European systems. However, the accompanying provisional budget and resources allocated to ENISA will not be sufficient for the agency to fulfil its mandate.

1.2. The EESC recommends to all Member States to establish a clear and equivalent counterpart to ENISA, as most of them have not done it yet.

1.3. The EESC also feels that, in terms of capacity building, ENISA should prioritise actions to support e-government <sup>(1)</sup>. EU/worldwide digital identity for persons, organisations and objects is key, and preventing and combating ID theft and online fraud should be a priority.

1.4. The EESC recommends that ENISA should provide regular reports on the cyber-readiness of Member States, primarily focusing on sectors identified in Annex II to the NIS Directive. A yearly European cyber exercise should assess the readiness of Member States and the effectiveness of the European cyber crisis response mechanism, and should produce recommendations.

1.5. The EESC supports the proposal to create a cybersecurity competence network. This network would be sustained by a Cybersecurity Research and Competence Centre (CRCC). This network could support European digital sovereignty by developing a competitive European industrial base for key technology capabilities based on the work done by the contractual Public-Private Partnership (cPPP), which should evolve into a Tripartite Joint Undertaking.

1.6. The human factor constitutes one of the most important causes of cyber accidents. For the EESC there is a need to build a strong cyber skills base and improve cyber hygiene also through awareness campaigns among individuals and businesses. The EESC supports the creation of an EU-certified curriculum for high schools and professionals.

<sup>(1)</sup> Digital Single Market/Mid-term review.

1.7. The EESC believes that a European Digital Single Market also needs a homogeneous interpretation of the rules for Cybersecurity, including mutual recognition between Member States, and that a certification framework and certification schemes for the different sectors could provide a common baseline. However, different approaches must be provided for different sectors due to the way they function. Therefore the EESC believes that sectoral EU Agencies (EASA, ERA, EMA, etc.) should be involved in the process and in some cases, with the agreement of ENISA to guarantee coherence, delegated to draw up cybersecurity schemes. Minimum European standards for IT security should be adopted in cooperation with CEN/Cenelec/ETSI.

1.8. The envisaged European Cybersecurity Certification Group supported by ENISA should be made up of national certification supervisory bodies, private sector stakeholders, including operators from various applications, and scientific and civil society actors.

1.9. The EESC takes the view that the agency should monitor the performance and decision-making of national certification supervisory authorities through audits and inspections, on behalf of the Commission and that responsibilities and sanctions for non-respect of standards should be defined in the Regulation.

1.10. The EESC believes that certification activities cannot exclude a proper labelling system, to be applied also to imported products to reinforce consumers trust.

1.11. Europe should scale up investments converging different EU funds, national funds and private-sector investments towards strategic objectives in strong public-private cooperation, also through the creation of an EU Cybersecurity Fund for Innovation and R & D in the current and future Research Framework Programme. Furthermore, Europe should create a fund for deployment for the Cybersecurity, opening a new window in the current and future Connecting Europe Facility as well in the next EFSI 3.0.

1.12. The EESC believes a minimum security level is necessary for 'ordinary' 'Internet of People' (IoP) devices. In this case, certification is a key method of providing a higher level of security. Internet of Things (IoT) security should be a priority.

## 2. Cybersecurity present framework

2.1. Cybersecurity is critical to both prosperity and national security, as well as to the very functioning of our democracies, freedoms and values. 'Cybersecurity is an ecosystem where laws, organisations, skills, cooperation and technical implementation need to be in harmony to be most effective', states the UN's Global Cybersecurity Index, adding that cybersecurity is 'becoming more and more relevant in the minds of countries' decision makers'.

2.2. The need for a secure ecosystem is becoming crucial due to the internet revolution. This revolution has not only redefined business-to-consumer (B2C) industries such as media, retail and financial services; it is also reshaping manufacturing, energy, agriculture, transport and other industrial sectors of the economy that, together, account for nearly two-thirds of the global gross domestic product, as well as utilities' infrastructure and people's interactions with public administration.

2.3. The Digital Single Market Strategy is built around improving access to goods, services and content, creating the appropriate legal framework for digital networks and services, and reaping the benefits of a data-based economy. It has been estimated that the strategy could contribute EUR 415 billion per year to the EU economy. The cybersecurity skills gap for professionals working in the private sector in Europe is predicted to be 350 000 by 2022 <sup>(2)</sup>.

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<sup>(2)</sup> OJ JOIN/2017/0450 final.

2.4. A 2014 study estimated that the economic impact of cybercrime in the Union amounted to 0,41 % of EU GDP (i.e. around EUR 55 billion) in 2013 <sup>(3)</sup>.

2.5. According to Special Eurobarometer 464a on 'Europeans' attitudes towards cyber security', 73 % of internet users are concerned that their online personal information might not be kept secure by websites and 65 % that it might not be kept secure by public authorities. Most respondents are concerned about being the victims of various forms of cybercrime, and especially about malicious software on their devices (69 %), identity theft (69 %) and bank card and online banking fraud (66 %) <sup>(4)</sup>.

2.6. So far, no legal framework has been able to cope with the pace of digital innovation, and a number of legal texts are contributing item by item to establishing an appropriate framework: the revision of the Telecoms Code, the General Data Protection Regulation (GDPR), the Directive on network and information systems security (NIS Directive), the Regulation on electronic identification and trust services for electronic transactions in the internal market (e-IDAS Regulation), the EU-US Privacy Shield, the Directive on non-cash payment frauds, and so on.

2.7. There are many different organisations further to ENISA, the 'EU Cybersecurity Agency', dealing with cybersecurity issues: Europol; Cert-EU (Computer Emergency Response Team of the European Union); the EU Intelligence and Situation Centre (EU INTCEN); European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA); Information Sharing and Analysis Centres (ISACs); the European Cyber Security Organisation (ECSO); the European Defence Agency (EDA); the NATO Cooperative Cyber Defence Centre of Excellence; and the UN GGE (United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security).

