

Official Journal

of the European Union

C 218



English edition

Information and Notices

Volume 54

23 July 2011

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I <i>Resolutions, recommendations and opinions</i>	
	OPINIONS	
	European Economic and Social Committee	
	471st plenary session held on 4 and 5 May 2011	
2011/C 218/01	Opinion of the European Economic and Social Committee on ‘The effect of the economic and financial crisis on labour force distribution among production sectors, with special regard to SMEs’ (<i>exploratory opinion</i>)	1
2011/C 218/02	Opinion of the European Economic and Social Committee on ‘The role of family policy in relation to demographic change with a view to sharing best practices among Member States’ (<i>exploratory opinion</i>)	7
2011/C 218/03	Opinion of the European Economic and Social Committee on ‘Sustainability impact assessments (SIA) and EU trade policy’	14
2011/C 218/04	Opinion of the European Economic and Social Committee on ‘Agricultural machinery, construction and handling equipment: what is the best way out of the crisis?’ (own-initiative opinion)	19
2011/C 218/05	Opinion of the European Economic and Social Committee on ‘The external dimension of European industrial policy — is the EU’s trade policy really taking the interests of European industry into account?’ (own-initiative opinion)	25
2011/C 218/06	Opinion of the European Economic and Social Committee on ‘Third country state-owned enterprises in EU public procurement markets’ (own-initiative opinion)	31

EN

Price:
EUR 7

(Continued overleaf)

III Preparatory acts

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

471st plenary session held on 4 and 5 May 2011

2011/C 218/07	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: an integrated industrial policy for the globalisation era — putting competitiveness and sustainability at centre stage' COM(2010) 614 <i>final</i>	38
2011/C 218/08	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area' COM(2010) 524 <i>final</i> — 2010/0278 (COD)	46
2011/C 218/09	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area' COM(2010) 525 <i>final</i> — 2010/0279 (COD) and the 'Proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances' COM(2010) 527 <i>final</i> — 2010/0281 (COD)	53
2011/C 218/10	Opinion of the European Economic and Social Committee on the 'White Paper: Insurance Guarantee Schemes' COM(2010) 370 <i>final</i>	61
2011/C 218/11	Opinion of the European Economic and Social Committee on the 'Communication from the Commission on the monitoring and reporting of data on the registration of new passenger cars' COM(2010) 657 <i>final</i>	66
2011/C 218/12	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws' COM(2010) 791 <i>final</i> — 2011/0001 (COD)	69
2011/C 218/13	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009' COM(2010) 775 <i>final</i> — 2010/0373 (COD)	74
2011/C 218/14	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters' COM(2010) 748 <i>final</i> — 2010/0383 (COD)	78



I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

471st PLENARY SESSION HELD ON 4 AND 5 MAY 2011

Opinion of the European Economic and Social Committee on 'The effect of the economic and financial crisis on labour force distribution among production sectors, with special regard to SMEs'

(exploratory opinion)

(2011/C 218/01)

Rapporteur: **Mr PEZZINI**

Co-rapporteur: **Mr HAVLÍČEK**

On 15 November 2010, the permanent representative of Hungary to the European Union, Mr Péter Györkös, asked the European Economic and Social Committee, on behalf of the future Hungarian presidency, to draw up an exploratory opinion on

The effect of the economic and financial crisis on labour force distribution among production sectors, with special regard to SMEs.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 153 votes to 5 with 11 abstentions.

1. Conclusions and recommendations

1.1 The EESC highly commends the attention that the Hungarian presidency is giving to a crucial issue for organised civil society, namely the impact of the current economic and financial crisis on the labour force and its distribution among production sectors, with special regard to SMEs.

1.2 The EESC recalls that it has often presented its views on the problems facing SMEs, which, together with the public and social economy sectors, constitute the warp and weft of Europe's economy and labour market.

1.3 The consequences of the global economic and financial crisis have impacted heavily on SMEs even if they have often reacted with greater flexibility and innovative solutions.

1.4 The EESC considers that the EU could do more to support SMEs beyond making statements of principle. There is now a real need for consistent and coordinated EU action on a range of priorities aimed at improving operational conditions on the internal market and at internationalising SMEs.

1.4.1 Among the priority actions, the EESC identifies: developing the potential of new entrepreneurship, especially among women, youth employment and support for the Youth on the Move flagship objective.

1.4.2 Recommends that an **annual SME conference** be held to take stock of the situation of SMEs in Europe, particularly as regards employment. This flagship conference should involve a range of national and European professional associations and all the European institutions.

1.5 In particular, the EESC calls for a roadmap to create – as of now – the necessary conditions for the development of new innovative enterprises and support for existing SMEs in order to contribute to creating new jobs, which are needed to emerge from the crisis, and in order to return to sustainable growth. The measures adopted should be programmed at the European, national and regional levels, and should include commercial and non-commercial or social economy enterprises. Alongside this roadmap, provision should be made for the training of unemployed workers and young people to access these new jobs.

1.5.1 The EU, in agreement with the Member States, could support, in convergence regions, the use of Structural Funds aimed at supporting SMEs.

1.6 The EESC believes that the internationalisation of SMEs must be stepped up in order to increase their access to new markets and, therefore, their job-creation capacity.

1.6.1 Access to new markets should be preceded by solid trade agreements setting out simple ready-to-use procedure protocols for SMEs.

1.7 The EESC considers it essential to promote an entrepreneurial culture and a spirit of initiative in an environment that supports entrepreneurs, understands market risks and values human capital.

1.8 Training, knowledge and qualifications transfer, new working methods and the development of openness to change have to be encouraged, especially during this crisis, in order to save jobs and increase the role that workers play in strengthening their companies.

1.9 The EESC stresses the importance of public procurement, in compliance with social and environmental standards, as a means to support the survival of businesses and local jobs. It should be a requirement to 'Think Small First' in a crisis where substantial numbers of jobs are at stake. The appropriate, responsible and intelligent use of public sector demand should foster open competition and innovation.

1.10 The EESC calls for the strengthened development of clusters and sectoral groups of SMEs. Contract and knowledge sharing between large and small businesses could result in innovative leaps, through sectoral and other networks.

1.11 The EESC recommends that in order to make the most of sectoral flagship initiatives, their development should be improved with respect to technology, employment, investment, and the optimisation of human resources.

1.12 The need to develop new financial instruments must be recognised. The EESC believes that the financial challenges and

other aspects of the crisis facing SMEs have been aggravated by an inability to develop new measures. Instruments such as JEREMIE, JASPERS and JESSICA need to be strengthened.

1.13 According to the EESC, the Commission should speed up the 'fitness checks' on existing legislation, thereby setting an example to Member States, in order to reduce the cumulative effects of legislation, compliance and costs.

1.14 The Committee believes that legislative proposals should be subject to prior analysis, in order to assess their impact on competition through operational, EU and national impact assessments.

1.15 The EESC asks the Commission to emphasise and step up its involvement in the promotion of new low-carbon emission technologies and the green economy, which are a source of new and better jobs.

1.16 The Committee believes that it would be useful to support and promote the spread of international and sectoral networks, for creativity and innovation leaders. With this in mind, recommends that the **Enterprise Europe Network** should not only provide general information and advice, but also have a **sectoral** role and be given administrative functions as a one-stop shop.

1.17 The EESC calls for the adoption of a European SME statute and implementation at Member State level of the Small Business Act, on which it has previously issued an opinion, to be expedited.

2. Introduction

2.1 Following the economic crisis in 2008, positive SME trends which had emerged between 2002 and 2008 came to a sudden halt, with job losses in 2009-2010 estimated at 3,25 million ⁽¹⁾.

2.2 The EU unemployment rate stood at 9,6 % in 2010, and was still worse in the public, transport and telecommunications sectors. There was a slight expansion in the retail and manufacturing sectors, whereas the youth labour market (15-24 age group) remained depressed, with unemployment hovering around 21 %, i.e. at its highest since the beginning of the crisis.

2.2.1 Furthermore, the economic crisis and factors including globalisation, technological progress, demographic ageing and the gradual transition to a low-carbon and low-particulate economy have triggered rapid changes in the qualifications and skills required on the labour market, with strong growth in new occupations.

⁽¹⁾ 2010 Report on *European SMEs under pressure*.

2.3 At the sectoral level, the recession has accelerated the ongoing employment shift from the primary and basic manufacturing sectors to the service sector, with forecasts of substantial reductions in employment in primary industry and farming, as well as expected job losses in the manufacturing and production sectors during 2010–2020. On the other hand, employment is set to rise in the service sector, especially in services to industry and market services. Increases are expected in distribution and transport, and in the hospitality, catering, tourism, health, education and security sectors.

2.4 Regarding job profiles, the trend that seems set to be consolidated and increased by 2020, should be in middle and senior management (40 %), i.e.: senior managers, professionals and technicians in so-called 'knowledge and skill-intensive jobs'.

2.4.1 The most significant reduction is expected to be in the number of workers with low formal skills or lower skills. It has been shown that employment in sectors that produce capital goods are more vulnerable to general economic crises due to the particular importance of skills, since these sectors are often associated with specific skills.

2.5 The Committee has frequently reiterated⁽²⁾ that 'the crucial role played by small and medium-sized enterprises (SMEs) in the EU economy is universally recognised' and has stressed⁽³⁾ that 'as economic output, innovation and employment depend increasingly on SMEs, the development of entrepreneurship among young people should be a priority'.

2.6 There are over 20 million independent enterprises in the EU. Over 99 % of them are SMEs with fewer than 250 employees. The vast majority (92 %) are micro-enterprises with fewer than ten employees. Furthermore, SMEs also account for over 67 % of employment in the EU⁽⁴⁾. Many of those SMEs which survived the crisis only did so as a result of the commitment of their staff.

2.7 Furthermore, we need to bear in mind that numerous obstacles are liable to hinder the emergence of new entrepreneurship and the creation and rapid development of innovative SMEs, not to mention the ability to conduct the full employment policy. These obstacles include:

— an environment that is unsuited to the development of entrepreneurship;

⁽²⁾ Cf. EESC opinion on *The different policy measures, other than suitable financing, that would help SMEs to grow and develop*, OJ C 27, 3.2.2009, p. 7; EESC opinion on *How to support SMEs in adapting to global market changes*, OJ C 255, 22.9.2010, p. 24; and EESC opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - *Think Small First: A Small Business Act for Europe*, OJ C 182, 4.8.2009, p. 30.

⁽³⁾ Cf. EESC opinion on *The post-2010 Lisbon Strategy*, OJ C 128, 18.5.2010, p. 3.

⁽⁴⁾ Source: Eurostat.

— difficult access to credit;

— difficulties relating to internationalisation and access to markets;

— inadequate knowledge or management capacity flow; and

— inadequate protection of intellectual property.

2.8 In 2009, the number of large businesses that registered reductions in employment levels was twice that of small businesses, and three times that of micro businesses. These figures confirm the stabilising influence that the latter types of businesses have on economic cycles.

2.9 Nevertheless, EU labour market trends continue to show marked imbalances from country to country, with unacceptable youth unemployment levels: while the average EU rate for 2010-2011 may settle around critical levels above 10 %, labour force distribution by sector, region, and above all, by age bracket, is a far greater cause for concern.

2.9.1 The most recent *Employment in Europe 2010* report reveals the young to be the main victims of the crisis, with a strong impact on unemployment in the 15-24 age group, which reaches and exceeds 30 % in some Member States.

2.10 Analysis of trends in European labour force distribution in the various sectors⁽⁵⁾, by age group, gender and type of business, indicates that:

— the overall EU27 employment rate⁽⁶⁾ rose from 62,2 % in 2000 to 64,6 % in 2009;

— the youth employment rate⁽⁷⁾ for the same period fell from 37,5 % to 35,2 %;

— the overall female employment rate rose from 53,7 % to 58,6 % whereas female youth employment fell from 34,1 % to 33,1 %;

— the EU27 employment rate in the industrial sector fell from 26,8 % in 2000 to 24,1 % in 2009;

— the employment rate in the services sector rose from 65,9 % in 2000 to 70,4 % in 2009;

⁽⁵⁾ Eurostat - Labour market indicators / European Union 27 - 2010.

⁽⁶⁾ Eurostat age group 15-64.

⁽⁷⁾ Eurostat age group 15-24.

— the employment rate in the agricultural sector fell from 7,3 % in 2000 to 5,6 % in 2009.

2.11 Figures indicate that the situation is slightly better in EU15 with respect to overall employment rates (63,4 % / 65,9 %) and female employment (54,1 % / 59,9 %).

2.12 Providing young people of both genders with skills and new qualifications is an objective of the EU *Youth on the Move* programme, although it seems inadequate in light of the extreme magnitude of the problem and the need to integrate this initiative with others in order to create new activities and businesses.

2.13 Through its Consultative Commission on Industrial Change (CCMI), the Committee has already given its opinion on the crisis' impact on employment in the manufacturing sector, the automobile industry, the textile industry, the metal-working industries, the aeronautic industry, the cultural and creative industries, the shipping and shipbuilding industries, the coal and steel industries, the domestic appliance industry and others in the forestry, farming and service sectors.

2.14 SMEs have a strong presence, alongside large companies, in all sectors, including the manufacturing sector (out of 2 376 000 European businesses, 2 357 000 are SMEs), the construction sector (2 914 000 out of 2 916 000) or the wholesale and retail sectors, car and motorcycle repairs and household goods (a total of 6 491 000 out of 6 497 000), not to mention real estate services, catering, the hospitality sector and transport.

2.15 The EESC emphasises that large, medium-sized and small businesses are entirely complementary, as can often be seen in the quality of subcontracting, the efficiency of outsourcing and the creation of innovative spin-offs.

2.16 Significant opportunities to create new jobs through SMEs in the public, private and social economy sectors, as a way out of the crisis and towards sustainable and competitive economic growth, exist in some service sectors in particular⁽⁸⁾:

- research and development spin-offs,
- the IT sector and related activities,
- activities to maintain and renovate existing building stock,
- auxiliary activities to financial intermediation,
- the hotel and catering sector,
- the tourism and cultural sectors,
- the postal and telecommunications and transport sectors,
- the electricity, gas and water supply sector, and

— the lead market sectors, i.e. e-health, sustainable construction, intelligent textiles, bio-based products, recycling, renewable energy, and the green economy.

2.17 Although the regional distribution of SME contribution to EU added value and employment for the 2002-2007 period does not seem to reveal many differences in employment terms, the SME contribution in terms of added value shows marked differences between EU12 and EU15, with a higher labour productivity gap between SMEs and large enterprises in the new Member States than in the old Member States.

2.18 Furthermore, in addition to creating new jobs, SMEs, as important vehicles for scientific and technological knowledge spillover, contribute significantly to the economy's growth and innovative performance by transferring and marketing ideas and discoveries. On this issue, it is worth noting that, at the EU level, the new approaches advocated by the 'Think Small First' principles and the Small Business Act have yet to be fully applied, especially at the regional and national level.

2.19 The Committee calls for the strengthened development of innovation clusters of SMEs with high growth capacity, as instigators of innovative leaps, through network systems with the capacity to put high quality user-friendly products on the market rapidly.

2.20 The cornerstone for the development of SME competitiveness is support for their internationalisation on global markets and the development of their internal market potential by ensuring a level playing field in terms of competition and operational conditions.

2.21 Whereas, on average, SMEs account for over 50 % of GDP, they only account, on average, for 30 % of exports outside the EU, even though their contribution is often included in global value chains.

2.22 Furthermore, considerable emphasis has been placed on simpler access to credit. The EU has supported governments, financial institutions and large companies during the crisis, whereas little, if anything, is being done to support SMEs and the creation of productive and sustainable employment at the local level. Instruments such as JEREMIE, JESSICA and JASPERS should be strengthened.

2.23 The EESC stresses that EU governments should vigorously support:

- national and regional programmes for promoting entrepreneurship;
- measures to keep SMEs in business;

⁽⁸⁾ Cf. Hartmut Schrör: *Enterprise births, survivals and deaths - employment effects* (EUROSTAT, Statistics in Focus, 44/2008).

- the development of new activities relating to smart products and services;
- the reduction of red tape;
- training unemployed workers and young people to access new jobs;
- the up-skilling and lifelong training of the workforce;
- social dialogue;
- better access to EU programmes, with particular emphasis on SME funding;
- action against tax evasion and the illegal employment; and
- cutting and simplifying red tape by boosting one-stop shops and sectoral networks.

2.24 More specifically, the EESC advocates speeding up the ongoing review in order to facilitate access to EU research and development programmes.

2.25 Market failure to promote sustainable jobs, the development of entrepreneurship, innovation and sustainable economic growth needs to be addressed through dynamic action packages capable of addressing and supporting the creation, growth and exit from the market of businesses, under appropriate, clear and transparent conditions.

3. General comments

3.1 This exploratory opinion is a response to a request from the Hungarian presidency for an opinion on the effect of the financial and economic crisis on labour force distribution among production sectors, with special regard to SMEs.

3.2 The EESC believes that in order to look for a way out of the crisis and play a key role in globalisation, we need immediate, consistent and coordinated EU action that puts words into practice on a range of priorities aimed at improving operational conditions on the internal market and on global markets. Such action should support SME innovation, restore the entrepreneurial spirit, be capable of identifying new directions for training and up-skilling the workforce and should enable the labour market to adapt to the new challenges.

3.3 In order to be able to make their full positive contribution to employment, even in the new context of globalisation, and despite the ongoing international crisis, SMEs must also be able to compete on an equal footing, not least in terms of:

- the establishment of a roadmap for creating the conditions needed to ensure that SMEs are able to contribute fully to creating jobs;
- the development of the innovative capacity of SMEs and support for networks, production and service clusters and technology parks ⁽⁹⁾;
- guarantees for access to foreign markets, financing tools and strengthened payment guarantees and assurances for international transactions;
- smart market economic support structures ⁽¹⁰⁾, combined with full reciprocity in the opening of European and foreign markets;
- respect for social and environmental standards, and industrial and intellectual property;
- measures against asymmetric information with regard to credit access in order to ensure an adequate supply of credit, loans and risk capital participation;
- lifelong training structures both to develop entrepreneurship and business management and to ensure qualified labour in a flexicurity framework negotiated between the social partners;
- European and national social dialogue that recognises the specificities of SMEs to ensure their appropriate representation at EU level, but which also allows the social partners to deal appropriately with the impact of the crisis; and
- action against the informal economy, and the reinforcement of competition policy, with respect to State aid.