2.8. Security by design is key to providing high quality goods and services: smart devices are not that smart if they are not secured, and the same is true of smart cars, smart cities and smart hospitals — they all require built-in security for devices, systems, architectures and services.

2.9. On 19-20 October 2017, the European Council asked for the adoption of a common approach to EU cybersecurity following the proposed reform package, calling for 'a common approach to cybersecurity: the digital world requires trust, and trust can only be achieved if we ensure more proactive security by design in all digital policies, provide adequate security certification of products and services, and increase our capacity to prevent, deter, detect and respond to cyberattacks' <sup>(5)</sup>.

2.10. In its resolution of 17 May 2017, the European Parliament 'emphasises the need for end-to-end security across the whole financial services value chain; points to the large and diverse risks posed by cyberattacks, targeting our financial markets infrastructure, the Internet of Things, currencies and data; [...] calls on the ESAs to regularly review existing operational standards covering ICT risks of financial institutions; calls furthermore for ESA guidelines on the supervision of Members States' cyber risks; stresses the importance of technological know-how in the ESAs' <sup>(6)</sup>.

2.11. The EESC has had several previous opportunities to tackle the issue <sup>(7)</sup>, including, during the Tallinn Summit, the conference on the Future development of e-Government <sup>(8)</sup>, and has set up a permanent study group on the Digital Agenda

<sup>(3)</sup> Commission Staff Working Document — Impact Assessment, accompanying the Proposal for a Regulation of the European Parliament and of the Council, Part 1/6, p. 21, Brussels, 13/9/17.

<sup>(4)</sup> Special Eurobarometer 464a — Wave EB87.4 — Europeans' attitudes towards cyber security, September 2017.

<sup>(5)</sup> European Council Conclusions of 19 October 2017.

<sup>(6)</sup> EP Resolution 17.05.2017 — A8-0176/2017.

<sup>(7)</sup> Digital Single Market/Mid-term review. OJ C 75, 10.3.2017, p. 124, OJ C 246, 28.7.2017, p. 8, OJ C 345, 13.10.2017, p. 52, OJ C 288, 31.8.2017, p. 62, OJ C 271, 19.9.2013, p. 133.

<sup>(8)</sup> EESC Press Release No 31/2017 Civil Society debates E-government and cybersecurity with incoming Estonian Presidency: <https://www.eesc.europa.eu/en/news-media/press-releases/civil-society-debates-e-government-and-cybersecurity-incoming-estonian-presidency>

### 3. The Commission proposals

3.1. The Cybersecurity Package includes a joint communication reviewing the previous European cybersecurity strategy (2013), as well as a Cybersecurity Act focusing on ENISA's new mandate and a proposed certification framework.

3.2. The strategy is structured around three main sections: resilience, deterrence and international cooperation. The deterrence part focuses mainly on cybercrime issues, including the Budapest Convention, and the international cooperation part looks at cyber defence, cyber diplomacy and cooperation with NATO.

3.3. The proposal sets out new initiatives such as:

- building a stronger EU cybersecurity agency,
- introducing an EU-wide cybersecurity certification scheme,
- swiftly implementing the NIS Directive.

3.4. The resilience part proposes cybersecurity-related actions addressing in particular: market issues, the NIS Directive, rapid emergency response, the development of EU competence, education, training — in cyber skills and cyber hygiene — and awareness.

3.5. In parallel, the Cybersecurity Act proposes the creation of an EU cybersecurity certification framework for ICT products and services.

3.6. The Cybersecurity Act also proposes an enhanced role for ENISA as the EU agency for cybersecurity, granting the agency a permanent mandate. On top of its current responsibilities, ENISA is expected to cover new supporting and coordination tasks related to support for the implementation of the NIS Directive, the EU Cybersecurity Strategy, Blueprint, capacity building, knowledge and information, awareness raising, market-related tasks such as support for standardisation and certification, research and innovation, pan-European cybersecurity exercises, and the secretariat of the Computer Security Incident Response Team (CSIRT) Network.

## 4. General observations — Overview

### 4.1. Context: Resilience

#### 4.1.1. Single Cybersecurity Market

*Duty of care:* The development of the proposed principle of 'duty of care' mentioned in the Joint Communication for the use of secure development lifecycle processes is an interesting concept to be developed with EU industry, which could lead to a comprehensive approach for EU legal compliance. Security by default should be considered for future evolution.

*Liability:* Certification will help to make it easier to attribute liability in the event of a dispute.

#### 4.1.2. NIS Directive: energy, transport, banking/finance, health, water, digital infrastructure, e-commerce.

For the EESC, the full and efficient implementation of the NIS Directive is essential in order to ensure the resilience of national critical sectors.

The EESC believes that information sharing between public and private actors should be strengthened through sectoral Information Sharing and Analysis Centres (ISACs). An appropriate mechanism to securely share trusted information within an ISAC and between CSIRTs and ISACs should be developed, based on an evaluation/analysis of the mechanism currently in use.

#### 4.1.3. *Rapid Emergency Response*

The 'Blueprint' approach would provide an effective process for an operational response at EU and Member-State level to a large-scale incident. The Committee underlines the need to involve the private sector; operators of essential services in the operational response mechanism should also be taken into consideration, as they could provide valuable information on threats and/or support in detection of and response to threats and large-scale crises.

The Joint Communication proposes mainstreaming cyber incidents into the EU's crisis management mechanisms. While the EESC understands the need for a collective response and solidarity in the event of an attack, a better understanding is needed of how this could be applied as cyber threats usually propagate across countries. Tools used in national emergencies could be only partially shared in the case of a local need.

#### 4.1.4. *Developing EU Competence*

For the EU to be truly competitive on the global stage and to build a solid technological base, it is essential to create a coherent, long-term framework encompassing all the stages of the cybersecurity value chain. In this respect, fostering cooperation between European regional ecosystems is key to developing a European cybersecurity value chain. The EESC welcomes the proposal to create a cybersecurity competence network.

This network could support European digital sovereignty by developing a competitive European industrial base and reducing dependency on know-how developed outside the EU for key technology capabilities, provide technical exercises, workshops and even essential cyber hygiene training for professionals and non-professionals, and also — based on the work done by the cPPP — foster the development of a network of national public-private organisations to support the development of a market in Europe. 'Advancing cPPP should lead to its optimisation, adaptation or expansion' (EE-BG-AT Trio Presidency Cybersecurity Work Programme) through the establishment of a Tripartite (Commission, Member States, Enterprises) Joint Undertaking.

To be effective and achieve its proposed objectives at European level, the network should rely on a well-defined governance system.

This network would be supported by a Cybersecurity Research and Competence Centre (CRCC) at European level, linking existing national competence centres across the EU. The CRCC would not only coordinate and manage research as in other joint undertakings, but also allow for the effective development of a European cybersecurity ecosystem that would support the implementation and deployment of EU innovation.

### 4.2. **Context: Deterrence**

4.2.1. Fighting cybercrime is a top priority at national and European level requiring a strong political commitment. Deterrence activities should be carried out based on a strong partnership between the public and private sectors, establishing efficient information sharing and expertise at both national and European level. The possibility of expanding Europol's activities in cyber forensics and monitoring could be envisaged.

### 4.3. **Context: International Cooperation**

4.3.1. Building and maintaining trusted cooperation with third countries through cyber diplomacy and business partnerships is key to strengthening Europe's capacity to prevent, deter and respond to large-scale cyber-attacks. Europe should foster its cooperation with the US, China, Israel, India and Japan. Modernisation of EU export controls should avoid violations of human rights or misuse of technologies against the EU's own security, but should also ensure that EU industry is not penalised with respect to third-country offers. An ad-hoc strategy for accession countries should be envisaged to prepare for the exchange of sensitive cross-border data, including the possibility to participate, as observers, in some activities of ENISA countries — these should be ranked according to their willingness to fight cybercrime and a blacklist might be envisaged.

4.3.2. The EESC welcomes the introduction of cyber defence in the envisaged second phase of a possible future EU cybersecurity competence centre. For this reason, in the interim, Europe could look at the development of dual-use competences, including leveraging on the European Defence Fund and the planned creation, by 2018, of a cyber defence training and education platform. Considering the mutually recognised potential and threats, the EESC deems it necessary to develop EU-NATO cooperation, and European industry should also closely follow developments in EU-NATO cooperation on enhanced interoperability of cybersecurity standards and other forms of cooperation in the context of the EU's approach to cyber defence.

#### 4.4. *EU Certification Framework*

4.4.1. The EESC believes that Europe needs to face the challenge of cybersecurity fragmentation through homogeneous interpretation of the rules, including mutual recognition between Member States under a unified umbrella to facilitate the protection of a Digital Single Market. A certification framework could provide a common baseline (with specific regulations on higher levels, where needed), assuring synergies across vertical sectors and reducing the present fragmentation.

4.4.2. The EESC welcomes the creation of an EU cybersecurity certification framework and certification schemes for the different sectors, based upon adequate requirements and in cooperation with the main stakeholders. However, time to market and certification costs, as well as quality and security, are key elements that must be considered. Certification schemes will be set up to increase security according to present needs and threat knowledge: the flexibility and evolution capability of these schemes should be considered to allow for needed updates. Different approaches must be provided for different sectors due to the way they function. Therefore the EESC believes that sectoral EU Agencies (EASA, EBA, ERA, EMA, etc.) should be involved in the process and in some cases, with the agreement of ENISA to avoid duplication and lack of coherence, delegated to elaborate cybersecurity schemes.

4.4.3. For the Committee it is important to base the certification framework on commonly defined European cybersecurity and ICT standards that are, as far as possible, internationally recognised. Considering the timeframe and national prerogatives, minimum European standards for IT security should be adopted in cooperation with CEN/Cenelec/ETSI. Professional standards should be considered positively but should not be legally binding or hinder competition.

4.4.4. There is a clear need to associate liabilities with the different levels of assurance based on the impact of threats. Opening dialogue with insurance companies could benefit the adoption of effective cybersecurity requirements according to the sector of application. In the EESC's view, companies looking for 'assurance level high' should be supported and incentivised, especially for life critical devices and systems.

4.4.5. Given the time that has elapsed since the adoption of Directive 85/374/EEC<sup>(9)</sup>, and in view of current technological developments, the EESC calls on the Commission to look into the relevance of including in the scope of the directive some of the scenarios set out in this proposal for a regulation, in order to make for safer products with a high level of protection.

4.4.6. The EESC deems that the envisaged European Cybersecurity Certification Group supported by ENISA should be made up of national certification supervisory bodies, private sector stakeholders and operators from various application domains to ensure the development of comprehensive certification schemes. In addition, cooperation should be envisaged between this group and sector-representative associations from the EU/EEA (e.g. cPPP, banking, transport, energy, federations, etc.), via the appointment of experts. This Group should be able to consider European achievements in certification (mainly based on the SO-GIS Mutual Recognition Agreement (MRA), national schemes and proprietary ones) and aim to preserve European competitive advantages.

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<sup>(9)</sup> OJ L 210, 7.8.1985, p. 29.

4.4.7. The EESC proposes that this group of stakeholders should be given responsibility for jointly preparing certification schemes, together with the European Commission. Sectoral requirements should also be defined through consensual agreement between public and private (users and suppliers) stakeholders.