3.4 The EESC sees a need to rationalise and simplify administrative and regulatory procedures for setting up businesses, especially at the national level, in order to ensure that existing businesses can benefit from technological and commercial opportunities and that new SMEs are able to create new jobs, thereby giving full and concrete application to the 'Think Small First' principles and the Small Business Act.

3.4.1 Furthermore, it is necessary to adopt a European SME statute and to study the European cooperative society, in order to promote it.

3.5 It is necessary to facilitate the internationalisation of SMEs, increasing business participation in research partnerships and ensuring access to foreign markets.

⁽⁹⁾ Cf. EESC opinion on *European industrial districts and the new knowledge networks* OJ C 255, 14.10.2005, p. 1; EESC opinion on *The role of technology parks in the industrial transformation of the new Member States* OJ C 65, 17.3.2006, p. 51; and EESC opinion on *Industrial change, territorial development and responsibility of companies* OJ C 175, 28.7.2009, p. 63.

⁽¹⁰⁾ Cf. Simplified access and structures regarding the Market Access Database (MADB).

3.5.1 This objective should also be pursued through a strategy that facilitates the development of international networks of creativity and innovation leaders, i.e. executives, researchers, members of the liberal professions, in order to promote synergies and improve internationalisation in the liberal professions.

3.6 It is necessary to promote an entrepreneurial culture, a spirit of initiative and female entrepreneurship, developing the necessary strategic and management skills, and improving training.

3.6.1 It also seems advisable to introduce a roadmap, with twice-yearly statistics on European SME economic and social variables.

3.7 Lifelong training for management staff and the workforce should result in qualified and well informed human resources in a framework that encourages equal opportunities for men and women. The EESC calls for priority EU, national and regional action against youth unemployment by creating more apprenticeship opportunities, quality work placements and graduate sponsorships, especially in the sciences, and by holding

a campaign to improve perceptions of jobs in industry and manufacturing and entrepreneurial initiative, especially among women.

3.8 The Committee is convinced that the innovation absorption capacity of SMEs must be fostered. There is a need to strengthen knowledge and skills networks and to develop a new generation of industrial districts, and infrastructure for technology transfer and worker mobility between industries, research centres and universities, also with regard to the European Institute of Innovation and Technology (EIT), which must incorporate SMEs.

3.9 The Committee is of the opinion that the development of sectoral flagship initiatives should be better coordinated in terms of technology, investment and the training and development of human resources.

3.10 European labour markets will come out of the crisis profoundly changed. This is why workers and entrepreneurs must be equipped - with the appropriate skills and support - to adapt to a changing situation. 'The crisis has wiped out any past progress so we urgently need to reform labour markets, make sure skills are in line with demand and working conditions are right for job creation.'⁽¹⁾

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ Cf. Mr László Andor, EU Commissioner for Employment - IP/10/1541 - 23.11.2010.

Opinion of the European Economic and Social Committee on ‘The role of family policy in relation to demographic change with a view to sharing best practices among Member States’

(exploratory opinion)

(2011/C 218/02)

Rapporteur-general: **Mr BUFFETAUT**

Co-rapporteur-general: **Ms OUIN**

In a letter dated 15 November 2010, on behalf of the Hungarian Presidency, and in accordance with Article 304 TFEU, Mr Péter GYÖRKÖS, Ambassador, asked the European Economic and Social Committee, to draw up an exploratory opinion on

The role of family policy in relation to demographic change with a view to sharing best practices among Member States.

On 7 December 2010, the Bureau of the European Economic and Social Committee instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee’s work on the subject. The rapporteur was Mr BUFFETAUT and the co-rapporteur, Ms OUIN.

Given the urgent nature of the work, at its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May 2011), the European Economic and Social Committee appointed Mr Stéphane BUFFETAUT rapporteur-general and Ms Béatrice OUIN co-rapporteur-general and adopted the following opinion by 183 votes to 3 with 8 abstentions.

1. Conclusions and recommendations

1.1 Although the thinking behind and substance of the family policies conducted in Europe may vary, they all share a common goal: supporting families. More comprehensive national and regional policies and policies on investment and training, housing and employment can serve to draw families to a particular Member State, region or locality and provide them with a favourable environment.

1.2 Comparing the systems already in place is a useful exercise, since it enables good practices to be identified, but the defining feature is that for any of them to be fully effective, the services and support mechanisms on offer must meet the expectations of families, parents and future parents. These expectations can vary from one Member State to another depending on national culture, social mores and traditions. Accordingly, public authorities should eschew ideological presuppositions and propose measures that give people a genuine opportunity to choose to have a family and to have the number of children they desire.

1.3 Although family policies do not fall within the remit of the European Union, the EU may nevertheless enact legislation on balancing work and family life, equality at work between women and men, and child protection and development.

1.4 When it comes to knowledge of demographic situations and trends and the exchange of good practice between Member States, the EU also has a valuable role to play.

1.5 Today, a number of initiatives and related funding arrangements are being developed under the leadership of the European Union, and the Structural Funds and the European Social Fund have already been used and may be used in future to support family-friendly policies.

1.6 It would be desirable for these initiatives and arrangements to be better integrated and placed under the authority of - or at the least coordinated by - one body responsible for defining an overall policy and determining priorities for action and research. The role of conductor and coordinator could be divided between the European Commission, specifically via the European Alliance for Families, for the more policy-related aspects of coordination and management, and Eurofound, for the more scientific aspects.

1.7 It would be desirable for the associations that represent families to be involved in drawing up family policies and policies that have an impact on families, at both EU and national levels.

1.8 Many of the policies determined at EU level have a direct impact on family life. The Committee therefore recommends that family issues be mainstreamed in all European policies, particularly in the impact studies which are now required for all European legislation ⁽¹⁾ and incorporated into all evaluations of existing policies which have to be reviewed.

⁽¹⁾ EESC Opinion on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 4.8.

1.9 The Committee firmly supports the idea of making 2014 the European Year for Families.

2. Introduction: overview of the current demographic situation

2.1 With birth-rates well below the replacement threshold for several decades ⁽²⁾, women having their first children ever later in life, higher separation rates, higher percentages of single-parent households, more families without a regular source of income, greater life expectancy and a rise in the number of dependent elderly people, largely resulting from past demographic trends, the configuration of European families is in a state of flux. Changes in family structures are giving rise to new challenges, which need to be taken into account when it comes to designing and coordinating family policies and their subsequent implementation.

2.2 The shift away from the extended family towards nuclear families, which has resulted from, amongst other things, urbanisation and changing lifestyles, has been accompanied by more individualistic attitudes, the emergence of new at-risk social groups that are more likely to experience social exclusion, including the long-term unemployed, single parent families, the working poor and children living in or at risk of poverty. Unfortunately, all European societies are affected by these phenomena. It is estimated that 17 % of Europeans suffer from poverty and social exclusion, which is not without consequences for family policy.

2.3 Although below-replacement-level fertility has been registered across the European Union as a whole, there are clear differences between the Member States and their various regions, in terms of both their demographic situations and their family policies. In addition, even within each Member State there are wide variations in population density, with some regions very densely populated and others de-populated, raising the issue of regional development and the maintenance of public services, including services for families. The European Union's motto, 'unity in diversity', is therefore particularly apposite in this connection. Although there is a positive reason for the rising proportion of elderly people, known as 'population ageing', namely that people are living longer and in better health, there is also a second, more negative cause: i.e. a sharp fall in the birth rate, leading to a situation where the population is not being replaced.

2.4 In terms of fertility, none of the Member States are achieving the basic replacement rate ⁽³⁾, although two countries, France and Ireland, are not far off. The birth-rate in the USA has almost reached the replacement threshold, whereas in the European Union, the average is a quarter below this threshold.

⁽²⁾ A phenomenon known by demographers as 'demographic winter'.

⁽³⁾ The replacement rate is 2,1 children per woman in the European Union. The figure of 0,1 children per woman is explained by the need to compensate for the unequal birth ratio, with higher number of male births, and for the girls who die before reaching reproductive age.

2.5 Within this general framework, there are strongly contrasting trends. Eighteen Member States are registering a natural increase, where births exceed deaths, whilst nine (in ascending order: Portugal, Estonia, Italy, Latvia, Lithuania, Hungary, Romania, Bulgaria and Germany) are experiencing a natural decrease, where deaths exceed births.

2.6 Any reversal of this trend would hinge predominantly on significantly improving the total fertility rate. Migration inflows could also have an impact, but would not be sufficient in themselves, since immigrants do not necessarily settle in areas where the birth-rate is low and they also age. Furthermore, immigration requires active pursuit of integration policies in order to avoid inter-community problems, which are all the more acute in host countries where population momentum is weak.

3. The impact of the crisis on families

3.1 The economic crisis has had a series of knock-on effects that have had an impact on living conditions for some families and made it more difficult to respond to the resulting need for support. The first area to be affected by the economic situation was employment and therefore, in many cases, household resources.

3.2 The crisis and the parlous situation of public finances in many Member States may also lead governments to amend or postpone the introduction of particular components of family policy.

3.3 Most national domestic policies - including, for example, policies aimed at combating exclusion and others on training, housing, public transport, energy, welfare, education and employment - concern families directly or have an impact on them. This demonstrates the need for 'family mainstreaming', in other words, across-the-board monitoring of these policies to assess their impact on families ⁽⁴⁾.

4. Policies oriented towards different types of families

4.1 Comprehensive family policy includes tax measures, family benefits, measures to encourage equality at work between women and men, care and support services for children and other dependents, family rights in old-age pension schemes and work-life balance measures, such as parental leave and the option to work part-time. Such policies exist in all EU countries, although the focus may differ from one country to another and they may be devised as social rather than family policies. Since countries have varying traditions, needs, and social - or even philosophical - approaches, and since families, too, have different expectations, this diversity is not surprising.

⁽⁴⁾ EESC Opinion on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 4.8.

4.2 The motivation behind the policies also varies, ranging from moral and civic concerns in some cases, to political and economic ones or an emphasis on raising the birth-rate in others. Whatever the origin, children's moral, health and educational well-being is a vital component, as is enabling parents to bring up the number of children they desire and balance their family responsibilities on the one hand, and their work and social lives on the other.

4.3 Since the 1970s, the Scandinavian countries have placed particular emphasis on equality between fathers and mothers, both in the work arena and in relation to care responsibilities, and have introduced social and vocational training policies with a dual focus on securing a better balance between work and family life and making it easier for parents to return to work after parental leave. In Sweden, these policies have been underpinned by major reforms in the areas of parental leave, public child-care provision, tax measures for families (joint taxation was abolished in 1971) and family law. The family policy that has been introduced has three dimensions: actual direct support for families, support for working parents in the form of paid parental leave and the sharing of the entitlement to paid parental leave between both parents. The outcome has been high female participation in the labour force, more involvement in the care of young children on the part of fathers, a fertility rate higher than the EU average and a drop in child poverty. In Finland, a benefit was introduced in 1988 for those caring for children at home and a similar benefit was created in Norway in 1998 to give recognition and resources to full-time parents.

4.4 In the Netherlands, the key aspect has been the increase in part-time work to enable more time to be devoted to bringing up children, an option that has been more widely taken up by fathers than elsewhere. Nevertheless, 73,2 % of men are in full-time work, as opposed to 45,9 % of women. Similarly, whereas 19 % of fathers choose to take up the option for parents to work part-time, which is a much higher percentage than in the rest of Europe, the take-up rate amongst mothers is 41 %. This option is available until the child is eight years old and is accompanied by a tax reduction of 704 euros per month. The leave entitlement is twenty six times the number of hours worked each week, per child, and is cumulative, meaning that child-care services can be used on a part-time basis.

4.5 In France, the key characteristics of family policy are that it is long-standing and has remained extremely stable over time, whichever political party has been in power, and that it has combined family benefits, an equitable tax regime for families, provisions in the pension system, labour law provisions establishing specific types of paid leave, child-care for children up to the age of three and free nursery school provision from the age of three. Another key aspect of French family policy is that powers are jointly exercised by the state and regional and city authorities, irrespective of which political party they are controlled by. National policy is therefore complemented by the many family policies, in areas such as child-care and family-support systems, that are introduced at regional and

local level. Family benefits as such are intended to compensate for the additional burden borne by the family for each child and favour large families. They are therefore universal rather than means-tested and directed towards the child, this being the factor that distinguishes a family policy from a social policy. As a result, France is one of the European countries with the highest female employment and fertility rates. When it comes to child-care, the issue of freedom of choice is a vital element of French family policy, but for there to be freedom of choice, there has to be a choice in the first place - in this case, sufficient provision of different forms of child-care to choose from.

4.6 In the United Kingdom, there has been a greater - and effective - focus on getting families and children out of poverty and it is generally accepted that it is not the State's place to interfere in personal life choices. The policies have been implemented in a context where labour market flexibility has made it relatively easy for mothers to go back to work and this flexibility also makes it possible to respond to families' extremely heterogeneous expectations. Amongst women whose lives are more focused on the family, the fertility rate is around twice as high as amongst women who are more heavily engaged in work outside the home.

4.7 Germany, where the demographic situation is critical, has for several years been conducting an ambitious policy to achieve a balance between work and family life, both on a practical level and in terms of changing attitudes, since being a working parent was something that was viewed quite negatively. Child-care provision has been expanded and extended to cover more appropriate hours and a parental leave of fourteen months, paid at two thirds of full salary, has been introduced. These measures have been accompanied by specific targeted benefits to combat child poverty by supplementing income.

4.8 In any event, studies show clearly that a high female employment rate often goes hand in hand with a high or relatively high fertility rate when there are options for reconciling work and family life. It would seem that after the period of demographic transition, where mortality rates - particularly infant, child/adolescent and maternal mortality rates - fell considerably, better hygiene behaviour was widely adopted and more people were able to decide on the spacing of their children, the post-transition period is characterised by a situation where both parents work outside the home. However, the proportion of fathers engaged in full-time work continues to be higher than that of mothers, particularly when there is insufficient access to child-care and paid parental leave.

5. Different scenarios

5.1 In view of the current demographic situation in the European Union, it is extremely important to identify what impact past policies have had on fertility levels. There are currently several possible future scenarios for demographic change.

5.2 According to the first scenario, which extrapolates forward from current trends, the European Union would remain in a situation where the fertility rate was below replacement level and varied in severity from one Member State to another. Due to the effect of demographic inertia, the population would continue to grow slightly as a result of the increase in life expectancy and positive migration, but this effect would ultimately peter out. In this case, the European Union would experience both significant population ageing despite the boost from migration (a 'structural' effect) and a significant rise in the number of elderly people, also known as 'gerontogrowth' (a 'trend' effect), together with a possible decrease in the labour force, despite a higher retirement age. Furthermore, around fifty percent of EU countries could experience population decline.

5.3 Ultimately, this situation would accentuate the demographic disparities between Member States and there is a danger that this could undermine the cohesion of the European Union, since the differences in national demographic structures could lead to widening divergences between the national policies that would need to be applied and their population's demands.

5.4 In the 'catastrophe' scenario, the demographic winter would intensify, with births considerably outstripped by deaths! Here, extremely low fertility rates, at half the basic replacement threshold – already the case in some parts of the European Union – perhaps combined with longevity increasing beyond the age of 65, would lead to extreme population ageing. This considerably older society would no longer have the means to provide the financial and health support needed by its elderly people.

5.5 These two aspects of the 'catastrophe' scenario would result in skilled young people leaving an ageing European Union for more entrepreneurial nations and would also result in immigration falling, since, being poorer and suffering from a relative lack of dynamism, major budgetary problems and difficulties in balancing social security systems, Europe would become a less attractive destination.

5.6 The combination of these factors would result in Europe having an extremely unbalanced age-pyramid, with considerably more elderly people than young people and a rapidly shrinking and ageing labour force.

5.7 Lastly, there is a third, more felicitous, scenario of demographic renewal or 'demographic spring'. Here, the fertility rate would rise again towards the replacement rate. The increased birth rate would stimulate various sectors of the economy. The labour force, having been declining, would then increase again in the next generation. Demographic dynamism would translate into economic dynamism, helping to finance social security. The European Union would once again become attractive to its own people, who would no longer be tempted to emigrate, as well as to better educated immigrants.

5.8 Naturally, these scenarios are not forecasts but simple hypotheses that can enable us to design appropriate policies to remedy the current situation and avoid the worst.

6. Can the differences in birth-rates be ascribed to family-friendly policies?

6.1 All the Member States have a raft of policies which, together, form a family policy, whether or not it is explicitly named as such⁽⁵⁾. The various policies pursue different objectives:

- reducing poverty and maintaining family incomes;
- supporting early childhood and children's well-being and development;
- helping balance work and family life;
- meeting the requirement for gender equality;
- enabling parents or would-be parents to decide on the number and spacing of their children, thereby increasing the birth rate.

6.2 If we wished to classify countries on the basis of their policies and define categories, we could say that there are:

- countries with a weak family policy where fertility is below the European average;
- countries with a family policy that does not meet families' needs and where fertility appears to be below the European average;
- countries where support for families measured in terms of GDP appears to be lower or equal to the European average, but where fertility is above the average; and
- countries with strong family policies where fertility is higher than the European Union average⁽⁶⁾.

Therefore, it would seem that these policies influence fertility in different ways, depending on their various constituent parts.

⁽⁵⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66, point 7.

⁽⁶⁾ Communication to the Reflection Group on the Future of the EU 2030 (chaired by Mr Felipe Gonzales) - Gérard-François Dumont, 'UE Prospective démographique' (EU demographic outlook) – <http://www.diploweb.com/UE-Prospective-demographique.html> (French only)

6.3 Comparing family policies is a useful exercise, since it enables good practice to be identified, but the defining feature is that for any of these systems to be fully effective, the services and support mechanisms on offer, particularly financial and/or tax support, must meet the expectations of families, parents and future parents. These expectations can vary from one Member State to another depending on national culture, social mores and traditions. Accordingly, the public authorities should eschew ideological presuppositions and propose measures that give people a genuine opportunity to choose to have a family and to have the desired number of children. These measures must also be adapted to take account of regional differences in population density. This data can then be used, respecting these differences, to develop a system for disseminating information and exchanging best practice. On the other hand, public intervention is fully justified in that the family, where human capital is created ⁽⁷⁾, is the foundation for the whole edifice of society - as we have seen from the crisis, where families have frequently played the role of social shock-absorber.