4.4.8. Moreover, the group should regularly review the certification schemes, considering the requirements of each sector, and adapt the schemes when necessary.

4.4.9. The EESC supports the phasing out of national certification schemes when a European scheme is introduced, as proposed in Article 49 of the Regulation. A single market cannot work with different and competing national rules. To this end, the EESC suggests taking a census of all national schemes.

4.4.10. The EESC suggests that the Commission launch an action to promote cybersecurity certification and certificates in the EU and support their recognition in all international trade agreements.

#### 4.5. ENISA

4.5.1. The EESC considers that ENISA's new permanent mandate as proposed by the Commission will significantly contribute to enhancing the resilience of European systems. However, the accompanying provisional budget and resources allocated to the reformed ENISA may not be sufficient for the agency to fulfil its mandate.

4.5.2. EESC encourages all Member States to establish a clear and similar counterpart to ENISA, as most of them have not done it yet. A structured programme to second national experts (SNEs) to ENISA should be promoted to support exchange of best practices and strengthen trust. The Committee also recommends that the Commission ensure that the present good practices and effective measures existing in the Member States are collected and shared.

4.5.3. The EESC also feels that, in terms of capacity building ENISA should prioritise actions to support e-government<sup>(10)</sup>. EU/worldwide digital identity for persons, organisations, companies and objects is key, and preventing and combating ID theft and online fraud as well countering industrial intellectual property theft should be a priority.

4.5.4. ENISA should also provide regular reports on the cyber-readiness of Member States, primarily focusing on sectors identified in Annex II to the NIS Directive. A yearly European cyber exercise should assess the readiness of Member States and the effectiveness of the European cyber crisis response mechanism, and should produce recommendations.

4.5.5. The EESC is worried that resources are too limited, in terms of operational cooperation, including the CSIRTs network.

4.5.6. In terms of tasks related to the market, the EESC considers that boosting cooperation with Member States and setting up a formal network of Cybersecurity Agencies would help to support cooperation among stakeholders<sup>(11)</sup>. Time to market is very short and it is critical for EU companies to be able to compete in this field, and ENISA must be able to react in tune with this. The EESC considers that, like other EU agencies, ENISA could in future, apply a system of fees and charges. The EESC is concerned that competition for competences between EU and national agencies could, as has occurred in other fields, delay the proper establishment of the EU regulatory framework and damage the EU single market.

4.5.7. The EESC notes that tasks relating to R&I and to international cooperation are currently minimal.

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<sup>(10)</sup> Digital Single Market/Mid-term review.

<sup>(11)</sup> OJ C 75, 10.3.2017, p. 124.

4.5.8. The EESC considers that cybersecurity should be a regular discussion point during the regular Justice and Home Affairs (JHA) Agencies joint meetings and that ENISA and Europol should cooperate regularly.

4.5.9. As the cyberworld is very innovative, standards need to be carefully considered to avoid hindrance to innovation, which requires a dynamic framework; both forward and backward compatibility should be guaranteed as far as possible, in order to protect both citizens and companies' investments.

4.5.10. Due to the importance of national certification supervisory authorities, the EESC suggests that this Regulation should already establish a formal network of authorities empowered to solve cross-border issues with the support of ENISA. The network could at a later stage evolve into a single agency.

4.5.11. Trust is fundamental, but ENISA may not issue decisions nor audit reports. The EESC takes the view that the agency should monitor the performance and decision-making of national certification supervisory authorities through audits and inspections, on behalf of the Commission.

4.5.12. Participation in the ENISA management board should be extended, as observers, to industry and consumer organisations.

#### **4.6. Industry, SMEs, funding/investments and innovative business models**

##### *4.6.1. Industry and investments*

To increase the global competitiveness of EU companies operating in the ICT field, actions must be geared towards better supporting the growth and competitiveness of the ICT industry, including of SMEs.

Europe should scale up investments converging different EU funds, national funds and private-sector investments towards strategic objectives in strong public-private cooperation. The level of investment in critical domains should be increased and supported by the creation of an EU Cybersecurity Fund for Innovation and R & D in the current and future Research Framework Programme. Furthermore, Europe should create a fund for deployment for the Cybersecurity, opening a new window in the current and future Connecting Europe Facility as well in the next EFSI 3.0.

Incentives should be created for EU Member States to purchase European solutions when possible and select European suppliers if available, especially for sensitive applications. Europe should support the growth of European cyber champions that can compete on a global market.

##### *4.6.2. SMEs*

Due to the fragmentation of the market, there is a need for more clarity on client demand, in order to better address the market. Without a structured demand, SMEs and start-ups cannot grow at a rapid pace. In this context the establishment of European a cybersecurity SME hub would be positive.

Cybersecurity technology is changing rapidly and SMEs, thanks to their agility, can provide the cutting-edge solutions needed to remain competitive. Compared to third countries, the EU is still looking for an appropriate business model for SMEs.

Start-ups and SME-specific schemes could be devised to support the cost of certification to counteract the great difficulty in raising funds for their technological and commercial development.

#### **4.7. The human factor: education and protection**

4.7.1. The EESC notes that the Commission's proposal does not take sufficient account of people as drivers of digital processes, either as beneficiaries or as a cause of major cyber incidents.

4.7.2. There is a need to build a strong cyber skills base and improve cyber hygiene and awareness among individuals and businesses. To achieve this result, dedicated investment, time to train high-level instructors and effective awareness campaigns should be considered. The implementation of these three lines of action requires the involvement of national and regional authorities (responsible for establishing and investing in effective educational programmes) and of businesses and SMEs in a collective approach.

4.7.3. The creation of a possible EU-certified curriculum for high schools and professionals, with the active involvement of ENISA and its national counterparts, should be envisaged. Moreover, gender equality must be considered when developing educational programmes to improve employment levels in cybersecurity.

4.7.4. The EESC believes that the certification process must include a proper labelling system both for hardware and software, as is the case with many other products (e.g. energy products). This instrument will have the triple advantage of reducing costs to businesses, overcoming existing market fragmentation caused by different certification systems adopted at national level, and facilitating consumer understanding of the quality and features of the item purchased. In this regard, it is important that products imported from third countries are subject to the same certification and labelling mechanisms. Lastly, the EESC believes that the introduction of an ad hoc logo could be an effective way of informing consumers and users immediately about the reliability of purchased products or trading sites, or sites where sensitive data is transmitted.

4.7.5. ENISA should lead an essential multi-level information and awareness raising exercise, in order to increase knowledge of 'secure' cyber behaviour and users' trust in the internet. To this end, business associations, consumer associations and other digital services bodies must be involved.

4.7.6. In addition to the Cybersecurity Act, as has already been proposed in Opinion INT/828, the EESC considers it crucial to launch at the earliest opportunity a major Europe-wide programme for digital education and training, providing everyone with the tools they need to cope with the transition. Whilst it is aware of the specific national remit in this area, the EESC hopes that the programme will start in schools, building on teachers' knowledge, adapting curricula and teaching methods to digital technologies (including e-learning) and providing all pupils with high-quality training. The programme will naturally include provision for lifelong learning with the aim of adjusting or updating all workers' skills<sup>(12)</sup>.

## 5. Specific comments

### 5.1. *Emerging technologies and solutions: the case of the Internet of Things (IoT)*

The number of connected devices is constantly increasing and is expected to reach a multiple of the number of people living on earth, due to the digitalisation of components, systems and solutions, and enhanced connectivity. This trend creates new opportunities for cyber offenders, especially because IoT devices are often not as well protected as traditional devices.

European security standards across different verticals using IoT devices can reduce development effort, time and budget for all industry participants in the value chain of connected products.

Some form of minimum security level through IDAM (Identity & Access Management), patching and device management is likely to be necessary for 'ordinary' 'Internet of People' (IoP) devices. As certification is a key method of providing a higher level of security, more emphasis should be given to the Internet of Things (IoT) security in the new EU certification approach.

Brussels, 14 February 2018.

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

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<sup>(12)</sup> Digital Single Market/Mid-term review.

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Growth Survey 2018’**

(COM(2017) 690 *final*)

(2018/C 227/14)

Rapporteur: **Dimitris DIMITRIADIS**

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| Consultation                                 | European Commission, 18.1.2018                                     |
| Legal basis                                  | Article 304 of the Treaty on the Functioning of the European Union |
| Subcommittee responsible                     | Subcommittee on the Annual Growth Survey 2018                      |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 194/2/3  |

## 1. Conclusions and recommendations

1.1. The EESC considers the framework of the European Semester to be of strategic importance and it is committed to continuing to contribute in the most effective way possible. At the same time the EESC reiterates the need to increase the role of organised civil society in the European Semester cycle and specifically in the preparation of the Annual Growth Survey (AGS). The EESC can bring added value to this process. In addition, the European Semester should involve in particular the social partners and the national Economic and Social Councils in a more structured manner.

1.2. The EESC recognises that the social dimension of the European Semester has been increased with the introduction of social indicators (Social Scoreboard) in the Joint Employment Report <sup>(1)</sup>. Nevertheless, the Committee is convinced that the focus on increasing investment, structural reforms and strengthening macroeconomic balance <sup>(2)</sup>, declared by the Commission, needs to be accompanied by extending the Semester cycle to other areas ‘*beyond GDP indicators*’ (social, environmental and sustainability targets). The EESC is in favour of making the Semester support the European Social Pillar so that it becomes a tool of better living and working conditions for citizens. The EESC would like to see the EPSR objectives mainstreamed into the policies and decisions taken.

1.3. The EESC supports the view that the key to increasing long-term growth is investment, innovation and knowledge, education and lifelong learning, particularly in green technologies and the circular economy but also in more traditional sectors. The Committee emphasises that private investment rates will be high only if proper motivation is created, sound domestic demand is ensured and a favourable investment climate is maintained.

1.4. The Committee points out that public investment is relatively low and is lagging behind. It insists on the need to increase public investment in order to safeguard the fragile growth, which includes boosting social investment in measures aimed at developing human capital through education and training and at better public services, care infrastructure, innovation and social cohesion across different countries and regions. The EESC calls, once again, to this end, for approval of the adoption of what is referred to as the ‘golden rule of public investment’ to stimulate public investment.

<sup>(1)</sup> Joint Employment report.

<sup>(2)</sup> OJ C 173, 31.5.2017, p. 73.

1.5. The EESC takes note of the establishment of the Structural Reform Support Programme <sup>(3)</sup>. While it is seen as a much needed tool which could help Member States carry out institutional, administrative and structural reforms by making resources available for capacity-building and technical assistance, such reforms should in the view of the EESC not end in mere labour market deregulation and product market liberalisation. At the same time, the Committee warns that, because of the relatively small budget and the lack of experience of cooperation with Member States in implementing structural reforms, the programme may not deliver the expected results.

1.6. The Committee shares the Commission's view that economically and socially reasonable and well-balanced structural reforms in well-functioning labour markets and product markets are essential for the adaptation of the European economy to long-term structural changes and possible economic and environmental shocks. However, the EESC insists on a non-systemic approach, and reforms should be carried out only when necessary and with respect for national law, social dialogue and collective agreements.

1.7. The EESC welcomes the greater emphasis placed by the Commission in the AGS on the composition and efficiency of public spending, as well as on responsible fiscal policy and appropriate and efficient spending. The Committee believes that reforms in public administration targeted at e-government initiatives, efficiency of public procurement <sup>(4)</sup> and more transparency of public funds can achieve a lot of cost saving and increase public investment. These measures should be one of the first choices when it comes to budgetary consolidation.