7. Key factors determining the success of family policies

7.1 Although family-friendly policies vary, the successful ones have several points in common:

- they include the introduction of measures (such as good quality child-care, particularly public provision of early years child-care, family support, in the form of care for all dependent persons, flexible working arrangements and specific leave) enabling people to balance work and family life, on the understanding that these measures need to be tailored to the conditions in individual countries and must meet fathers' and mothers' expectations and children's emotional, psychological and physical needs;
- they include a focus on preventing and combating family poverty;
- the policies are maintained over the long term, under governments of different political persuasions and are universal; their main focus is the interests of the child, irrespective of family income. This aspect of stability is extremely important, since families plan their future over the long term. An appropriate, long-term family policy is one of the components of sustainable development;
- they include recognition of the family and highlight the role of the family and the value of having a successful family life. In contemporary society, success is mainly defined in individual and professional terms, but there are other forms of personal success, connected with our relationships to others and to the common good, including success in family,

⁽⁷⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66, point 6.4 and on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 3.11.

community or cultural life, which should be given more attention, particularly in the media ⁽⁸⁾ and in national education systems;

- they take account of the specific situation of large families.

7.2 Alongside the elements of family policy as such, two other policies – employment and housing ⁽⁹⁾ – are clearly also important. Without a home and a job, it is difficult to plan a family. To start a family, one needs to have a certain degree of confidence in the future. High youth unemployment or insecure employment contracts can have a significant impact on generation replacement, since although raising a child may be a lengthy process, the optimum age-span for having a baby is short. For this reason, attention should be paid to the situation of students and young people who are, or wish to become, parents.

7.3 When family policies are implemented over a long period of time and genuinely respond to families' expectations, they have a positive impact on the wellbeing of children and parents and on social harmony, and they encourage the return to a better fertility rate.

7.4 A recent survey of 11 000 mothers conducted by the World Movement of Mothers shows that their priorities are:

- firstly, balancing work and family life;
- secondly, recognition of the importance of their role as mothers by society; and
- thirdly, a need for more time to take care of their children.

7.5 It would be interesting to conduct a similar survey of fathers, since the three priorities that emerge from the survey may well apply for them too. In particular, recognition of their role as fathers would certainly encourage them to invest more in family life ⁽¹⁰⁾. In this regard, recent proposals aimed at encouraging fathers to take parental leave (some even making such leave paid and mandatory) are interesting, since they contribute to the requisite revaluing of fatherhood and the equally necessary move towards fathers taking more responsibility, particularly in the event of divorce. From this point of view, it would be useful to collect material on good practices in businesses, which introduce flexible forms of work organisation that take account of parental responsibilities. Corporate social responsibility also extends to supporting a good balance

⁽⁸⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66, point 8.15 and on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 3.13.

⁽⁹⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66, point 4.6.

⁽¹⁰⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66 point 8.11.

between work and family life, where businesses are at the coalface in terms of implementing these measures. It would be interesting to establish a label for 'family-friendly' businesses, such as the one set up in Spain, with the support of the Ministry of Health and Social Affairs⁽¹¹⁾.

7.6 In a previous opinion⁽¹²⁾, the Committee proposed that, 'initiatives be envisaged enabling grandparents and other close family members to care for the children if working parents so wish as well and provided this is in the child's interest'. With respect to family time, the EESC has already adopted the principle that, 'Everyone needs to be able (...) to have a sufficient number of years of time credit for family (...) activities. It should be possible for people to choose to put back their retirement age if they prefer to take time out (financed in the same way as retirement) during their working lives'⁽¹³⁾. In this way, if time working outside the home were partial or temporarily interrupted, the loss of income would not be overly acute. The economic impact should be analysed in detail, in particular to calculate the savings in relation to collective childcare that could then be put into recognising the time spent on bringing up children in pension calculations. It is also important for grandparents' rights in relation to their grandchildren to be guaranteed.

7.7 Surveys on young people's aspirations, on the changes connected with greater family mobility, on the relationships between fertility and young people's access to housing and the decision to start a family and on the new family forms would also enable needs-based family policies to be designed. Where these kinds of surveys would be useful would be in helping to build up a better picture of families' expectations, which has been one of the key elements in the policies that have been conducted thus far.

8. What role should the European Union play?

8.1 Family policies do not fall within the remit of the European Union. Article 9 of the Charter of Fundamental Rights states that exercise of the rights relating to the family is governed by national laws. Nevertheless, as we have already seen in relation to parental leave and the discussions on the length of maternity leave, the EU may enact legislation on balancing work and family life and the social partners can negotiate agreements that will become directives. The EU Union can also introduce legislation on equality at work between women and men, which is one of the components of family policy, as well as on child protection and development, drawing on the European Commission's recent agenda for the rights of the child⁽¹⁴⁾.

8.2 The Europe 2020 strategy sets a target for male and female employment that will only be met if it is accompanied

by a family policy that enables men and women to raise as many children as they want whilst continuing to work, which is not the case in most Member States today.

8.3 When it comes to knowledge of demographic situations and trends, at all the various geographical levels, evaluation of family-friendly policies - including both national policies and the family policies implemented by local authorities - and the exchange of good practice between Member States, the EU also has a valuable role to play.

8.4 The European Alliance for Families launched under the last German presidency provided for the establishment of an Observatory, which has never seen the light of day.

8.5 Today, a number of initiatives and related funding arrangements are being developed under the leadership of the European Union:

- a group of experts on demographic issues;
- the European demography forum;
- good practice workshops;
- an expert network for family policy questions;
- the European Alliance for Families internet portal; and
- regional seminars.

The total funding for these measures is around EUR 500 000, to which one can add the FAMILY PLATFORM research project, which is nearing completion, other research projects concerned with demography that also touch on family-related issues and the OECD family database.

8.6 It would be desirable for all these various initiatives to be better integrated and placed under the authority of - or at the least coordinated by - one body responsible for defining an overall policy and determining priorities for action and research. Given that this is not an auspicious moment for creating new independent bodies in the European Union, the role of conductor and coordinator could be divided between the European Commission, via the European Alliance for Families, for the more policy-related aspects of coordination and management, and Eurofound, for the more scientific aspects. As a tripartite EU agency, the latter would be very well suited to this task. With effective coordination of all the initiatives conducted at EU level, a proper database could be put at the

⁽¹¹⁾ http://www.en.aenor.es/aenor/certificacion/resp_social/respEFR.asp.

⁽¹²⁾ EESC Opinion on Promoting the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding OJ C 277/102 of 17.11.2009, point 1.12.

⁽¹³⁾ EESC Opinion on Links between gender equality, economic growth and employment rates OJ C 318/15 of 23.12.2009, point 4.2.6.2.

⁽¹⁴⁾ COM(2011) 60 final.

disposal of Member States. In addition, the Alliance should develop contacts and cooperation with the Social OMC structures and initiatives currently being discussed by the European Commission and the various stakeholders.

8.7 The European Social Fund and the European Regional Development Fund have already been used to help establish family policy measures in some Member States. Consideration should be given to how this type of initiative could be further developed. Likewise, family policy must also be incorporated into the European platform against poverty.

8.8 Similarly, funding should be provided under the research⁽¹⁵⁾ and innovation programme for studies and research, not only on demography as such, but also in the areas of sociology, anthropology and philosophy, which also touch on family issues. In addition, studies should be conducted on the effectiveness and impact of family-oriented policies. In this regard, rather than being discontinued, the work of the FAMILY PLATFORM should be extended, as all the associations and stakeholders active in this area have urged.

8.9 It would be desirable for the associations that represent families to be more involved in drawing up family policies and policies that have an impact on families, both at the EU and national levels.

8.10 Irrespective of the individual future or history of a family or the changes that have taken place in families in general over the past few decades, every person in Europe has belonged or belongs to a family. No-one is born in a vacuum and surveys of public opinion all show that family ties are still amongst those that rank highest on people's list of fundamental values. Moreover, many of the policies determined at EU level have a direct impact on family life (including policies on the freedom of movement of persons, employment and social

welfare, environmental and consumer protection, VAT rates for baby products⁽¹⁶⁾, and the media, as well as education programmes and cultural and social programmes).

8.11 The Committee therefore recommends that family issues be mainstreamed in all European policies, particularly in the impact studies which are now required for all European legislation⁽¹⁷⁾ and incorporated into all evaluations of existing policies for the purpose of revision. For example, in Spain, water is a scarce resource; to reduce its consumption, the pricing system was based on a price per cubic metre, which increased in line with consumption. However, this mechanism was extremely disadvantageous for large families, since a family of five 'automatically' consumes more water than a person living alone or a household with no children. Following legal action, this pricing system was dropped⁽¹⁸⁾. It would therefore be desirable for studies analysing the impact of legislation on families to be carried out systematically at European level, so as to avoid any such negative side effects on families.

8.12 In addition, it is important to stress the extent to which regional policies and policies on investment and training, housing and employment are inter-related and can, even more than 'family policies' as such, draw families and young people to a particular Member State, region or locality and help to create a sustained overall population momentum.

8.13 The Committee firmly supports the idea of making 2014 the European Year for Families and celebrating the twentieth anniversary of the United Nations' International Year of the Family. The future of our societies rests on the coming generations, who will be born and grow up within families. Yet, we must emphasise that in the final instance, there is a crucial factor in people's decision to start a family. That factor is hope for a better future, and it is governments which bear the responsibility and have the important and exacting task of carrying the hopes of the people they govern.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁵⁾ EESC Opinion on The family and demographic change OJ C 161 of 13.07.2007, p. 66 point 4.5.

⁽¹⁶⁾ The Committee has previously called for a reduction in VAT on these products, beginning with nappies. See the EESC opinion on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 4.7.

⁽¹⁷⁾ EESC Opinion on Promoting solidarity between the generations OJ C 120 of 16.05.2008, p. 66, point 4.8.

⁽¹⁸⁾ <http://sentencias.juridicas.com/docs/00285332.html>.

Opinion of the European Economic and Social Committee on ‘Sustainability impact assessments (SIA) and EU trade policy’

(2011/C 218/03)

Rapporteur: **Ms Evelyne PICHENOT**

On 22 April 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on

Sustainability Impact Assessments (SIA) and EU Trade Policy.

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 161 votes to three with four abstentions.

1. Conclusions and recommendations

In order to improve the performance of sustainability impact assessments (SIA) relating to the European Union’s trade policy, the EESC recommends that the Commission review the mechanism in order to respond better to the concerns of civil society and to the reality of globalisation. The EESC suggests that the SIA be remodelled and integrated into a coherent evaluation cycle.

1.1 To this end, the EESC believes that it is crucial that all trade agreements henceforth include a monitoring mechanism which involves civil society, as the only way to guarantee that honouring of commitments and the risks and opportunities presented by the opening-up of trade in terms of sustainable development are monitored. This mechanism is essential to the proposed dynamic approach, enabling the risks and opportunities identified in the initial study to be re-assessed according to given timetables.

1.2 In order to ensure that the system is in line with sustainable development objectives, the EESC recommends that SIAs:

- form part of an *ex-ante*, *in-itinere* and *ex-post* evaluation,
- be coordinated with the preliminary impact assessment effected prior to the negotiation mandate and be carried out in useful time,
- prioritise the detection of social and environmental risks, to supplement the economic evaluation, which in practice serves primarily to validate the EU’s desire to conclude a trade agreement,
- rather than weighing up the aggregated effects of liberalisation on each of the pillars of sustainable development, place the emphasis on a more specific, detailed assessment based on sectors or households, particularly in the case of economies with a large proportion of informal activity,

- become a reference for the public debate in the European Parliament on the ‘analysis of consequences’,

- involve other EU policies in the accompanying measures.

1.3 In order to make the information provided more relevant, the EESC recommends that the SIA be adjusted by the following means:

- a rebalancing amongst the three pillars,
- consultants must draw on a wide range of available methods, including qualitative methods, with a view to providing information regarding the non-economic aspects of the trade agreement in question,
- ecological approaches must be developed (life cycle analysis, carbon footprint, measurement of ecosystem services),
- the team of consultants responsible for the assessment should systematically seek to include experts from the partner country which is a signatory to the trade agreement in question,
- the social partners, specialists on environmental issues and representatives from the world of business must be invited for direct, in-depth discussions,
- taking into account the impact on gender equality,
- the SIA should include an analysis of the working conditions for the legal and health professions, in particular with regard to the independence of their members and safeguarding their physical integrity.

1.4 In order to organise a renewed participatory process, the EESC recommends that:

- the assessment remain accessible at all stages to all interested parties and partner countries and be accompanied by a concise report,
- the consultation be organised according to the different stages of the cycle, open to all interested parties from civil society and provided with adequate financial resources,
- the EESC be able to participate upstream of the SIA by means of an opinion on the choice of indicators and the identification of civil society organisations to be consulted, and to propose consultation methods,
- an EESC opinion be sought on the ‘analysis of consequences’ submitted to the European Parliament and the Council,
- the EESC be recognised as an important partner for organising consultations and follow up with the civil societies of the partner countries, in cooperation with the EU delegations,
- the EESC act as a facilitator to ensure that the consultation with civil society regarding the impact assessment be coordinated with the future implementation of the follow-up mechanisms laid down in agreements,
- the *ex-post* evaluation take account of the interim reports of the monitoring committee.

2. Sustainability impact assessments: a necessary tool but in need of an overhaul

2.1 In its Communication on Trade, Growth and World Affairs ⁽¹⁾, the European Commission states that it wishes to intensify its consultations with stakeholders and civil society with a view to assessing the impact of trade policies on sustainable development more effectively. Aware of the pioneering role played by DG Trade through the introduction of sustainability impact assessments (SIAs), the EESC is pleased that the Commission is reviving the discussions to examine the achievements of the method but also to seek to overcome its limitations and weaknesses. In this exploratory opinion, the EESC focuses on proposals intended to improve the system’s performance and to clarify its aims. It seeks to respond to questioning as to the social and political purpose of SIAs.

2.2 Following the entry into force of the Lisbon Treaty, the European Parliament’s powers have increased and it now stands on an equal footing with the Council when it comes to trade

policy. For the first ratification of an agreement since the Treaty’s entry into force, that with South Korea in March 2011, stakeholders, in sensitive sectors in particular, have been able to put the significance of this new power on the part of MEPs to the test. It has therefore become necessary to bring the previous method for holding dialogue with civil society into line with this institutional change.

2.3 The EESC notes with great interest the modifications to the system proposed in the aforementioned recent Commission Communication. The SIA linked to the consultation with civil society remains in place, with a formal commitment to carry it out during the negotiations and to indicate the results in a ‘positioning paper’. A new stage is added to it. The Commission says that, in order to monitor the impact of trade agreements, they will be subject to *ex-post* evaluations. Finally, a key stage of the political debate is added, after the negotiations and before the signing of the agreement, at which the Commission prepares an ‘analysis of consequences’ to be forwarded to Parliament and the Council. The SIA should no longer be seen merely as a tool for the negotiation stage. It should form part of the cycle of drawing up, implementation and follow-up of policies. The proposals contained in this opinion for overhauling the system are therefore topical and significant.

2.4 In the absence of a positive conclusion at multilateral level, bilateral or regional free trade agreements (FTAs) are including more and more aspects relating to more ‘sustainable’ governance of world trade, both by means of a more complete cycle of evaluation (*ex-ante* and *ex-post*) and through their content, i.e. sustainable development chapters including environmental and social commitments.

2.5 There is already a structured dialogue ⁽²⁾ between DG Trade and civil society which includes information and exchange sessions at various stages of trade negotiations. This meets an obligation to consult both European civil society organisations and organisations from partner countries for the drawing up of SIAs by consultants. The EESC would like to be more closely involved in this large-scale experiment in civil dialogue.

2.6 At the current stage of development or resumption of bilateral or regional trade negotiations, this information/consultation formula raises hopes, but is also subject to criticism ⁽³⁾. In SIAs, the widespread use of mathematical simulation models, such as the calculable general equilibrium models designed to assess the effectiveness rather than the social and environmental impact of macroeconomic policies, tends to give considerable weight to economic assessments. The results of modelling presented in SIAs are often intuitive, without any real informative value for negotiators or stakeholders, since they do not indicate significant or sufficiently targeted impacts. As

⁽¹⁾ COM(2010) 612, 9.11.2010.

⁽²⁾ DG Trade Civil Society Dialogue. Report of activities 2010 http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145785.pdf.

⁽³⁾ 2010 final report on the public consultation on the future EU trade policy http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146556.pdf.

a result of the absence or shortage of reliable statistics in the informal sector, the SIA does not take sufficient account of the possible impact on this sector.

2.7 In terms of procedure, various studies⁽⁴⁾ reveal the limitations in the drawing up of these SIAs and the organisation of consultations. Because they come too late in the negotiation process, SIAs do not make it possible to genuinely influence its content or to make those concerned by the most problematic effects aware thereof in enough time. There is a lack of clear rules regarding the identification and choice of key players consulted during the procedure.

2.8 In the event that the values of certain social indicators change considerably as a result of the effects of the economic and financial crisis, the initial study should be supplemented or amended to update the data and scenarios used and to make the suggested accompanying measures more relevant.

3. Incorporating SIAs into a coherent evaluation cycle

3.1 Since SIAs have not been satisfactory, providing information too late and giving little new information for negotiations, with no clear political involvement or appropriate consultations, the EESC proposes that a dynamic approach be taken to their overhaul. Firstly, SIAs should be geared towards detecting particular risks (environmental and social) and evaluating and monitoring these risks over time. The true added value of SIAs lies in the provision of this information on anticipated and observed risks.

3.2 The evaluation is therefore *ex ante* (anticipated risks), *in itinere* (development of risks) and also *ex post* (observed impact). The SIA is therefore more than just a method or a diagnostic tool: it must be dynamic in nature. It must no longer be seen as a static tool for calculating the arithmetical value of the three pillars, but as a process of co-producing and sharing targeted information. This information can be used as a 'signal' or warning, to be brought to the attention of civil society and the negotiators, who have a monitoring duty.

3.3 In order to be effective, the SIA process must form part of a coherent cycle of evaluation of EU policies, the common aim of which is sustainable development.

⁽⁴⁾ Anne Chetaille (2005). Studies on the impact of trade agreements on sustainable development: situation and prospects. Gret, Paris.
Ruddy and Hilty (2007). Impact assessment and policy learning in the European Commission. Sciencedirect.
Pascal Gabriel (2008). Environmental problems, employment and social cohesion. An examination of political developments at international level. Syndex/DG Emploi.
Ekins and Voituriez (2009). Trade, Globalisation and Sustainability Impact Assessment, Earthscan, London.