1.8. The EESC stresses that efforts to mitigate the negative effects of ageing challenge Member States' budgets. The importance of training and re-training, the preventive role played by the health sector, the efficiency of spending for the health sector and the need to safeguard the efficiency of the social protection system should be emphasised once again.

## 2. General comments

2.1. The EESC reiterates its views regarding the fact that the AGS does not cover other relevant policy areas such as environmental policy or other relevant issues such as the quality of employment. The EESC considers it is possible to expand the Semester to ensure that EU macroeconomic policies are sustainable, not only economically and socially, but also environmentally. The Semester must address the economic, social and environmental challenges on the same footing.

2.2. In this regard, the European Semester should include a comprehensive system of indicators which factor in social and environmental ramifications. The introduction of the Social Scoreboard in the 2018 AGS is a first step in this direction, which should be supplemented with indicators relating to wage developments and the coverage rate of collective bargaining where possible. The current macroeconomic and social analysis could be complemented by adding resource and energy efficiency indicators, progress on national climate and energy targets and changes in national environmental tax ratios.

2.3. The AGS should place stronger emphasis on long term demographic issues, particularly in the context of population ageing and, worker migration. At this juncture when the immediate threats to economic and fiscal stability appear to be averted, there is an urgent need to focus on these longer-term issues.

2.4. The EESC has discussed that the European Semester should be further developed to ensure coordination of the implementation of the Sustainable Development Goals <sup>(5)</sup>.

2.5. The development of the European Semester should take into consideration the post-Brexit period and assume that it will be essential to revise financial capacity upwards.

2.6. Additionally, the European Semester will need to be adapted to a future post-2020 strategy. This strategy should be based on the priorities of the Juncker Commission as well as the 2030 targets, based on the Europe 2020 strategy and its objectives (which are still relevant for the coming years) and the Paris Climate Agreement.

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<sup>(3)</sup> Regulation (EU) 2017/825.

<sup>(4)</sup> COM(2017) 572.

<sup>(5)</sup> OJ C 81, 2.3.2018, p. 44.

### 3. Specific comments

#### 3.1. Investment

3.1.1. Productivity growth is one of the principal sources of improvement in economic well-being. It is of crucial importance for the EU to maintain a high and sustainable rate of productivity growth, given the fact that the EU is now lagging behind its major competitors, particularly in crucial industry branches and the development of low-carbon technology. A continuously improving economy is a crucial basis for financing social security and healthcare benefits at the level desired by European citizens. Indeed, advancing well-being, cohesion and social justice is fully compatible with economic and productivity growth<sup>(6)</sup>.

3.1.2. The key to productivity growth is investment, quality of employment, innovation and knowledge. With less capital investment, less new equipment is provided to workers, and, *ceteris paribus*, future productivity growth rates and levels are lower. This is especially true in times when labour force growth slows because of demographic changes and declining birth-rates as is the case in Europe. For work to become more productive, investments must be made in education, lifelong learning and training, in improving working conditions, in basic services such as childcare and out-of-school care, in modernised plants, equipment, and productive techniques, in new discoveries and innovations and in transportation, communications, and other infrastructure. Additionally, it must be taken into consideration that large-scale public investment, including social investment, operates on a far longer timescale. Therefore, giving further consideration to planning requirements should help increase public investment. To this end, the EESC reiterates its call to approve the adoption of what is referred to as the 'golden rule of public investment' to stimulate public investment.

3.1.3. In this regard the EESC considers it essential that EU and national budget opportunities should be used to full effect and that cohesion policy should remain the EU's main investment tool. The Committee emphasises that its governance and its interactions with the European Semester should be improved to further increase its contribution to sustainable and inclusive development. The Structural Funds can be used more than at present to support education and training in needed skills in close cooperation with social partners. In this sense the Committee agrees with the Commission's opinion that EFSI is 'far from reaching its full potential in boosting human capital development'.

3.1.4. For modernising plants and production technologies a proper business climate and social environment need to be created in order for companies to be motivated to invest. The EESC believes that it is extremely important for Member States to develop stronger and more efficient institutions capable of fighting corruption and delivering on the rule of law. Otherwise, investment rates cannot be high.

3.1.5. The EESC reiterates the need for investments in Just Transition measures accompanying transformative investments, notably in energy and manufacturing sectors. Such investments, for which an adequate financing fund should be available, should also support workers from regions transitioning from high- to low-carbon industries, which need to be well managed to contribute to the goals of decent work for all, social inclusion and the eradication of poverty.

3.1.6. Besides the favourable climate, it is also important for investment that well-functioning financial markets exist in Europe. The EESC is concerned that the integration of financial markets is still lagging behind. Further development of the Banking Union and the Capital Markets Union (CMU) should proceed without any delay.

3.1.7. The EESC agrees that it is vitally important to establish a CMU and other framework conditions, so as to improve funding conditions, spread risk and make credit more accessible for all companies and to put the principle of equal opportunities into practice.

3.1.8. The conditions for access to finance are still very unequal and access to finance is still very difficult and a major challenge for SMEs, small family and traditional businesses, start-ups and scale-ups. This is why the Committee welcomes measures such as the Pan-European Venture Capital Fund of Funds and calls on the Commission, in cooperation with local, regional and national authorities, to take further measures to leverage private and public investment and promote differentiation of funding sources.

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<sup>(6)</sup> OJ C 173, 31.5.2017, p. 33.

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

3.1.10. The EESC calls on the Commission and the Member States to put all possible effort into removing the bottlenecks to investment and to creating a favourable investment climate. Besides the problems mentioned above, examples include the Regulation on venture capital funds and efforts to develop the Social Entrepreneurship Fund, a 'second chance' for failing entrepreneurs, the improvement of insolvency proceedings and the implementation of preventive restructuring schemes. Stimulating the involvement of banks and improving their operational efficiency should form one pillar of efforts to boost investment activity.

3.1.11. The Committee has already emphasised in previous opinions that the completion of the Energy Union, the Digital Single Market Strategy and the Action Plan for the Circular Economy will open up ideal opportunities for investment. Additionally, new opportunities for green investment combating climate change need to be considered. Increased dynamism in these areas also depends on international trade agreements, some of which may be adversely affected by changing attitudes in global politics and how accessible markets are as a result.

## 3.2. Pursuing structural reforms

3.2.1. The EESC considers that structural reforms should be economically and socially well-balanced. The structural reforms to be carried out first should be those that promote productivity growth, but also those that enhance job security and the social protection system, while respecting collective bargaining and the autonomy of social partners. Structural reforms are essential for building integrity and transparency in public administration and for delivering high quality services to citizens and businesses.

3.2.2. The EESC takes note of the initiatives proposed by the Commission in the Roadmap for deepening Europe's Economic and Monetary Union, and is currently drawing up a specific opinion on this package of initiatives<sup>(7)</sup>. The Committee will continue contributing to the EU leaders' discussion on the future development of the EMU as part of the debate on the future of Europe. However the Committee regrets that in the AGS most of the problems in enhancing convergence and inclusion of Member States concern almost entirely euro area countries. Convergence of countries which are not members of the Eurozone should be of equal concern and effort. A new strategy and action plan need to be promoted to ensure that lower productivity Member States can catch up by developing their own quality investment growth. Also, measures should be taken to foster the recovery of specific areas with revitalisation projects incorporating quality growth and investment.

3.2.3. The social partners play a particularly important role in shaping, developing and implementing economically and socially reasonable and well-balanced structural reforms. This role must be rooted in a new start for social dialogue — one that is based on the current form of dialogue but with enhanced mechanisms for participation. Responsible social engagement depends a lot on clear and direct communication, and the EESC welcomes the intention announced by the Commission to involve the social partners in a deep and systematic way in the European semester cycle.

3.2.4. The EESC agrees with the European Parliament's view that a well-functioning labour market is very important for a positive economic situation to develop<sup>(8)</sup>. This should be one of the priorities of the reforms. However, the EESC also believes that the social dimension of the European single market, including security systems, needs to be strengthened and the EPSR should be the basis for it.

3.2.5. When addressing the structural labour market challenges facing Member States, the Commission should take into account the different stages of the Member States in terms of economic development and the proposed measures should be productive, inclusive, acceptable and implementable in their societies.

<sup>(7)</sup> ECO/446 (not yet published in the OJ).

<sup>(8)</sup> OJ C 173, 31.5.2017, p. 73.

3.2.6. Quality education and training must be accessible for everybody as a basic right. However, today it is of a vital importance for the development of the European economy to be able to rely on a well-educated, updated and skilful labour force. There are many signals from employers' organisations that the most significant factor hampering an increase of production and job creation is the lack of proper skills demanded by businesses. Trade unions, on the other hand, urgently demand the appropriate framework for all to remain updated with skills needed during their career (e.g. right to paid training leave) — challenging the responsibility of all: individuals, business (depending on the size of the business) and the public. All these have to be addressed without delay with proper measures suggested in the AGS in line with the New Skills Agenda for Europe<sup>(9)</sup>.

3.2.7. According to the Joint Employment Report, '... wage growth remains subdued in most countries ... during the 2014-2016 period real wage growth lagged behind productivity growth. This is a long-term trend: in the EU, from 2000 to 2016, real productivity per person employed grew by 14,3 %, while real compensation per employee grew by 10,2 %'<sup>(10)</sup>. While in most countries wage growth rates are below productivity growth, in other countries they are higher. This heterogeneity gives leads the EESC to emphasise that real wage growth, including minimum wages where these exist, should be in line with productivity growth. In the EESC's view, a fair redistribution of income and wealth from productivity gains should increase equality and have a positive impact on domestic and global demand within the EU. This domestic demand needs to be stimulated as an essential condition for sustaining growth, overcoming the crisis and boosting employment. Increasing wages, in particular lower wages, is one of the most important instruments for achieving these objectives in European economy and society<sup>(11)</sup>.

3.2.8. The EESC has emphasised many times the need for support for SMEs<sup>(12)</sup>, which — in addition to the workers and employees concerned — suffer the most from market failures while having great potential for contributing to the European economy. For this reason, the Committee welcomes the intention expressed by the Commission to support the dissemination of new technologies among SMEs. At the same time it is important that the Commission also takes into account the problems of access to finance for SMEs, their heterogeneity as a group and the need to support small traditional and family businesses<sup>(13)</sup>.

3.2.9. Implementing a system of incentives that creates a level playing field for competition, provides more support for growth and reduces the opportunities for abuse should be an integral part of the reform process. Particular attention should be paid to a better regulatory and administrative framework. The EESC shares the view expressed in the AGS that a single market in the defence sector could bring a lot of benefits for the European citizens, but also reiterates its view that EU budgetary funds could not be used to finance military instruments as well as operative actions.

3.2.10. The EESC underlines the need to continue boosting Europe's competitiveness in a broad sense, much broader than mere company competitiveness. Europe's global economic stature needs to be reinforced and measures need to be taken to make it more prepared to compete with its global competitors.

### 3.3. *Responsible fiscal policies*

3.3.1. The observed recovery of the European economy is helping to improve the state of public finances, which were in distress during and after the financial and economic crisis. At the same time low interest rates and economic growth provide good opportunities for decreasing excessive debt levels where they exist. The government debt-to-GDP ratio is extremely unevenly distributed across the EU and this fact exposes countries with high levels of debt burdens to possible interest rate risk, leading to high funding costs if interest rates start to increase when monetary policy accommodation is reduced.