3.3.1 There must firstly be coherence between the three pillars, with the necessary strengthening of the environmental and climate dimension, but also, in relation to the social dimension, explicit account must be taken of human rights and decent working conditions⁽⁵⁾.

3.3.2 There must then be coherence between the policies and accompanying measures laid down and the risks and opportunities identified. The recommendations must involve the widest possible range of EU policies and measures (Structural Funds and specific programmes, development aid, the European Globalisation Adjustment Fund, the European Instrument for Democracy and Human Rights – EIDHR, EIB funding). In turn, these instruments must take account of SIAs in their programming.

3.3.3 Finally, there must be coherence between the different evaluations established by the Commission. In particular, the link between the impact assessment carried out prior to the negotiation mandate and the SIA must be clarified. The mandate of an SIA may if necessary be adapted and revised according to whether it has been preceded by an ambitious prior assessment or a modest and incomplete prior assessment of social and environmental risks.

3.4 Members of the European Parliament, representatives of the Member States and civil society should be involved throughout the process, much more so than is currently the case. The 'analysis of consequences' of the trade agreement drawn up by the Commission for forwarding to the European Parliament and the Council has a strategic dimension in the cycle and the institutions' consideration of the analysis makes it possible to focus the civil dialogue on a key moment in the political debate.

3.5 SIAs should become widespread and be adapted to current and future mandates for negotiation of free trade agreements with our strategic economic partners (United States, China, Russia, Japan, India, Brazil), covering aspects relating to the UN protocol on economic and social rights as well as intellectual property rights, public procurement codes and investment agreements.

4. Increasing the relevance of the information provided

4.1 Communicating results to negotiators at an early stage in the discussions is crucial if potential positive or negative consequences are truly going to be taken into account. Assessments should remain accessible to all stakeholders and partner countries at all stages. Although the time period for carrying out the assessment is now nine months, this time must be organised in such a way as to strengthen the consultation process in the partner countries.

⁽⁵⁾ Information report, Decent work and sustainable development in the Mediterranean region, EESC, September 2010.

4.2 In response to the criticisms regarding the usefulness of the SIA, the general points and the qualitative measurement of aggregated effects (economic versus environmental versus social) should be removed. Priority should be given to the targeting of specific environmental and social risks, as well as potential in these fields, in addition to the necessary assessment of economic opportunities which, according to most models, are positive. In fact, it is because of them that the agreements in question are being negotiated, following the impact assessment prior to the mandate.

4.3 Environmental and social risks should be assessed using the widest possible range of methods available, both quantitative methods and more qualitative methods, explicitly intended to provide information on the non-economic aspects of the commercial policy in question, such as impact on gender equality, food security or food safety. In particular, more ecological avenues warrant further development, such as life cycle analyses, carbon footprint and impact on diversity. Another dimension is the use of qualitative methods to assess the social consequences for the targeted sectors in terms of employment and decent work.

4.4 In this regard, the Commission should explicitly request specialists on social and/or environmental issues in the specifications of the call for tenders. We strongly recommend that experts from partner countries and those of the ILO, WHO or FAO, as appropriate, be more closely involved, particularly in the case of economies with a large proportion of informal activity. Furthermore, the consultants must carry out an analysis of the working conditions for the legal and medical professions, providing information on the legal protection of their interests and physical integrity.

4.5 Intra-European impact must not be left out, particularly in the case of SIAs which would involve strategic partners, especially in relation to employment or restructuring. The involvement of social partners is crucial in this area, including when it comes to tackling any possible tensions between social and environmental objectives with a view to a fair transition and green and inclusive growth. Sectoral information must be systematically sought from the EESC's Consultative Commission on Industrial Change and those European sectoral social dialogue committees whose agendas include trade. Direct discussions with social partners will give the results of impact assessments more legitimacy.

4.6 Furthermore, voluntary and/or negotiated corporate social responsibility (CSR) commitments by multinational companies, as well as international framework agreements (IFAs), should gradually become aspects feeding information into SIAs.

4.7 The financial and human resources dedicated to strengthening the capacities of partner countries (in particular environmental and social expertise and consultation mechanisms) are crucial to the quality of SIAs and the launch

of the monitoring group. Coordination in this area between DG Development and Cooperation and DG Trade must be enhanced and developed, to take into account the planning of the new European External Action Service.

4.8 The impact of the FTA on countries outside of the trade agreement and on the outermost regions should be incorporated progressively with the assistance of local experts and civil society, with a view to assessing the ecological and social consequences of the change in trade flows.

4.9 This useful diagnostic method for negotiators and future assessors should be reflected in a revision of the practical guide for SIAs drawn up by the Commission in 2006 ⁽⁶⁾. Experts from DG Development and Cooperation, DG Employment, DG Environment, DG Climate and DG SANCO should be closely involved in this revision and its implementation.

5. Reviewing the process for participation by civil society

5.1 Many of these recommendations respond to the wishes of contributors who expressed a critical opinion during the public consultation launched by DG Trade in 2010 on the new trade policy. Just as SIAs should form part of a coherent cycle of evaluation of policies, the consultation should be revamped and made more dynamic, as a process catering for the various stages of the cycle, and should be based on a series of best practices.

5.2 In the context of institutional consultations, the EESC could have more prior involvement in the drawing up of specific SIAs, producing opinions on the choice of social and environmental indicators, identifying accompanying measures and proposing the most suitable consultation mechanisms.

5.3 In the 'analysis of consequences' to be communicated to the European Parliament, civil society expects the Commission to report on the way the conclusions of SIAs have been taken into account by negotiators and the modifications made to certain chapters in order to prevent the problems identified.

5.4 The initial assessment should be incorporated into an early evaluation and monitoring system (two to three years) making it possible, in close cooperation with civil society, to clarify, and if necessary, to review, the impacts observed and to identify new risks. The monitoring and evaluation should focus on the risks and any changes in them over time, as well as the effectiveness of accompanying measures.

⁽⁶⁾ Handbook for trade SIA, DG Trade: http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127974.pdf.

5.5 For the purposes of the new assessment cycle incorporating the SIA, the EESC has a network of established relations with broad sections of the civil societies of non-EU countries. It will therefore be able to act as an interface for the consultations. It already has experience of organising dialogue with the civil societies of the partner countries at various stages of negotiations.

5.6 The EESC's permanent geographical groups for exchange with the civil societies of non-EU countries are a key asset when it comes to laying the foundations for follow-up committees involving all elements of civil society. With their experience of dialogue and confrontation on different aspects of association or partnership agreements, these EESC working bodies are an ideal forum for debating the balances achieved in trade agreements. Each joint structure provides geographically-based, on-the-ground expertise regarding the empirical links between international trade and sustainable development.

5.7 The follow-up mechanism contained in the Cariforum agreement is a response to the need for monitoring of the overall agreement, involving a joint examination by civil societies of its application. In the case of South Korea, it makes it possible to monitor the agreement's sustainable development chapter. These follow-up mechanisms considerably

enhance the credibility of European commitments in the area of sustainable development. The quality of the SIA will dictate the subsequent validity of the monitoring and the parties' faith in the consultation process. The EESC therefore reaffirms its belief that a monitoring committee should be provided for in all trade agreements.

5.8 The EESC supports DG Commerce's cooperative approach aimed at including a 'sustainable development' chapter, containing social and environmental commitments, in each agreement. The SIA contributes to this incentive-based approach by indicating, in an empirical and practical fashion, the opportunities offered by trade in this field, as well as the transitional provisions and adjustment, compensation and safeguard measures required to prevent or reduce social and environmental risks, in accordance with the terms of the agreement.

5.9 As the hub for the monitoring of the Cariforum Agreement, the EESC will work on the basis of links previously developed with civil society. It will also build a partnership with South Korean civil society to oversee the monitoring mechanisms to be put in place. With a view to reviewing the participatory process, lessons should be drawn from the first ex-post assessment of the agreement with Chile.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on ‘Agricultural machinery, construction and handling equipment: what is the best way out of the crisis?’ (own-initiative opinion)

(2011/C 218/04)

Rapporteur: **Mr RANOCCHIARI**

Co-rapporteur: **Mr PESCI**

On 15 July 2010, the European Economic and Social Committee acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Agricultural machinery, construction and handling equipment: what is the best way out of the crisis?

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 151 votes to 3 with 8 abstentions.

1. Conclusions and recommendations

1.1 The European construction equipment and agricultural machinery industries have been hit extremely hard by the crisis at a time when there is a major change in global demand. The sector is nevertheless part of a very competitive technologically advanced industry.

However, there are a number of actions needed at EU level to ensure the sustainability and competitiveness of the sector avoiding in the longer term the overcapacity of the EU production:

- a legal framework that does not limit the ability of manufacturers to innovate and develop equipment to reflect customers' requirements;
- a level playing field within Europe, through effective market supervision: Market surveillance and customs authorities should effectively enforce Regulation 765/2008 and tighten controls on the European market;
- product legislation and trade policy that ensures free access to global markets;
- European legislation that takes account of the relatively diminishing role of the European markets. The centre of the world market is increasingly shifting to South America and Asia, thus all necessary measures, including a reduction of red tape and the promotion of voluntary measures by the industry, should be envisaged to keep European manufacturers' factory sites in the EU;
- harmonisation - within Europe and globally - of the road safety requirements and environmental protection;
- improved working conditions and implementing measures throughout the EU to avoid future overcapacities and to

drive forward the development of new products and new ideas on work organisation based on the knowledge of all stakeholders;

- a programme of funding and incentives to support SMEs' competitiveness.

1.2 Following the hearing held on 11 November 2010 in Bologna as part of the EIMA (International Agricultural Machinery Exhibition) attended by many stakeholders, further and more detailed recommendations are addressed in the subsequent chapters.

2. Background to the opinion

2.1 The European agricultural machinery and construction equipment industry provides technical solutions to efficiently satisfy such basic human needs as feeding the growing world population, providing housing and ensuring the necessary infrastructure.

2.2 High costs for land in Europe result in European demand for highly efficient and innovative solutions for farming and construction, making the European industry global technology leaders.

2.3 While demand in Europe is stagnating, the markets in Asia, Latin-America, Africa and CIS countries have been growing and will continue to grow quickly. Other global players have therefore emerged and are becoming competitive, even outside their home markets.

2.4 The global financial crisis has hit both sectors considerably. When the housing bubble burst, it led to a sharp downturn in the construction equipment sector in the second half of 2008. A drastic cut in investments in the construction sector ensued, with a 42 % drop in turnover in 2009. This cut was mainly due to a lack of financing possibilities for customers and decreased construction activity.

2.5 The effects of the crisis were felt later in the agricultural machinery sector and although the fall in 2009 was less pronounced (– 22 %), the recovery did not start in 2010 as it did in other sectors of industry, and the drop in turnover for the whole of 2010 is estimated to be 9 %. The main driver was once more the lack of finance possibilities for customers, together with uncertainty.

2.6 There is a growing shift in product demand. While markets outside Europe with far less stringent legal requirements are growing there is a decreasing demand for EU products that fulfil ever tougher safety and environmental legislation. This increases the already complex product portfolio. It also leads to a shift in production sites, with products aimed at non-EU markets being produced closer to the source of demand, resulting in EU job losses.

3. Agricultural and construction machinery: strategic importance of the sector, upcoming challenges, structure of the market

3.1 *Small quantities, high product diversity – strong dependence on suppliers*

There are many similarities between the two sectors in terms of the scale and production range of their manufacturers.

There are large multinational companies producing wide ranges of products covering the most widely-used types of equipment such as agricultural tractors, excavators or wheeled loaders.

At the same time, there are manufacturers ranging from sizeable regional manufacturers right down to SMEs that cover the most common-place types of equipment but find a way to survive by supplying the market with highly specialised niche products.

The range of specialisation and variety of products offered on the market is often disproportionate to the actual size of the manufacturer. It is quite usual to find manufacturers with up to 200 different models, offering equipment designed for very specific purposes and selling less than 1 000 items a year; many others survive selling series of less than 100 items a year for each model.

3.2 *Employment and production*

3.2.1 The agricultural machinery market closely mirrors the trends in the agricultural sector.

Without the latest machines, the modern, efficient and competitive agricultural sector would not exist. Today more than 10 million people work in agriculture. While the number of workers in this sector is decreasing, it is still possible to identify major differences between the EU 15 and the ‘new’ Member States which joined the EU after 2004.

Within the EU 15, ‘only’ 4 % of the workers are employed in this sector, whereas they represent 13.4 % of the total work force in the 12 new Member States.

This is why in the EESC opinion a strong CAP is necessary for farmers but also for industry to keep on with investments in R&D meeting at once legislations constraints and buyers demand.

In the agricultural machinery sector, there are some 4 500 manufacturers that generated a turnover of around EUR 28 billion in 2008. 135 000 people work in this sector and a further 125 000 people work in distribution and maintenance.

Two-thirds of the EU 27 production is concentrated in Germany, Italy, France, Spain and the UK, whereas the ‘new’ 12 as a whole account for only 7 % of EU machinery production.

3.2.2 The construction sector in the EU employs 7.1 % of the active population.

Production of construction equipment follows the same pattern as agricultural machinery with Italy, Germany, France, Spain and the UK accounting for almost three quarters of total European production. In all, there are approximately 1 200 companies in Europe with an overall turnover of EUR 31 billion in 2008, which fell to 18 billion in 2009. This represents a 42 % decrease.

This industry employed 160 000 workers directly. Indirectly it is estimated that in the supply chain, distribution and maintenance network another 450 000 jobs depended on the sector. In 2010, according to industry estimates, direct jobs dropped by 35 % and the indirect ones by 20 %.

However, there is a clear lack of skilled and young personnel. A labour survey of Technology Industries of Finland evidences that the difficulties to recruit qualified staff have increased. The shortage concerns professions that have topped the list for over ten years: welders, metal processors, mechanics and engineers.

3.3 *Dependency on suppliers of components and engines*

The European manufacturers in both sectors have always been leading in the global context with regard to advanced technology and quality of the equipment offered. Advanced technology, ranging from highly automated functions and high resolution GPS for precision farming, to continuous variable transmissions and electronics needs to be state of the art in these sectors.

On the other hand, the need to perform under extreme conditions (dust, mud, ice, extreme heat and cold) means that off-the-shelf components will not meet the requirements or provide the specific further development needed.

There is a growing concern in the industry that the necessary European partners in the component sector could be not available in the future, to ensure via common development the technology leadership.

Engines are the key component for product development and compliance with legislation but, unlike in the car sector, only the large multinational companies have the facilities to produce engines.

The number of independent engine manufacturers is decreasing and they occupy a marginal position on the market; the majority of equipment manufacturers frequently face the challenge of depending on engine suppliers that are controlled by their competitors.

3.4 Importance of distribution and maintenance network

The dealer and maintenance network is one of the decisive factors for a manufacturer's success. Machines of such high complexity carry risks for safety and health if not properly used and maintained. They require a well-trained distribution system to assist in the selection of the most appropriate technology and provide high-quality maintenance and repair to ensure fast and reliable service needed for the complex equipment, the high performance expectations of the customers and for sectors where climate conditions, seasonal peaks and strict deadlines are factors.

3.5 The effect of economic crisis on growth and production

The economic crisis has hit both sectors very hard and at a moment when the global demand was on a very high level. For construction equipment the demand broke down globally in the 4th quarter of 2008. In 2009 the total sales of European manufacturers decreased by 42 %, leading to drastic stocks and a very low usage of capacities. For the full year 2010, as said before, a further decrease of 9 % was registered, while at the end of 2010 demand in Asia picked up again.

In the agricultural machinery sector the effects of the crisis started later with farming being less dependent from the general economic climate. 2009 however sales dropped by 22 % and by another 9 % in 2010.

In both sectors a single digit increase in 2011 is expected, far less than needed to return to pre-crisis times.

The main limiting factor during the crisis has been the lack of credit availability – mainly for customers in order to finance new machines, but also for manufacturers. Additionally of course also the lack of activity especially in the construction sector has limited demand for new equipment. Demand in both sectors showed to be very volatile.

4. Difficulties and challenges to face after the crisis

The economic crisis has evidenced some peculiarities of both sectors and led to a very difficult situation for which an intervention is needed at political level.

4.1 Insufficiency of suppliers and know how

It is important to emphasise that the construction equipment industry is currently facing substantial and fundamental changes.

The focus of the world market has been shifting increasingly to South America and Asia.

Whereas 20 % of the world's overall demand for construction equipment was coming from Europe in 2005, the latter will only account for 14 % of the total worldwide demand in 2014 ⁽¹⁾.

The most spectacular change involves China and India. It is expected that Chinese demand for construction equipment will represent 34 % of global demand in 2014, compared with only 18 % in 2005, which means demand will have doubled over 9 years.

The consequences of such a change are of paramount importance, since demand from the USA and EU together will represent only 29 % of global demand.

As an effect of the crisis, the trend to massively move production closer to the new markets outside Europe has significantly accelerated. As a result, the number of key component suppliers in Europe has also dramatically decreased. This concerns not only a shift in the production sites but also on the necessary know how.

As the needs and specifications of the foreign markets differ from the European ones, there is a growing concern about a lack of affordable European key component suppliers that, in the future, could deliver according to the European needs.

Another issue is the availability of steel in a recovering global economy where price increases and protectionist measures would have a negative effect on this sector as pre-crisis figures demonstrate.

4.2 Effects on the employment: aging labour forces, lack of skilled personnel and brain drain

The mechanical engineering industry employs 3.6 million people in Europe ⁽²⁾.

Of these, 10 % work in the agricultural machinery and construction equipment industries. In general it has an aging work force - only 20.1 % of the workers are less than 30 years old, while the average in the other non financial goods sectors is around 1 in 4 workers.

On the user side, farmers are also facing the same problems: only 7 % of all European farmers are less than 35 years old. Agriculture and construction attract fewer people than others, since the work is harder and pays less than many other jobs in Europe.

⁽¹⁾ Data from Off Highway Research: www.offhighway.co.uk.

⁽²⁾ Eurostat data: European Business Facts and Figures 2009 edition.

The poor public image of the industry, which results in people not recognising its importance for the whole community, the shortage of skilled workers and engineers, the mismatch of skills needs and available skills on labour market; the diversity and disparity of qualifications nomenclatures and national certificates for various degrees; the absence of elite education in natural and engineering sciences ... all these features the sector presented were worsened by economic crisis.

The industry has tried to limit job cuts as far as possible. However, as said before, the workforce employed by the construction equipment industry has been reduced by 35 % compared to 2008 ⁽³⁾.

The crisis has also resulted in a brain drain directed to the Far East and South America, where markets are more flourishing and where the crisis had less dramatic effects.

5. Actions necessary at EU level

5.1 Ensure that measures to combat unfair competition are enforced

Importing non-compliant construction equipment into the EU and its sale and use, remains a major problem for the European construction equipment industry. Equipment placed on the EU market for the first time must comply with all valid safety and environmental requirements. Machinery which does not fulfil these requirements is non-compliant and Member States should prevent it from being placed on the EU market.

It is a source of unfair competition and compromises bona fide suppliers' ability to undertake R&D activities. This, in turn, threatens the competitiveness of the European construction equipment industry and the jobs it provides. Non-compliant machines are more likely to cause accidents and they frequently fail to meet the environmental standards demanded by the UE.

Manufacturers complying with the EU legislation are currently confronted with and challenged by the products placed on the EU market under unfair conditions at a fraction of the market price for compliant products. Authorities lack the means and resources to tackle this situation, while legislation is not always clear in its defence of legal products.

More and more non-compliant machines are illegally placed on the EU market without any effective action by market surveillance and customs authorities, although stricter legislation entered into force on 1st. January 2010 (Regulation 765/2008).

Recommendation: The EESC calls on the European Commission and Member States authorities to take all the necessary steps to ensure fair competition within the EU market and to guarantee a level playing field for manufacturers who need to compete at international level.

⁽³⁾ Data from CECE (Committee for European Construction Equipment).

5.2 The right decisions must be taken to improve the environment

As with the situation in the automotive sector, one of the greatest challenges for both sectors is the legislation governing emissions from mobile machines. Compared with the automotive sector, the unit compliance costs of mobile machines are extremely high, as production and sales are much lower and the number of different models is much higher.

With the next emission stage that starts in 2011(IIIB) and the following stage already planned for 2014 (Stage IV), the key pollutants will be reduced by more than 90 % compared to existing levels. The modifications will affect the engines, but also impose a fundamental re-design for the whole machine.

The technologies imposed by these emission levels require the use of ultra-low sulphur fuels which are difficult to obtain in Europe for the off-road sector and definitely not available outside Europe. This will prevent sales outside Europe for both new and used equipment.

As a crisis relief measure, the industry has requested a legislative instrument allowing an increase of the engine quantities already foreseen under the flexibility scheme of the existing directives. The consequent cost-saving for the sector would be considerable at the cost of a one-off increase in emissions of around 0.5 % The European Commission has supported the request and presented two proposals amending the relevant directives. These proposals are under consideration in the Council and Parliament. However, progress on this subject is too slow and could reduce its planned positive economic effect.

The EESC recommends that the additional flexibility provisions for the next stage of the legislation on non-road mobile machine emissions and a similar proposal for agricultural tractors are adopted as quickly as possible.

Reduction in soot and NOx emissions in the future will require special technologies resulting in increased fuel consumption and thus CO₂ emissions. Efforts by manufacturers have prevented a real increase in fuel consumption by improving the efficiency of the whole machine. Any new legislation on carbon limits/reduction should be in accordance with the current emissions legislation and should leave enough lead time after the end of the current emission stages before it is introduced.

Recommendation: Before considering developing more stringent or new legislation applying to the same products, an impact assessment should be undertaken at EU level, taking account of the possible negative consequences for the industry's competitiveness on a global market and the possible marginal improvements in practice for these machines.

5.3 *Advanced age of equipment in use – scrapping scheme for mobile machines needed*

The machinery used in agriculture and construction has a long life expectancy. The average lifetime of tractors is more than 15 years. The constant improvement to the environmental performance of new equipment therefore has only a limited and slow effect on the overall environmental performance of the equipment in use. Faster progress could best be achieved by incentives to remove very old and polluting equipment from the market. This approach also has clear advantages compared with retrofitting old equipment with after-treatment systems. The adaptation of the old equipment with filters creates many additional challenges and inefficiencies as regards safety and performance.

The EESC recommends a scrapping scheme which would be a suitable solution for tackling the problem of old and polluting machines that will contribute to a cleaner environment and safer working conditions.

The EESC considers any exhaust retrofit scheme to be an incorrect solution to the problem of polluting equipment used in built-up areas. Far from solving the problem, these systems keep noisy and unsafe machines in operation and possibly even increase the risks as a result of incompetent installation.

The EESC also recommends developing harmonised requirements for retrofitting after treatment systems, not only because of their exhaust reduction potential but also for dealing with the risks they create by being fitted on agricultural and construction equipment.

5.4 *The CO₂ challenge can be up taken by the industry*

Similar to the situation in the on-road sector, the main contributor to the sector's CO₂ emissions is fuel consumption. The possibilities for reducing greenhouse gas emissions need to be assessed in terms of the equipment's specific work-performance and not simply the fuel consumption per km, as is the case in the car sector.

Considerable improvements have been achieved already in the past years with more efficient machines. More and more the life-time costs, of which fuel costs are a large portion, have become an important factor for customers making the buying-decision.

However, to achieve the optimal reduction of CO₂ optimisation should not only focus on the engine as the power source but on the whole machine, the applications and the process, besides the operational efficiency and the possible use of alternative low-carbon energy sources.

The EESC calls on the EU institutions and Member State representatives to support a market-driven and comprehensive approach to reduce CO₂ emissions from mobile machines. As one size does not fit all, the development of appropriate solutions for the most emitting types of machines (tractors, combines etc.) measuring the overall machine efficiency (i.e. fuel consumption per ton of grain harvested or km of road paved) would be a pragmatic and sound solution.

5.5 *Harmonisation is the key – within Europe and globally- both for road safety and environment*

With the markets shifting away from Europe, the importance of globally harmonised product legislation and standardisation is increasing rapidly. This also applies to the harmonisation of road safety requirements, which is currently missing in construction equipments and some agricultural vehicles.

In addition, European industry faces the challenge of European requirements becoming ever stricter compared to the rest of the world, making the European versions of the machines either too expensive or not compatible.

When it comes to environmental protection, for instance, the impact of each decision at EU level should be carefully considered before any legislation is adopted and implemented in the EU.

The agricultural and construction machinery sector has been helping to safeguard the environment by reducing the emissions of its machines, as required by Directive 97/68/EC for NRMM (non road mobile machinery) and by directive 2000/25/EC for tractors. This will lead to a considerable reduction of particulates (97 %), NO_x (96 %) and CO (85 %).

The same efforts have been made by the industry on noise emissions: the industry has worked for 10 years to comply with the relevant legislation on noise emissions for 22 construction machines.

Moreover, international standards applying to the life cycle of machines are already in place and standards on recycling schemes for earth moving equipment have been promoted by the industry itself.

To ensure the future competitiveness of European products, it is therefore of the utmost importance that laws and regulations be made consistent at global level.

The EESC calls upon the EU institutions and Member State representatives to support, participate and act on the development of global standards. For this purpose the UNECE⁽⁴⁾ seems the right laboratory where to develop such standards.

5.6 *Working conditions and social dialogue in the sector*

Both the agricultural machinery and construction machinery sectors have many small and medium sized players and therefore require special arrangements regarding social dialogue. Staff representation is less important and possibilities for the transnational exchange of information are fewer than in sectors where European Works Councils exist. Nevertheless, the various companies of the sector show certain unity and need

⁽⁴⁾ United Nations Economic Commission for Europe (Geneva, www.unece.org).

organised coordination and exchange in the same manner. Thus, an upgrading of the dialogue between companies and workers is to be achieved.

Precarious work is emerging in the metalworking sectors as well as in others. Consequences of this are, among others, poor ongoing professional training, and a permanent threat of losing experienced and skilled workers to other sectors. Working conditions are also adversely affected by this type of employment.

Recommendation: The EC should promote the launch of a sector analysis specifically focusing on the level of working conditions. We do also recommend implementing actions for improving working conditions throughout the EU. Finally, it would be of paramount importance to set up measures for avoiding future overcapacities, as those which occurred during the economic crisis, and give new impetus to the development of new products and new ideas on work organisation based on the knowledge of all stakeholders

5.7 *Young and skilled labour forces should be maintained in Europe*

The lack of skilled personnel, ageing labour force, brain drain directed to other continents ... those are some of the problems affecting the agricultural machinery and construction equipment sector when it comes to employment. It is more and more difficult to attract young and skilled people to this sector. Industry and institutions should continue making the necessary investments in training, educations, lifelong learning, as this is a core sector for the European industry.

Without top class education and young skills there is no future, and technical innovation needs highly educated and creative engineers. Programmes should be implemented at different

levels targeting workers promoting education and training and their utility to them, but also specifying the added-value and benefits employers reap when investing in workers' and their competences. Wider acceptance of such programmes will be achieved through the stakeholders in the social dialogue.

Recommendation: Member States should further support the industry in relation to education and training, lifelong learning and skills development relating to mechanical engineering. Supported programmes for reconversion of workers in excess, before the situation is occurred, is crucial for the future.

5.8 *SMEs should remain at the core of innovation*

As the recently issued DG Enterprise Communication on 'An industrial policy for the globalisation era' duly pointed out, one of the main Challenges and Policy Responses for stimulating SMEs in the different sectors (including the Construction and Agricultural machinery sectors) is access to finance, which is still a bottleneck.

While SMEs are often those introducing innovation to the market, the possibility of investing in innovation has been undermined by cuts in access to finance. In all the Member States, access to finance became more difficult during the financial and economic crisis. In particular, SMEs of this sector experienced tightening credit conditions. Most governments have therefore introduced or expanded public guarantee schemes or provided direct state aid. However this is not sufficient.

We therefore recommend Member States and the European Commission to support SMEs of the agricultural and construction machinery sectors with projects and funds addressing their needs.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on ‘The external dimension of European industrial policy — is the EU’s trade policy really taking the interests of European industry into account?’ (own-initiative opinion)

(2011/C 218/05)

Rapporteur: **Mr PEZZINI**

Co-rapporteur: **Mr PHILIPPE**

On 16 September 2010, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The external dimension of European industrial policy – is the EU’s trade policy really taking the interests of European industry into account?

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 4 April 2011. The rapporteur was Mr Pezzini and the co-rapporteur was Mr Philippe.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 106 votes to two with three abstentions.

1. Conclusions and recommendations

1.1 The EESC entirely agrees with the Hungarian EU presidency’s concern that ‘a transformation of incredible speed and depth is happening throughout the world; Europe must be able to stand in a much stronger global competition than ever before’.

1.2 The Committee calls upon the EU urgently to adopt jointly-agreed, consistent measures to define an integrated strategy for the external dimension of industrial policy which ensures a leading role for the EU in the area of trade and a common approach in multilateral and bilateral trade agreements.

1.3 The EESC believes that it is crucial to have equal rules for all players, so they can compete under fair conditions, with sustainable, competitive economic and social growth in full accordance with international economic, social and environmental standards, bearing in mind that, by 2015, 90 % of world growth will be generated outside of Europe, a third of which in China alone. Therefore, EU trade policy must also support EU development policy and must take into account the inequalities between trading blocks and within society, especially in developing nations.

1.4 The Committee considers the following to be necessary:

— to establish a common framework for ‘enhanced European governance’ in order to harness the potential of the Single Market with a view to boosting European industry internationally;

— to speak with one voice at international level;

— to establish consistent action on the part of the Member States.

1.5 The Committee believes that the lengthy task of implementing the Single Market, which began in 1988, must be pursued and stepped up, including through the creation of European contract law for companies, based on a Regulation, containing a new, advanced scheme which companies can draw on, on an optional basis, in their cross-border contracts.

1.6 The Committee believes that it is possible for European industry to remain a world leader, not just through innovation, research and the application of new technologies, but by creating effective infrastructures and calling for smart regulation on the world market to promote clean, sustainable production and distribution methods.

1.7 The Committee believes that particular attention should be paid to actions at EU, national and regional levels, to education and the ongoing training of human resources and to the dissemination of knowledge.

1.8 The EESC recommends that the interests of European industry should always be taken into account and that they should be defended forcefully during negotiations using, in a clear, transparent and diversified manner, all available legislative instruments, including trade agreements.

1.9 The EESC stresses the importance of providing companies with a smart, predictable and, above all, less burdensome legislative framework, and a better entrepreneurial environment for SMEs.

1.10 It is in the interests of European companies that, with clear and transparent protection, the following should be included in bilateral agreements and discussions:

- social standards, providing decent working conditions in accordance with international conventions;
- environmental protection standards;
- limits on the use of environmental resources;
- energy saving and climate protection standards;
- the widespread use of the ecolabel;
- a culture of EMAS certification;
- compliance with technical regulatory standards;
- protection of industrial and intellectual property;
- effective instruments for trade protection and for access to markets and strategic raw materials with regard to resource management concerns from civil society on both sides;
- initiatives to support the activities of SMEs in third countries;
- systems of social dialogue and monitoring by civil society, including through *ex ante* and *ex post* impact assessments; and
- a high level of consumer protection.

1.11 The EESC agrees with the Brussels European Council of December 2010 on the need 'to tackle more efficiently challenges and seize opportunities linked to globalisation by carrying out impact assessments before the launch of trade negotiations ... to ensure open markets, fair trade and competition conditions. EU trade policy should in any case take into account the unequal conditions under which our industry often has to compete'.

1.12 The Committee calls for a concrete follow-up to the need expressed by the EU Council to 'further enhance the coherence and complementarity between its internal and external policies' ⁽¹⁾.

1.13 The Committee believes that the EU must build on its competitive advantages in order to defend its interests in a more effective and strategic manner and in order to increase the international credibility of the European economic and social model.

⁽¹⁾ Paragraph a) of Annex I of the conclusions of the European Council of 16 September 2010.

2. Introduction

2.1 Industry as a whole, including the specialised services on which industry depends and which depend on industry amounts to nearly half of the EU's GDP: about 47 %.

2.2 Industry can target its outlay and thereby stimulate the growth of the entire economy, boosting:

- EU productivity;
- the export of manufactured goods ⁽²⁾;
- technological developments: over 80 % of private-sector expenditure in RTD in the EU is funded by the manufacturing sector.

2.3 In order to counter deindustrialisation, all EU policies must be harnessed to meet the objective of supporting industry's potential for growth and competitiveness, primarily by cultivating its external dimension.

2.4 The aim is not to frame an isolated policy but rather to mainstream the competitiveness of industry, and related services, into all EU policies, beginning with the common trade policy.

2.5 The opening-up of markets is certainly the prerequisite for an upswing in employment. However, the EU must update its strategy to better support corporate internationalisation, in a context of symmetry and reciprocity, with equal rules for all players.

2.6 A consistent approach would entail tackling a number of sectors, bringing considerable added value:

- The EU's future trade policy should be integrated into the Europe 2020 strategy. A targeted and effective set of rules must therefore be established, in order to:
 - support open and fair markets, while demanding compliance with equal rules by emerging countries and protecting the requirements of the least developed countries;
 - protect industrial and intellectual property;
 - create new, more integrated fields of knowledge;
 - combat counterfeiting;
 - defend and raise awareness of the value of the social market economy ⁽³⁾;

⁽²⁾ Approximately 75% of EU exports (source: DG Enterprise).

⁽³⁾ See Article 3 of the Lisbon Treaty.

- offer and demand a high level of protection and improvement of the environment and
 - promote the euro as an international trade currency.
- The opening-up of the global market and the resulting reciprocity of tariffs has been severely limited by non-tariff barriers: 'The EU must step up our efforts to enforce our rights under bilateral and multilateral agreements to prise open markets that are illegally closed' ⁽⁴⁾ in order to ensure symmetry, reciprocity and equal rules.
- Initiatives supporting the internationalisation of SMEs should be reviewed and upgraded. SMEs currently send less than 15 % of their exports outside the internal market.
- EU policy should step up its efforts to strengthen other avenues to internationalisation, such as:
1. FDI (Foreign Direct Investment)
 2. technological cooperation
 3. sub-tendering.
- The Member States should focus on developing stronger dialogue with the social partners and all economic and social stakeholders.
- With regard to employment, advanced sectoral initiatives should be given fresh impetus, along the lines of the Lead Markets pilot schemes.
- 2.7 The international role of the euro as an international trade currency, for both raw materials and manufactured goods, should be consolidated.
- 2.8 As a result of the headlong globalisation of the world economy and the development of emerging economies, a thorough review of the EU's trade policy is needed to take full account of the interests of European industry, so that it can maintain and develop its role in the global village.
- 2.9 Generally, the EU's industrial policy is implemented by means of:
- general measures designed to develop the internal market;
 - an external trade policy (anti-dumping policy, bilateral and multilateral trade negotiations with an impact on individual industrial sectors);
 - a raft of social, regional and environmental policies, geared towards the development of human resources;
- a competition policy complete with legal instruments, which are needed for market shortcomings and useful in connection with State aid;
 - a research and development policy;
 - measures to foster innovation;
 - boosting cooperation between European companies;
 - encouraging dialogue and cooperation between social partners, including in developing countries, particularly through the negotiation of International Framework Agreements;
 - efforts to implement environmental policies;
 - an ambitious and effective education and training policy.
- 2.10 Trade, the economy, inter-faith and cultural dialogue, in short prosperity, are conditional on and determined by the standard of relations between States, governments and international organisations. Account should also be taken of differing levels of development and of the different possible approaches to solving common problems.
- 2.11 In this opinion, the EESC seeks to focus on the external dimension of industrial policy.
- 2.12 In this context industrial policy has a key role to play, partly owing to the recent realisation that industry and companies must regain the central place which is rightly theirs.
- 2.13 'An industrial policy for the globalisation era' ⁽⁵⁾: This initiative sets out a number of priorities designed to improve the business environment, particularly for SMEs, and to foster the development of a sound, sustainable industrial base.
- 2.14 'Smart, sustainable and inclusive growth' ⁽⁶⁾ is linked to the strengthening of a diversified and innovative manufacturing sector in order to operate successfully in the global marketplace.
- 3. Areas of interest and action with a view to a coherent external dimension**
- 3.1 There are many areas of interest and intervention which highlight the perennial purpose of European industrial policy, but the EESC has chosen to focus on the following issues:
- the European strategy for access to raw materials;
 - the internationalisation of SMEs;

⁽⁴⁾ COM(2010) 612 final, para. 4.

⁽⁵⁾ See strategic initiative 10 COM(2010) 2020 final.

⁽⁶⁾ IDEM.

- standardisation and IPRs;
- regulatory dialogue;
- common trade policy;
- the EU's image and prospects;
- sectoral initiatives: Lead Markets and European platforms.