3.3.2. Given this background the EESC appreciates the fact that one of the pillars on which the Commission builds its economic and social policy is the pillar of responsible fiscal policies. However, the Committee wishes to emphasise that a responsible government spending policy is not always measured just by an accounting result as deficit, but by the impact it has had on the real economy and society at large.

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<sup>(9)</sup> COM(2016) 381.

<sup>(10)</sup> Joint Employment report, p. 4.

<sup>(11)</sup> ECO/444 (not yet published in the OJ).

<sup>(12)</sup> OJ C 345, 13.10.2017, p. 15.

<sup>(13)</sup> OJ C 81, 2.3.2018, p. 1.

3.3.3. The EESC fully supports the view that fiscal policy needs to be tailored to country-specific circumstances. The eternal dilemma between the need to secure long-term control over deficit and debt levels and 'growth-friendly' public spending is always difficult to resolve and the balance may change according to specific country situations. The EESC is in favour of flexibility, particularly when this makes possible public investment to boost sectors that are also of long-term benefit (education, training and healthcare) or investment aimed at creating the conditions for economic transition to a sustainable economy tackling climate change or for supporting measures for companies suffering from market failures.

3.3.4. The EESC calls strongly for a constant, well-coordinated fight against tax evasion and tax avoidance, to secure fair taxation of multinational companies and the digital economy. The EESC also points to the importance of combating tax evasion through greater transparency<sup>(14)</sup>, along with all forms of unfair tax competition between Member States<sup>(15)</sup>.

#### 3.4. *European Pillar of Social Rights*

3.4.1. The EESC welcomes the interinstitutional consensus reached in the proclamation of the EPSR at the Gothenburg Social Summit in November 2017.

3.4.2. The EPSR is primarily a political declaration, including legislative and non-legislative proposals. The unanimous support received by the Member States is an important signal encouraging its application. As a framework for both legislative and non-legislative initiatives, the EPSR should help to foster reforms and increase the focus on social progress within the European Semester.

3.4.3. The EESC believes that the EPSR should be accompanied by a roadmap to detail its implementation and support achievement of its objectives at national level<sup>(16)</sup>.

3.4.4. The EESC asks for a Semester that fully integrates the social dimension. The EESC would like to see the EPSR objectives mainstreamed into the policies and decisions taken.

3.4.5. As the EESC has previously highlighted<sup>(17)</sup>, to ensure its future the EU needs to combine a sound economic basis with a strong social dimension. The EU needs to focus on providing balanced and inclusive economic growth, social progress and environmental integrity, which can lead to the increased well-being of citizens.

3.4.6. The Commission's Autumn Package incorporates a Social Scoreboard as a new tool within the European Semester to monitor the implementation of the EPSR, and this should be part of the analysis made in the forthcoming country reports and country-specific recommendations.

Brussels, 14 February 2018.

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

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<sup>(14)</sup> OJ C 487, 28.12.2016, p. 62.

<sup>(15)</sup> OJ C 81, 2.3.2018, p. 131.

<sup>(16)</sup> OJ C 81, 2.3.2018, p. 145.

<sup>(17)</sup> OJ C 81, 2.3.2018, p. 145.

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/66/EEC introducing Community measures for the control of Newcastle disease’**

(COM(2017) 742 *final* — 2017/0329 (COD))

(2018/C 227/15)

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| Consultation                                 | European Parliament, 14.12.2017<br>Council of the European Union, 22.12.2017 |
| Legal basis                                  | Article 43(2) of the Treaty on the Functioning of the European Union         |
| Section responsible                          | Agriculture, Rural Development and the Environment                           |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 151/2/5  |

Since the Committee unreservedly endorses the contents of the proposal and has already set out its views on the subject in its earlier opinion EESC 4014/2013 (NAT/611), adopted on 16 October 2013 (\*), it decided, at its 532nd plenary session of 14 and 15 February 2018 (meeting of 14 February), by 151 votes to 2 with 5 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned document.

Brussels, 14 February 2018.

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

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(\*) OJ C 67, 6.3.2014, p. 166.

**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) 2016/1139 as regards fishing mortality ranges and safeguard levels for certain herring stocks in the Baltic Sea’**

(COM(2017) 774 *final* — 2017/0348 COD)

(2018/C 227/16)

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| Consultation                                 | European Parliament, 15.1.2018<br>Council of the European Union, 19.1.2018 |
| Legal basis                                  | Article 43(2) of the Treaty on the Functioning of the European Union       |
| Section responsible                          | Agriculture, Rural Development and the Environment                         |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 193/1/3  |

Since the Committee endorses the contents of the proposal and feels that it requires no comment on its part, it decided, at its 532nd plenary session of 14 and 15 February 2018 (meeting of 14 February), by 193 votes to 1 with 3 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 February 2018.

*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 Repealing Regulation (EU) No 256/2014 of the European Parliament and of the Council concerning the notification to the Commission of investment projects in energy infrastructure within the European Union’**

(COM(2017) 769 *final* — 2017/347 (COD))

(2018/C 227/17)

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| Consultation                                 | European Parliament, 15.1.2018<br>Council of the European Union, 11.1.2018 |
| Legal basis                                  | Article 194 of the Treaty on the Functioning of the European Union         |
| Section responsible                          | Transport, Energy, Infrastructure and the Information Society              |
| Adopted at plenary                           | 14.2.2018  |
| Plenary session No                           | 532  |
| Outcome of vote<br>(for/against/abstentions) | 192/0/2  |

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 532nd plenary session of 14 and 15 February 2018 (meeting of 14 February), by 192 votes with 2 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 February 2018.

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

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