3.1.1 Access to raw materials. Secure and easy access to raw materials is crucial for infrastructure and is a prerequisite for industrial development. The EU's initiatives are essential for:

- removing existing distortions and establishing new rules and agreements on access to raw materials, particularly energy;
- urging constant efforts, including by the WTO, to enforce compliance by producer countries with minimum environmental and social standards;
- improving conditions for sustainable raw material extraction in Europe;
- supporting European or national recycling industries in order to limit waste, create jobs with high added value and limit the environmental and social impact of extraction processes;
- promoting resource efficiency and the use of secondary raw materials;
- strengthening authorities and institutions responsible for raw materials management in resource-holding developing countries;
- supporting the research under way on obtaining energy from fusion, by means of JET and ITER, using raw materials (deuterium, lithium, tritium) which are widely available in nature, particularly in sea water.

3.1.1.1 If it is to consolidate and increase its global competitiveness, European industry must adopt a strong integrated strategy, paying particular attention to energy supply, complete with genuine 'raw material diplomacy'.

3.1.1.2 Access to raw materials, particularly energy, must be a fundamental pillar of the new industrial policy. Our priority must be to strengthen our economic and political relations with third countries, in order to:

- abolish distortions in access conditions; this presupposes combating restrictions on exports ⁽⁷⁾;

- support metal production in Europe;
- step up work on raw materials already available in Europe;
- monitor the list of 14 'strategic' raw materials for the future of European production. These are: antimony, beryllium, cobalt, fluorspar, gallium, germanium, graphite, indium, magnesium, niobium, the platinum group (platinum, palladium, iridium, rhodium, ruthenium and osmium), rare-earth elements, tantalum and tungsten;
- establish strategic reserves of the principal raw materials;
- include cotton amongst strategic materials;
- set up a European geological service.

3.1.2 The internationalisation of SMEs. Another key challenge is the international dimension of European industry: SMEs must be able to compete on the global markets alongside big business, while consolidating their local position.

3.1.2.1 Forecasting and financing tools (insurance, payment guarantees etc.) must be created and reinforced in order to enable SMEs to develop at international level.

3.1.2.2 According to a recent study by DG Enterprise, 25 % of European small and medium enterprises have been engaged in import/export activities in the last three years. Outside the European internal market only 13 % have dealt with third countries and only 7 to 10 % have done business with the BRIC countries (Brazil, Russia, India and China).

3.1.2.3 Internationalisation in fact benefits firms, stimulating their potential in terms of:

- a tendency to take on more staff. SMEs which are active internationally expand by 7 % in terms of jobs created, whereas others expand by only 1 %;

- a tendency towards a higher rate of innovation. 26 % of internationally active SMEs generate products or services which are innovative, against 8 % of other SMEs.

3.1.2.4 Improved performance in international trade is important for firms' growth and competitiveness.

3.1.2.5 In particular, pilot schemes must be reinforced and extended with a view to setting up European support centres in third countries, the European Business Centres ⁽⁸⁾, as must efforts to make the Market Access Teams fully operational.

⁽⁷⁾ Such as those put in place by China, India and others.

⁽⁸⁾ In China, Thailand, India and Vietnam.

3.1.3 **Standardisation.** A strong standardisation and intellectual property protection policy is needed, ensuring that there is an external dimension to standardisation procedures.

3.1.3.1 Standards must not become barriers to trade, and the increasing host of national standards in the field of services must not impede trade.

3.1.3.2 The EESC believes that a legal obligation must be introduced for all bodies setting standards to comply with the OMC-TBT principles.

3.1.3.3 Another key issue is interoperability: services and applications must be genuinely interoperable in order to be accepted by the market and meet the objectives set.

3.1.4 **Regulatory dialogue.** In order to be properly competitive, European industry needs a 'global playing field' of rules and regulations.

3.1.4.1 Tariff-based trade barriers are often flanked by non-tariff, regulatory barriers. In this respect, the EESC believes that action must be stepped up on a number of fronts in order to reduce the current barriers and in order to prevent further barriers from arising.

3.1.4.2 The principle of better regulation is fundamental in order to drive down high costs which are frequently imposed by excessive red tape and to enjoy easier access to international markets thanks to mutual recognition mechanisms.

3.1.5 **The common trade policy** is a pillar of the EU's external relations. It governs the Member States' trade relations with third countries with the fundamental objective of ensuring equal competition and equal rules.

3.1.5.1 The fight against **counterfeiting and piracy** must be more effective, both inside and outside the single market, given their serious negative impact on a growing number of increasingly varied sectors.

3.1.5.2 As the new provisions of the Lisbon Treaty indicate, improved performance in cross-border and international trade is important for firms' long-term growth, competitiveness and sustainability and Europe must be able to speak with one voice.

3.1.5.3 Instruments for trade protection and market access aim in particular to shield European firms from barriers to trade. The EU must be able to ensure that world trade develops smoothly and is fair and sustainable, taking account of third countries' differing levels of development, assisting the least developed in their processes of industrialisation, and demanding that emerging countries fully comply with the rules.

3.1.5.4 The EU must identify specific economic criteria for negotiating and signing free trade agreements and choosing partners, especially as regards market potential, in terms of size and economic growth, ensuring clear *ex ante* (political coherence) and *ex post* (full respect for symmetries and reciprocity) assessment mechanisms, with the support of European social dialogue and organised civil society.

3.1.5.5 Decreases in tariffs in the context of the WTO must be accompanied by an effort to improve working conditions in accordance with ILO standards.

3.1.6 **The EU's image and prospects.** The EU needs a vision geared towards sustainable development and able to promote inclusive societies, open economies and peaceful relationships, taking a global and long-term perspective.

3.1.6.1 The EU needs to look to its image, both internally and, in particular, externally, offering consistency, unity and a capacity to respond quickly, in order to capitalise fully on its potential. It must effectively harness tiers of synergies in order to:

- ensure that **markets open in a balanced way** whilst **safeguarding the planet's limited resources, ensuring Europe's long-term access to the resources** that are strategic to its needs;
- **step up economic dialogue with all the major partners**, in the context of a multilateral approach;
- continue to **strengthen the international role of the euro**;
- project the EU as an **'international regulatory power'**, promoting higher regulatory standards in the industrial, environmental and social fields and in respect of decent work conditions, public procurement and intellectual property;
- **relaunch the three main EU external development policies**: enlargement, the neighbourhood policy and the Union for the Mediterranean, and a new partnership with Africa within the ACP framework ⁽⁹⁾.

3.1.6.2 The EESC is convinced that without **shared foresight at European level on the global prospects of European industrial policy**, it will be impossible to put into practice the common strategic vision which is crucial for a strong and coherent relaunch of the external dimension of European industrial policy.

⁽⁹⁾ EESC opinion on The external dimension of the renewed Lisbon Strategy, OJ C 128/2010, p. 41.

3.1.6.3 The EESC believes that the aim of European industries is growth and the only way to achieve this is not to be permanently subjected to low-cost competition.

3.1.7 Sectoral initiatives: Lead markets and platforms

3.1.7.1 Europe must shape its own future based on its strengths. Sectoral solutions are constantly being developed to boost Europe's global competitiveness and make Europe a more attractive place to live and work.

3.1.7.2 Key areas include:

- technological infrastructures,
- energy supply networks,
- the knowledge-based society and the digital society,
- health and mobility,
- the cross-cutting technologies needed by EU industry.

3.1.7.3 The EESC believes that the following existing sectoral approaches should be placed within a coherent, reinforced framework:

- European technology platforms;
- Lead Markets initiatives;
- the various high-level advisory committees;
- innovation platforms, such as LeaderShip, Cars 21, ICT Taskforce;
- the high-level chemical industry group.

3.1.7.4 The EESC also believes that certain particularly sensitive, promising sectors should be further developed:

- **space;**
- **sustainable mobility;**
- **the social challenges of the future, relating to climate change;**
- **the competition challenges**, such as the chemical, engineering and agri-food industries;
- **energy-intensive sectors.**

4. The external dimension of EU policies: the key to the success of EU industry

4.1 The Hungarian presidency has stated that 'a transformation of incredible speed and depth is happening throughout the world; Europe must be able to stand in a much stronger global competition than ever before'.

4.2 Twenty million companies in Europe, particularly small and medium-sized companies, led by artists, workers, craft-people and entrepreneurs, must be able to innovate, to increase their competitiveness and create jobs, backed by a European industrial policy with an integrated external dimension.

4.3 The EESC welcomes the conclusions of the European Council of 17 December 2010 in relation to international competitiveness and the single market.

4.4 In particular, the EESC stresses the importance of providing companies with a smart, predictable, less burdensome regulatory framework and a better business environment for SMEs, enabling them to work with a long-term perspective.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'Third country state-owned enterprises in EU public procurement markets' (own-initiative opinion)

(2011/C 218/06)

Rapporteur: **Mr ROSSITTO**

Co-rapporteur: **Mr PAETZOLD**

On 16 September 2010 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Third country state-owned enterprises in EU public procurement markets.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 152 votes to 4 with 9 abstentions.

1. Conclusions and recommendations

1.1 The EESC believes that opening-up of the public procurement systems of all countries to international trade under the Agreement on Government Procurement (WTO GPA) is a winning card: it ensures reciprocity and symmetrical regulations and implementation thereof, making it possible to counter protectionist measures and unfair competition practices, notwithstanding specific agreements with emerging countries, in line with relevant primary and secondary EU legislation and European Court of Justice judgments.

1.2 The EESC believes that the EU must increase negotiating power to improve access to third countries' public markets, in line with its primary and secondary legislation, given that the EU has opened up over 80 % of its public markets while the other major developed economies have only opened up 20 % of theirs.

1.3 The EESC strongly urges the European Parliament, the Council and the Commission to ensure more effective, strategic defence of the EU's interests in the area of access to public markets both internally and internationally, strengthening its global credibility but also increasing the shelf-life and development of the European economic and social model.

1.4 The EESC believes that there should be a level playing field for contracting enterprises, based on reciprocity with third country enterprises that respect the key principles of international public procurement, particularly as regards prohibited direct or indirect state aid, price calculation methods and precautionary consideration of costs and risks.

1.5 The EESC recommends that EU internal market legislators and EU international negotiators in the area of international public procurement, be consistent and aware of the potential reciprocal effects of their activities, promoting equal treatment, non-discrimination, mutual recognition, proportionality, transparency, fighting corruption, respect for social and environmental standards and respect for fundamental rights.

1.6 The EESC feels it is essential to set in motion systematic monitoring of the consistency between the results of bilateral and multilateral negotiations carried out by the Commission with authorisation from the Member States and the ensuing full, genuine implementation by the Member States of the measures adopted.

1.7 The EESC advocates converting the GPA from a plurilateral to a multilateral agreement, with more countries signing up to it and transitional measures in terms of offsets, price preferences, introduction of bodies or sectors and new thresholds; and energetically reviving the idea of excluding for the time being public contracts financed with European funds from the GPA in respect of enterprises from countries still implementing national protection measures.

1.8 The EESC calls for swift adoption of the announced Market Access Scheme for Procurement – MASP, with clear, transparent, tried and tested mechanisms for reciprocal opening-up of markets to ensure symmetrical access to public markets, adapting the 2004 public procurement package accordingly.

1.9 The EESC calls for the approach based on prevention and an 'early warning' system for projects and/or new third country regulations which are restrictive in the area of procurement to be beefed up, with a view to identifying potential barriers and condemning them internationally right from the start, fine-tuning the Commission's market access database to provide reliable, rapidly-accessible information on calls for tender and the technical details and formalities of technical specifications, particularly for EU SMEs, along with statistical data and indicators showing the impact of distorting factors.

1.10 The EESC recommends introducing measures to streamline and simplify procedures, gearing them to the EU's new challenges in order to ensure that internal and international contracting authorities fully exploit the economic and innovation potential of SMEs, including through training, provision of information and assistance for contractors and participants in international calls for tender and on third markets, particularly for their middle and senior management.

2. Introduction

2.1 In the EU total annual public procurement for goods and services amounts to around 17 % of GDP – around EUR 2 100 billion, of which approximately 3 % is above the GPA (WTO Agreement on Government Procurement) threshold ⁽¹⁾. The world public procurement market is estimated at between 10 and 20 % of GDP – no comparable data exists for countries which are not GPA members: world public procurement amounts to well over 10 % of world GDP.

2.2 European companies, from the large global enterprises to the most enterprising SMEs, are fighting to establish themselves on world markets but encountering growing difficulties in accessing the public procurement market. This is not so much owing to obstacles at borders as to obstacles 'beyond the border', which are more complex, technically more problematic and take longer to be identified, analysed and removed, and rules and practices that are restrictive and in danger of preventing EU companies from bidding effectively for public contracts in third countries.

2.3 This own-initiative opinion concerns a specific aspect of the public procurement market, as can be seen from the title: exploring and specifying – as regards bidding by third country state-owned enterprises for public contracts on EU markets – how the EU can:

- ensure that its internal market functions properly where public procurement is concerned;
- guarantee that third country state-owned enterprises are authorised to operate on the European market in compliance with the same admission criteria and conditions as all other enterprises;

- likewise, guarantee that European enterprises benefit from reciprocity and symmetrical access on third country markets.

Other public procurement issues are, or will in the future, be addressed by EESC opinions.

2.4 The link between opening-up of foreign trade and internal market reform is two-way: while in both cases the aim is to reduce the cost of unnecessary regulatory barriers preventing trade in goods, services and investments, the growing interdependence of the internal and international markets demands that legislators regulating the EU's internal market and EU negotiators in the area of international trade and international public procurement be aware of potential reciprocal effects of their activities and implement a consistent policy which is based on promoting the principles of EU primary and secondary legislation as upheld by the Court of Justice and the Charter of Fundamental rights:

- respect for human rights;
- fighting corruption;
- respect for social and environmental standards;
- transparency;
- proportionality;
- equal treatment;
- non-discrimination;
- mutual recognition.

2.5 With regard to standards and regulations, services, investment and public procurement, as well as intellectual property rights and certification procedures, burdensome procedures, lack of transparency and industrial policy measures aiming at forced import substitution, forced transfers of technology and granting local producers preferential access to raw materials often persist among a number of our trade partners.

2.6 While EU companies are subject to increasing competition on their internal market, which has prioritised transparent openness and worked hard to create a European internal market without barriers, it has now become apparent that this openness leaves the internal market absolutely defenceless against third-country market players, who have not committed themselves to practising the same openness on their own markets.

⁽¹⁾ Source: European Commission estimates in COM(2010) 612 final.

2.7 The EU has strict rules on these issues in order to guarantee fair competition on a level playing field, but experience suggests that none of these rules applies to third-country public enterprises, particularly when they bid for public contracts. This contravenes the very ideas underpinning the internal market and is highly detrimental to European industry and the European economy.

2.8 The EESC deems it necessary to study how the EU can ensure the smooth operation of the internal market, including in cases where third-country state-owned enterprises are allowed onto the internal market, while assiduously fighting protectionism and opposing all forms of social and environmental dumping ⁽²⁾, lack of transparency in the area of costs, prices and state subsidies, and failure to respect budgetary and free market rules, in the interests of European consumers, companies and taxpayers.

2.9 The General Agreement on Tariffs and Trade specifically excluded public contracts from the basic obligation on national treatment and from the commitments set out in the General Agreement on Trade in Services; however, it should be borne in mind ⁽³⁾ that by 2015 90 % of world growth will be generated outside Europe, with a third from China alone: in the years to come, we need to seize the opportunity provided by higher levels of growth in third countries, especially in East and South Asia.

2.10 While our market is already largely open, those of our major trading partners are much less so, especially at regional and local level. A few examples in various continents suffice:

2.10.1 In **CHINA**, markets are still far less open than they could be. With GDP of EUR 3 573,8 billion in 2009, China exported EUR 227 billion of goods and services to the EU and imported EUR 99,7 billion of the same from the EU in that year. The 'buy local' clauses have existed since 2003 under Article 10 of the GPL (Government Procurement Law), while in 2007 the 'buy Chinese' policy was reinforced by two decrees limiting the possibility of awarding contracts for foreign supplies to instances where indigenous products are 'unreasonably' more expensive and of lower quality. In 2009 this rule was interpreted strictly, removing any remaining possibility, particularly for hi-tech and innovative products, while rigorous monitoring was laid down for public construction contracts in the 2008 and 2009 domestic stimulus packages. In November 2009 China introduced an indigenous innovation product accreditation list, while in 2010 the State Council proposed

changes regarding state-controlled companies in order to induce these companies to operate solely on the domestic market. At the same time, however, it granted state aid to the Chinese hi-tech industry to make it more competitive on foreign markets ⁽⁴⁾.

2.10.1.1 In the field of works contracts, China abandoned a licence system for project management, construction management and other construction services for a new WFOCE (wholly foreign-owned construction enterprise) and JV (joint venture) system, in which foreign companies are in practice excluded from projects covered by national competitive bidding (NCB), while they are only admitted to the rare international competitive bidding (ICB) for domestic projects: both systems – WFOCE and JV – must satisfy the Chinese qualification system, which requires nominal capital of at least five times the value of the project, key staff including least 300 members resident in China for at least a year, references for previous work carried out in China and, for JVs, taking on the partner with the lowest qualification grade ⁽⁵⁾.

2.10.1.2 The current Chinese bid in the WTO negotiations on the Agreement on Government Procurement (GPA) does not include the vast majority of construction works likely to be of interest to European enterprises, as regards either the activity or the contracting authorities.

2.10.1.3 In **RUSSIA** – which is not a signatory to the WTO GPA – a decree of the Ministry of Economic Development adopted in December 2008 lays down restrictions on access to government and municipal contracts, giving preference to national products and services, which can be priced up to 15 % above the contract price, and in 2009 'buy Russian' measures were adopted to counter the crisis.

2.10.2 In **BRAZIL** the law on public procurement was amended in July 2010 to enable the contracting authorities to reserve a 25 % margin for products and services produced or supplied wholly or partially in Brazil. In 2009 Brazil recorded GDP of EUR 1,128.5 billion ⁽⁶⁾.

⁽²⁾ See COM(2010) 612/1 final.

⁽³⁾ See COM(2010) 612/4 final.

⁽⁴⁾ A key concern with regard to public procurement as well as intellectual property is the 'indigenous innovation' policy aimed at supporting Chinese firms moving up the value chain. The indigenous innovation scheme, first announced in November 2009, severely hampers access to the Chinese procurement market in a wide number of innovative sectors from green technology to telecommunication. See SEC(2011) 298 final.

⁽⁵⁾ See Communication from the European Communities, WTO DOCUMENT No. S/C/W/286, para. 15-19; in addition, where a foreign company acquires a Chinese company the qualifications gained by the Chinese company are annulled and it has to start again from zero.

⁽⁶⁾ 2010/7 Amendments to the Brazilian law on public procurement introducing a 'Buy Brazilian' clause on a 'temporary' basis.

2.10.3 In the **USA**, Congress stepped up the 'buy American' requirements of the American Recovery and Reinvestment Act (ARRA) (7). US GDP in 2009 amounted to EUR 10,122.6 billion, and the USA exported around EUR 286,8 billion of goods and services to the EU and imported around EUR 323,8 billion from the EU in that year (8).

2.10.4 In **JAPAN**, the seventh largest market for EU exports, with EUR 36 billion of exports as against EUR 56,7 of imports in 2009 – EU companies have difficulty gaining access to public contracts, despite the fact that Japan is a signatory to the WTO GPA: only 4 % of all public contracts were opened to EU companies, worth EUR 22 billion (2007), that is less than 0,7 % of Japanese GDP, while Japan had access to the EU public market to the tune of EUR 312 billion, i.e. 2,5 % of EU GDP (9).

2.10.5 In **VIETNAM**, a directive was issued in April 2010 on the use of domestic products and materials and on public contracts for these products, financed with state funds. Vietnam achieved GDP in 2009 of EUR 66.8 billion, exporting EUR 7,8 billion of goods to the EU and importing EUR 3,8 billion from the EU.

2.10.6 In **AUSTRALIA**, in 2009 two states adopted rules on public contracts deemed to be significant – over AUD 250 million – which are subject to requirements of 40 % of local (Australian or New Zealand) products in the state of Victoria, while in New South Wales a 20 % price preference has been established, to which additional 2,5-5 % preferences are added depending on the case. Australia recorded GDP of EUR 712,8 billion in 2009, exporting EUR 14,4 billion of goods and service to the EU and importing EUR 34,1 billion.

2.11 On the other hand, there are cases such as **TURKEY**, where the public procurement system improved following the adoption of Law No 5812 in 2008, which brought internal provisions into line with Community rules: contracts for the supply of goods, works and services are based on open competition mechanisms, although there is room for improvement in the transposition of the EU directives relating

(7) The legislation includes two new 'Buy America(n)' provisions that: - 'prohibit funds appropriated by this Act to be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States'; and - 'prohibit funds appropriated by this Act to be used for the procurement by the Department of Homeland Security of a detailed list of textiles items unless the item is grown, processed in the United States'.

(8) A further example is the prohibition of US government purchases from so-called inverted companies, which are originally US companies that have changed tax jurisdiction and inverted to another country's tax system with serious concerns as to its compatibility with the WTO GPA. The result is then that an EU company established in the EU cannot sell to the US government, even though it should be protected by the GPA coverage.

(9) See SEC(2011) 298.

to appeal systems (10). Contracts above the EU threshold in 2008 were worth EUR 7 703 million in the area of works; EUR 8 459 in the area of services and EUR 8 042 in the area of goods.

3. The current legislative framework

3.1 The current legislative framework regulating the public procurement market for European companies is as follows:

- the basic Community framework is made up of the 2004 Public Procurement Directives – Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, along with Directive 2007/66/EC on review of the procedures for the award of public contracts and the Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts (11), and Directives 89/665/EEC and 92/13/EEC;
- the Treaty, which included in primary EU law recognition of the right to regional and local autonomy, with the possibility for public authorities to use their own instruments to discharge their public service responsibilities, such as various forms of public-private partnership;
- numerous European Court of Justice judgments on public procurement;
- the principal instrument for opening-up of international public procurement is the WTO Plurilateral Agreement on Government Procurement – GPA, currently being revised, while the WTO General Agreement on Trade in Services (GATS) excludes government procurement from the GATS' main market access provisions, without prejudice to the multilateral negotiating mandate on services procurement, where the Community is a driving force for commitments in the area of market access and non-discrimination on services procurement and has put forward common procedural rules for covered procurement;
- 'procurement' clauses in Free Trade Agreements (FTAs), Association Agreements (AAs) Partnership and Cooperation Agreements (PCAs), Stabilisation and Association Agreements (SAAs), Economic Partnership Agreements (EPAs), Interim Agreement on Trade and Trade-related matters (IAs) and Trade and Economic Cooperation Agreements;

(10) **TURKEY Public Procurement Assessment 2009 - SIGMA Support for Improvement in Governance and Management.** A joint initiative of the OECD and the EU.

(11) Commission Staff Working Document SEC(2008) 2193.

— application of Community law on public procurement and concessions to institutionalised public-private partnerships.

4. Comments

The EESC believes that opening-up of the public procurement systems of all countries to international trade under the Agreement on Government Procurement (WTO GPA) is a winning card, as it ensures reciprocity and symmetrical regulations and implementation thereof, making it possible to counter protectionist measures and unfair competition practices, notwithstanding specific agreements with emerging countries.

4.1 The EESC would highlight the data revealed from the Commission's recent indication that 'by 2015, 90 % of world growth will be generated outside Europe, with a third from China alone' ⁽¹²⁾.

4.2 The EESC agrees with the principle that, in order to build on its own competitive advantages, the EU must ensure more effective, strategic defence of its interests, strengthening its global credibility but also increasing the shelf-life and development of the European economic and social model. In order to be more credible, Europe must increase negotiating power to improve access to third countries' public markets, given that the EU has opened up over 80 % of its public markets while the other major developed economies have only opened up 20 % of theirs ⁽¹³⁾.

4.3 The EESC considers that the current Community regulatory framework for public procurement is in principle adequate and sufficient to regulate the economic, social and environmental aspects of the European market. Unfortunately, some Member States are failing to fully exploit the opportunities to ensure fair competition provided by this regulatory framework, and are risk of opening their markets, non-reciprocally, to third country state-owned enterprises that do not respect the key principles of international public procurement; however, it is essential that these rules are rigorously respected, along with the fundamental principles of the Treaties and the Charter of Fundamental Rights (CFR).

4.4 The EESC believes that public-public cooperation must not create parallel markets which evade public procurement rules and exclude private operators.

4.5 The EU is intended to be an open economy which encourages free trade, providing legally-certain, non-discriminatory access to a wide number of public contracts; at the same time, confidentiality and transparency must be ensured

to promote innovation and a sustainable public procurement market which:

— gives preference to tenders offering the best value for money in comparison with the lowest price;

— caters for the entire life cycle of the work.

4.6 The EESC believes that there should be a level playing field for all contracting enterprises: in this regard the EESC raises doubts regarding the conditions for participation of third country 'state-owned enterprises', particularly in terms of prohibited direct or indirect state aid, price calculation method, and precautionary consideration of costs and risks. In fact, the European market guarantees access without sufficient guarantees against unfair competition, entailing a real danger of social and environmental dumping and non-compliance on the part of these state-owned 'enterprises' with the body of ethics laid down in the Treaties and the CFR.

4.7 The EESC believes the following are necessary:

4.7.1 To stress in international negotiations and negotiations with third countries that the EU's fundamental values, rights and principles, as enshrined in primary EU legislation on the basis of the Treaties and the CFR, must be respected and are non-negotiable.

4.7.2 To speak together with a single, strong, consistent voice in international negotiations, avoiding individual national measures that could jeopardise the joint negotiating stance and systematically comparing actual opening-up of national markets against the terms and conditions of agreements at European level.

4.7.3 To ensure greater coordination between the Commission departments dealing with the various aspects of trade, industrial and cooperation negotiations in line with the multilateral provisions on government procurement laid down by the 1994 GPA Agreement, the new generation FTAs, the Partnership and Cooperation Agreements (PCAs) or Association Agreements (AAs) in the framework of the Euro-Mediterranean Partnership, with approaches more targeted at non-tariff barriers and pressure to open up public procurement to EU companies.

4.7.4 To convert the GPA Agreement from a plurilateral to a multilateral agreement, with more countries signing up and transitional measures in terms of offsets, price preferences, introduction of bodies or sectors, and higher thresholds.

⁽¹²⁾ COM(2010) 612, pt 1.

⁽¹³⁾ Joint declaration, 9.2.11, by **France, Germany, Spain, Portugal, Italy and Poland in favour of greater reciprocity between the EU and its trade partners.**

4.7.5 To exclude for the time being public contracts financed with European funds from the GPA, concerning enterprises from countries still implementing national protection measures, as already argued by the EESC in several earlier opinions ⁽¹⁴⁾.

4.7.6 To meticulously implement the principles of reciprocity and proportionality for certain sectors, in the *General Notes and Derogations from the Provisions of Article III of Appendix I of the EC of the GPA*.

4.7.7 To oblige third country enterprises to comply with the same conditions placed on European companies on their markets: the EU cannot continue to base negotiations on formal reciprocity rather than genuine economic reciprocity; a safeguard clause suspending the agreement in the event of imbalance should be provided for.

4.7.8 Where major trade partners benefit from the general opening-up of the EU without reciprocity, the EU must consider introducing targeted restrictions on access to the EU's public procurement sectors, with the aim of prompting these partners to propose reciprocal opening-up of the market.

4.7.9 To adopt, as soon as possible, the Market Access Scheme for Procurement – MASP, with clear, transparent, tried and tested mechanisms for reciprocal opening-up of markets to ensure symmetrical access to public markets in the developed economies and the major emerging economies in the sectors covered by Directive 2004/17/EC ⁽¹⁵⁾ and the 2011 Work Programme ⁽¹⁶⁾.

4.7.10 To ensure greater technical cooperation between representatives of the Member States and the Commission on market access, and more frequent consultation with industry representatives.

4.7.11 To introduce strict monitoring, along with measures to ensure its effective implementation, of the absence of direct or indirect state aid – considered to be prohibited in the EU – particularly for Community calls for tender receiving financing from the Community, the EIB, the Structural Funds or for TENs, accompanied by full compliance with guarantees for Community social and environmental standards.

4.7.12 To fine-tune the Commission's market access database, providing reliable, rapidly-accessible information on calls for tender and the technical details and formalities of technical specifications which in effect prevent bidding in third countries, providing statistical data and indicators showing the impact of distorting factors.

4.7.13 To beef up the approach based on prevention and an 'early warning' system for projects and/or new third country regulations which are restrictive in the area of procurement, to enable potential barriers to be identified and condemned internationally right from the start, tackling them at source with the systematic use of notification procedures under the Agreement on Technical Barriers to Trade.

4.7.14 To introduce EU-level measures for SMEs in order to ensure that internal and international contracting authorities fully exploit the economic and innovation potential of SMEs.

4.7.15 Training, provision of information and assistance for participants in international calls for tender and on third markets, particularly for middle and senior management, acknowledging the crucial size-related issues they face in terms of trade protection, market access and access to information.

4.7.16 To amend Article 55(3) of Directive 2004/18/EC and Article 57(3) of Directive 2004/17/EC on abnormally low tenders, by making it impossible to accept bids submitted by state-owned enterprises that fail to prove that their bid has not received direct or indirect state aid that is prohibited by the Community rules: an example to this effect of 'state aid tests' can be found in the Millennium Challenge Corporation's Annex 4.

4.7.17 To add infringement of intellectual property rights involving the use of fraudulently acquired patents or technical data as grounds for compulsory exclusion under Article 45 ⁽¹⁷⁾ of Directive 2004/18/EC and Article 54 ⁽¹⁸⁾ of Directive 2004/17/EC.

4.7.18 To ensure that the future European legal instruments on the free movement of third country workers do not provide an incentive for third country state-owned enterprises that receive prohibited state aid.

4.7.19 To ensure swift, detailed publication in a centralised EU database of restrictive rules and practices in the area of public procurement which prevent EU companies from bidding effectively for contracts in third countries, such as 'buy local' legislative acts or acts providing for increasing percentages of 'local content' or 'stimulus packages' for local innovations and technologies or for national 'economic recovery', which give preference to local operators and make market access more difficult for companies from other countries.

⁽¹⁴⁾ EESC opinion on *International public procurement*, OJ C 224, 30.8.2008, p. 32.

⁽¹⁵⁾ COM(2009) 592 final.

⁽¹⁶⁾ COM(2010) 612/4 and COM(2010) 623/2, Annex I, point 36.

⁽¹⁷⁾ Article 45 *Personal situation of the candidate or tenderer*.

⁽¹⁸⁾ Article 54 *Criteria for qualitative selection*.

4.7.20 To further strengthen consistency and complementarity between internal policies and the EU external policy, in response to the call by the September 2010 European Council 'to review the interface between industrial policy and competition policy in the light of globalisation and to promote a level playing field' ⁽¹⁹⁾.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁹⁾ See Competition Council of 10.12.2010 – *Council Conclusions on an integrated industrial policy for the globalisation era: Putting competitiveness and sustainability at centre stage*, point 15.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

471st PLENARY SESSION HELD ON 4 AND 5 MAY 2011

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: an integrated industrial policy for the globalisation era — putting competitiveness and sustainability at centre stage’

COM(2010) 614 final

(2011/C 218/07)

Rapporteur: **Mr VAN IERSEL**

Co-rapporteur: **Mr GIBELLIERI**

On 28 October 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An Integrated Industrial Policy for the Globalisation Era - Putting Competitiveness and Sustainability at Centre Stage

COM(2010) 614 final.

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 4 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 119 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Communication on Industrial Policy as a flagship in the Europe 2020 Strategy. It strongly endorses the holistic approach and an enhanced interlinking of EU policies as well as a deepened coordination towards industry between the EU and the Member States. The goal is a sustainable competitive European industrial sector in the global economy.

1.2 The EESC calls on the Council and the Commission to draw up a list of priorities and timeframes on the basis of the Communication and the corresponding Council Conclusions⁽¹⁾.

1.3 The enhanced interlinkage should, in the view of the EESC, lead to integrated approaches in a fully developed internal market within a social market economy through smart legislation, R&D and innovation, access to finance, energy-efficient and low-carbon economy, policies in the fields of the environment, transport, competition and employment, the improvement of skills and competences, trade and related issues, and access to raw materials.

1.4 Streamlining internal planning and coordination within the EU institutions as well as focusing on a closer relationship between the EU and the Member States places improvement of governance at the centre of future industrial policy. Member States should improve coordination among themselves. Also regions and metropolitan areas should take ownership. In brief, vertical as well as horizontal connections across Europe should be intensified in order to keep pace with other continents.

⁽¹⁾ Conclusions adopted by the Competitiveness Council on 10 December 2010 (ref. 17838/10). The European Council made a good start on 4 February 2011 on energy and the promotion of innovation.

1.5 The EESC highlights the significance of annual Commission reports concerning national industrial policies which should be oriented to commonly agreed objectives. These reports should be openly discussed to improve coordination and promote best practices and to add to a European level playing field.

1.6 The EESC insists on an appropriate level of private and public financial resources for competitiveness and innovation counterbalancing shrinking budgets. The EESC very much welcomes the announced improvement of cross-border conditions for venture capital, as well as the proposals for public and private EU project bonds for investments in energy, transport and ICT ⁽²⁾. Project bonds for other areas, e.g. research and demonstration projects, should be examined. The structural and cohesion funds have also to focus on industrial policy goals. New innovative ideas are to be developed to attract private capital to the industrial sector.

1.7 Industrial policy concerns all sorts of interconnected manufacturing and services. The boundaries between sectors are blurring. SMEs are becoming increasingly important both in terms of added value and job creation. These factors require smart horizontal and sectoral legislation and/or regulation, and accompanying measures. The complexity of international networks and integrated manufacturing processes should be taken into account.

1.8 Because of the complexities and manifold interconnections the EESC underlines the need for (joint) commitments of public and private stakeholders via high level groups, technology platforms, social dialogues and education programmes.

1.9 The EESC highlights the following priorities:

- the need for smart regulation, regulatory stability, adequate assessments and ex-post evaluations;
- access to finance at EU level: FP7/FP8, CIP ⁽³⁾, EIB and EIF, notably for SMEs;
- the Innovation Union should be very closely connected with industrial policy, especially in the area of key enabling technologies and energy-intensive industries;
- coordination within and between knowledge chains – research centres, universities, companies – should be promoted;
- a European patent is a test for the credibility of industrial policy;

⁽²⁾ See Annual Growth Survey, section 9, COM(2011) 11 final.

⁽³⁾ Framework Programme and Competitiveness and Innovation Programme.

- employees should be involved and participate;
- schooling and training at all levels are needed, alongside the promotion of entrepreneurship, to ensure high-quality and stable employment with appropriate and sustainable wages; best practices should be communicated;
- global developments require an active trade policy and effective market surveillance, they call unequivocally for one European voice in order to attain a global playing field;
- a resource-efficient and low-carbon economy in Europe should imply that the EU requires the same standards to be respected by its trade partners;
- access to raw materials and to diversified sources of energy should be safeguarded.

2. Introduction

2.1 'New style' industrial policy dates from April 2004 ⁽⁴⁾. After a lengthy process of liberalisation and privatisation, a wide variety of national concepts of industrial policy continued to prevail.

2.2 At EU level, framework conditions empowering industries were given prominence. Sectoral analyses were carried out.

2.3 The EESC took an active part in this development and commented in a series of opinions on the enhanced interest for sectors and their specific characteristics at EU level ⁽⁵⁾.

2.4 Meanwhile the context changes constantly. Due to the financial and economic crisis, diverging opinions on governance at EU level as well as diverging industrial performances in the Member States have an impact on the European ability to respond to changes.

2.5 In parallel, new themes and societal challenges have arisen, including the ageing society, climate protection and sustainable development, access to energy, intensified globalisation, the knowledge-based and digital society and changes in labour markets.

2.6 Innovation is the order of the day, both inspired by ongoing research and technology, and by increased competition, in home markets and abroad.

2.7 Over the last decade schooling and training at all levels has been increasingly highlighted as a priority.

⁽⁴⁾ COM(2004) 274 final.

⁽⁵⁾ Relevant EESC opinions can be found at <http://www.eesc.europa.eu/?i=portal.en.enterprises-and-industry>.

2.8 In spite of clear progress, fragmentation of the internal market and a lack of focus has persisted, partly due to disparities in approaches to business. The relation between the completion of the internal market and industrial policies is too often overlooked. The EESC has repeatedly urged to put in place the right conditions, taking into account the need of tailor-made rules for sectors and thematic issues which take into consideration the broadly ramified worldwide value networks.

3. What's new in the Communication

3.1 Industrial policy is about maintaining a strong manufacturing industry in Europe and about raising an overall awareness in society and among stakeholders that the EU must evaluate and put in place adjusted conditions to empower industry – manufacturing and services – to develop successfully in home markets and abroad.

3.2 Industrial policy should meet the challenge of increased uncertainties and imbalances as well as fierce competition and agendas set by other world players in defining a framework for a strong industrial base in Europe, for investment and job creation.

3.3 Industrial policy is a flagship initiative in Europe 2020 alongside other flagships and important fields, such as innovation, skills, trade and the Single Market. The holistic approach underscores the need for effective coordination and coherence of **all** EU policies. Coordination and coherence, including the accompanying transparency and visibility of EU policies, must support technological progress and innovation (notably key enabling technologies), restructuring, quality job creation ⁽⁶⁾ and the European presence in international markets.

3.4 A new instrument is the proposal of the Commission on 'competitiveness-proofing' through an assessment procedure, which must go beyond simple price or cost competitiveness to include investment and innovation factors.

3.5 The often neglected external dimension of industrial policy is prioritised. The same applies to the increased attention to access to raw materials as a basic condition for any industrial policy.

3.6 Renewed emphasis is placed on an integrated horizontal approach coupled with sectoral applications and tailor-made approaches, the requirement to look at the interconnection amongst sectors and the intertwining of value and supply chains (crucial for SMEs), networks and clusters, the impact of business services and access to finance.

⁽⁶⁾ See the EESC opinion entitled 'Innovative workplaces as a source of productivity and quality jobs', adopted on 18.3.2011 (not yet published in the Official Journal), in particular § 2.6.

3.7 In parallel to continuous change and restructuring processes in large parts of European industry, the Communication points to new sectors with rising investments and jobs such as space ⁽⁷⁾, new security services, and the cultural and creative industries.

3.8 Very important and ambitious, in the EESC's view, is the Commission's proposal, based on Article 173 of the Lisbon Treaty, to publish annual reports on the state of play and development of national industrial policies which are supposed to strengthen common analyses and commonly agreed approaches and policies.

3.9 The EESC notes with satisfaction that the Competitiveness Council fully endorses the framework for strategic lines of EU action, which will facilitate a shared vision on priorities. Most importantly, the Council also underscores the need for coordination of Member States' industrial policies.

4. General remarks

4.1 Given the compelling circumstances, the EESC considers the Communication on industrial policy as well as the Council Conclusions to be very timely.

4.2 Industrial policy as a flagship in the Europe 2020 Strategy proves that the Commission is determined to prepare a coordinated strategy both at EU level and in the Member States. The commitment of the Member States is vital and urgent.

4.3 The EESC stresses the importance of a competitive sustainable manufacturing industry in Europe. This calls for a strong industrial base, connected with services that are vital to industry. Authoritative sources highlight a gradual shift in employment from manufacturing to industry-related services, not only intermediate inputs, but also the services provided by manufacturers themselves ⁽⁸⁾.

4.4 Strong policies are essential to give shape to the future: smart energy, nanotechnology and life sciences, new materials, business services and social media, and the need to broaden ICT. Europe has no Apple and no Google! China is catching up fast and is already surpassing Europe in certain areas.

4.5 The EU badly needs a vision and a programme to improve productive investments and productivity. Well-defined common principles for action in the EU and in the Member States should generate incentives for ambitious investment programmes by companies and public authorities.

⁽⁷⁾ The EESC points to the specific significance of space industries for the development of remote and rural areas.

⁽⁸⁾ Amongst others, see *Les secteurs créateurs d'emploi à court-moyen terme après la crise* (Centre d'analyse stratégique attached to the French Prime Minister, November 2010).

4.6 Industrial policy needs an appropriate level of private and public financial resources. Shrinking budgets that are underway should be counterbalanced by other, commonly agreed, financial means ⁽⁹⁾.

4.7 The EESC perceives three major themes which have to be taken further in the coming years:

- the interconnection and interaction of a broad spectrum of horizontal and sectoral EU policies,
- the complex international networks and integrated manufacturing processes ⁽¹⁰⁾, and
- the evaluation and enhanced coordination of national policies at EU level and among Member States.

4.8 Streamlining internal planning and coordination within the EU institutions as well as focusing on a closer relationship between the EU and the Member States places improvement of governance at the centre of future industrial policy.

4.9 The Member States develop their own industrial approaches and targets. To make EU 'new style' industrial policy successful the Council should elaborate the Competitiveness Council's Conclusions as a basis for working together more intensively.

4.10 The EESC fully endorses the need for a holistic and integrated approach. Enhanced interlinking of policies is an important concept for a sustainable social market economy in Europe. It should lead to an integrated approach to Europe's industrial future in an operational internal market through smart legislation, R&D and innovation policy, access to finance, energy and low-carbon policy, environmental policy, transport policy, competition policy, improvement of skills and competences, trade policy and related issues, and access to raw materials. Sectoral approaches will amplify potentialities. These subjects are discussed in separate Communications ⁽¹¹⁾.

4.11 The EESC welcomes effective 'competitiveness-proofing', which should start on a selective basis.

4.12 Maintaining, even extending, the EU's financial resources in R&D is paramount. Large European projects – such as those in the field of energy – and the realisation of a pan-European infrastructure, co-financed by one or more Member States, should induce leverage effects.

⁽⁹⁾ Germany, for instance, has recently raised its innovation budget by 20 %.

⁽¹⁰⁾ See EESC opinion entitled 'The Value and supply chain development in a European and global context' (OJ C 168 of 20.7.2007, p. 1).

⁽¹¹⁾ The first example of the application of this method is to be found in LeaderSHIP 2015, a strategy for the European shipbuilding sector launched in 2005.

4.13 Industrial clusters usually emerge in traditional industrial basins which develop continuously on the basis of new investment, technology and innovation, value chains, competences and skills, and regional and international networking ⁽¹²⁾. Advanced regions are spearheads for Europe.

4.14 The EESC believes that bundled policies and actions at EU level, combined with more transparent and up-to-date ongoing information on national developments, will contribute substantially to the realisation of a level playing field and a robust internal market, the heart of European integration.

4.15 Data and analyses are key. The EESC praises the detailed analytical work performed by the Commission. In-depth analyses and precise and comparable data at EU level are indispensable for any policy. Closer and forward-looking monitoring and evaluation require reliable data on dynamic up-to-date trends ⁽¹³⁾. Progress is on its way, but much remains to be done.

4.16 Alongside national statistics, Eurostat has a vital role to play. It should be satisfactorily equipped to collect the right data and to analyse European and global trends and dynamics in time. It should be given enhanced means to access data. Information should be available as quickly and completely as possible.

5. Governance at EU level; horizontal and specific approaches: sectors and value networks

5.1 The bundling of Commission activities in one concept underlines the need for decompartmentalisation so as to enhance visibility and effectiveness.

5.2 Industrial policy remains to a certain extent national. The list of areas mentioned in the Communication in which the EU (Commission, Council, EP) is responsible for acting or could intervene is also impressive. Against this backdrop the coherent framework of Europe 2020 offers promising opportunities.

5.3 The EESC agrees with the Commission's policy intentions. However, the role of the Commission is not always clearly defined, partly due to the lack of formal competences in a number of areas. In certain sectors, such as energy, national targets and procedures continue to prevail and Commission's and Member States' competences are not coherently applied.

⁽¹²⁾ This point is illustrated by developments in a number of regions and metropolitan areas across Europe where outmoded industrial structures are being replaced by future-oriented investments and new dynamism.

⁽¹³⁾ The EESC has argued this before in an Information Report entitled 'A sectoral survey of relocation' (2006), that proved flaws in the comparability of data used by the Commission.

5.4 Accordingly, the authority and effectiveness of the Competitiveness Council that – together with the Commission – sets targets and is responsible for regulation in a very wide range of subjects, should be improved.

5.5 The EESC calls on the Council and the Commission to draw up an operational list of priorities, and a corresponding time frame. These priorities must also include the economic infrastructure such as advanced transport networks, diversified energy sources and access to them, the digital agenda and ICT.

5.6 The external dimension of the internal market and the aim of a world level playing field increasingly require an active trade policy and an effective European diplomatic corps.

5.7 Industry is once again undergoing fundamental transformations driven by R&D and innovation, amended regulation and international industry and services markets. These developments affect all sectors. Priorities as set in successive EU work programmes should reflect the trends in order to secure the right framework conditions and include a concrete agenda that would provide guidance and certainty for industrial investments. A stable long-term regulatory framework is necessary.

5.8 The relationship between industrial policy and the Single Market is paramount. The EESC insists that parallel to more specific industrial policies, the decision-making on the Single Market Act will clearly reconfirm the role of the Commission and the EU, and the need for a European level playing field.

5.9 The EESC reconfirms the necessity to maintain the objective of 3 % of GDP on R&D expenditure. Shrinking financial resources should not damage decisive innovative forces.

5.10 With a view to efficiency and added value of policies and financial instruments, the EESC has welcomed in various opinions sectoral high-level groups, technological platforms, the stimulation of innovative clusters and cross-border cooperation between research panels and research centres, all backed by EU funding. Demonstration and exemplary projects should be developed.

5.11 A successful project is the Lead Market Initiative (LMI) for six important sectors to lower barriers for products and services⁽¹⁴⁾. In the same vein the EU should embark on new industrial projects, e.g. clean and energy efficient vehicles, carbon capture and storage, pan-European networks, space endeavours, and key enabling technologies.

⁽¹⁴⁾ The LMI identified the following markets: eHealth, protective textiles, sustainable construction, recycling, bio-based products and renewable energies.

5.12 The EESC considers the adoption of the European patent a test case for the credibility of EU industrial policy. If a European patent cannot be achieved for the EU as a whole now, for the time being a limited number of countries should start with it.

5.13 More generally, in the context of the world today the protection of intellectual property rights is a high priority.

5.14 Approaches designed specifically for sectors are essential in order to achieve better and more appropriate regulation and to develop the needed instruments and measures.

5.15 Nonetheless, globalisation, fragmentation of supply chains across country boundaries, and the close interdependence of the various actors make a 'traditional' sector by sector view of industry from a policy perspective less relevant. This is not to be seen as denying the existence of some very specific problems in some sectors, but these need to be dealt with on a case by case basis in a European perspective.

5.16 A flexible sectoral approach enables successful exchanges of views and is a good basis for the commitment of public and private stakeholders. In addition to the Commission and government officials, these include companies, research institutes, (higher) education, social partners, NGOs and regional representatives.

6. Key specific issues

6.1 Industrial policy is an overall concept with a number of related and interconnected areas.

6.2 **Access to finance and funding** are serious bottlenecks to be addressed urgently. The EESC welcomes very much the announced improvement of cross-border conditions for venture capital, as well as the proposals for public and private EU project bonds for investments in energy, transport and ICT⁽¹⁵⁾. Project bonds for other areas, e.g. research projects, should be examined. Other measures, among them tax deduction schemes, will have to be taken into consideration.

6.3 Especially SMEs have been hit by the financial crisis. Innovative ideas have to be developed to mobilise private capital, e.g. crowd funding. The EESC proposes that the Commission should organise round tables with external stakeholders to examine ways and means to mobilise private capital for industrial purposes. Practices around the world have to be taken into account. Fertile ideas and practices must be diffused.

6.4 The EESC recommends that the EIB too, together with the EIF, should be encouraged in its efforts to develop targeted instruments to help European SMEs to grow.

⁽¹⁵⁾ See footnote 2.

6.5 The role of the EIB is all the more important as an example for other private investors as well as a catalyst for attracting additional financial funding. This includes also the promotion of long-term investments, needed for the development of innovative processes. Social and environmental criteria should be integrated into EIB loans, with ex-post evaluations of the impact of EIB spending on European industry at large and for the achievement of EU objectives.

6.6 As to FP7 and FP8 the EESC welcomes the increasing focus of the Commission on innovative industrial projects and (cross-border) cooperation.

6.7 Currently, EU R&D funding focuses on disseminating and deepening knowledge. Projects in line with the views of EU Technology Platforms must be endorsed, as well as the European Institute for Innovation and Technology (EIT) ⁽¹⁶⁾. The EESC advocates further simplification in the implementation. EU funding should be invested in a targeted way in order to create a multiplier effect of public and/or private investments.

6.8 This means that FP8, alongside fundamental research, must also be driven by industrial policy objectives. For large industrial projects an effective coordination between (centralised) EU and national funding is necessary anyway.

6.9 The same goes for the CIP, the Competitiveness and Innovation Programme for SMEs in the fields of energy, ICT and entrepreneurship.

6.10 Development in mono-industrial regions should be looked at afresh in order to encourage industrial diversification more effectively. Sustainable development will be endorsed by EU funding of low-carbon and environmental projects.

6.11 The relationship between **innovation** and industrial policy is self-evident. Innovation is a very broad area and covers also non-technical matters. Quite rightly, the innovation and industrial policy flagships largely share the same focus and common objectives as innovation partnerships. This will add to efficiency and visibility.

6.12 A possible de-industrialisation must be avoided by strengthening the link between innovation and industry ⁽¹⁷⁾, amongst others through the emphasis on 'key enabling technologies'. Conditions for science-driven industries should be improved.

6.13 National and EU level research and innovation policy is closely connected with industrial policy, especially under the

pressure of shrinking budgets and efforts in other continents. The reduction and/or off-shoring of research expenditure in companies is also worrying.

6.14 The conversion of research and science into products via applied technology remains a weak spot across Europe. Whilst fundamental research remains crucial, the EESC stresses the need for an effective, sustainable and faster transition from the 'lab' to the real economy.

6.15 Goals in the transition process to a low-energy and low-carbon economy can give rise to additional opportunities for pioneering innovation.

6.16 An improvement of the coordination within and between knowledge chains should be a priority. It should be discussed among all stakeholders in the public and private sector in order to bridge gaps and promote added value and effectiveness.

6.17 Universities still do not play their full role as an integral part of the knowledge triangle. Emphasis has to be laid on open and cross-border networks between universities and industry. The EU should focus on promoting such developments.

6.18 The **Social Chapter** of Europe 2020 covers various elements. The creation of jobs through private investments and through the supply and value chain and SMEs is central. This objective would also enhance public acceptance of the strategy.

6.19 Employees should be involved and participate. The EESC emphasises the need for effective social dialogue and the promotion of common objectives and commitments in this era of dynamic changes. Social dialogue is also needed for socially acceptable solutions and is required to create trust for economic transformation; moreover, it should enhance public awareness and acceptance.

6.20 Member States have their own traditions in this field. In the EESC's view, participation and involvement of employees should take place at company, regional, national and EU level so as to foster anticipation and shape change. At EU level, sectoral social dialogues are a very valuable tool that the Commission should continue to support and promote them where they do not exist.

6.21 **Schooling and training** at all levels are at the top of the list. Analyses of the labour market (at sectoral level) should be a basis for guidelines for education curricula, with a view to mid- and long-term skills requirements. Gender gaps should be eradicated. In some areas, such as engineering and technical professions the mismatch between supply and demand on the labour market is worrying. Entrepreneurship should be promoted.

⁽¹⁶⁾ The first three Knowledge and Innovation Communities (KICs) are underway.

⁽¹⁷⁾ See, amongst others, 'The de-industrialisation of Europe. There is no more time to lose!', Académie Royale de Belgique, 2010.

6.22 Guidelines and the dissemination of best practices are needed in order to shape (higher) education curricula⁽¹⁸⁾. The EESC calls for the Commission to step up its commitment in this area.

6.23 **Global developments** call for an active European trade policy. The division of labour between 'high-value' and 'low-value' countries is blurring. Major economic and social developments are taking place at high speed, notably in Asia. A global level playing field is thus all the more important in terms of environmental and social standards, reciprocity of market access, intellectual property, etc.⁽¹⁹⁾.

6.24 The EESC insists that all European decision-making as well as the assessment of future legislation take the perspective of a global level playing field into account. In parallel, better monitoring and more effective market surveillance should be put in place in the EU. The competences of customs controls should be enhanced.

6.25 The significance of standardisation can hardly be overestimated as an important instrument in the Single Market. American and Chinese companies are often aligning with these standards spontaneously, because they are pioneering in the world.

6.26 The EESC underlines the link between industrial policy and trade policy and related issues. Artificial barriers to trade and investment in other parts of the world must be combated. Negotiations on these issues can go beyond the WTO framework and have to be dealt with in bilateral or other multi-lateral frameworks. The external dimension of industrial policy implies that the EU must speak with one voice in any international economic forum⁽²⁰⁾.

6.27 The EU must aggressively combat limitations on access to raw materials applied by trade partners. The EESC welcomes the recommendations for action on prices of raw materials and market consolidation in the mining sector. Speculation in the commodities markets should be addressed.

6.28 Without prejudice to agreed EU energy and climate objectives and standards, policy instruments must be carefully examined and designed in terms of the extent to which they impact on the competitiveness of industry⁽²¹⁾. A resource-efficient and low-carbon economy in Europe should imply

that the EU requires the same standards to be achieved by its trade partners⁽²²⁾. The preferable solution is multilateral agreements. Trade sanctions should be avoided.

6.29 Concerning **social standards**, the EESC points to the ILO declaration on core labour standards of 1998 on discrimination, child labour and forced labour as well as the freedom of trade unions and collective bargaining⁽²³⁾. The ILO conventions are more concrete, but they are not subscribed to or implemented by a number of countries.

6.30 Corporate Social Responsibility (CSR) must be practiced internationally on the basis of the ILO Declarations and the OECD Guidelines as well as of other widely recognised international instruments⁽²⁴⁾. Companies start using CSR as a label enhancing their image.

7. Relation between national industrial policies and the EU

7.1 In spite of inter-state differences the US economy functions with one market and one central government. The same goes for China and others.

7.2 In Europe, by contrast, Member States all have their own forms of industrial policy⁽²⁵⁾. The pattern is highly diversified due to diverging national decision-making structures and traditions, specific relationships between the public and private sectors and diverging structures of the economies and comparative advantages. Moreover, the current crisis may bring with it the temptation of hidden protectionism.

7.3 Due to all these disparities the output in terms of economic growth and employment in the Member States is very different. The Council underlines the desirability of annual reports on the development of national industrial policy. Given the limited competences of the Commission in this field, this is far from an easy job.

7.4 A main objective of Europe 2020 is to bring the EU and the Member States closer together. The Commission reports can form an additional part of EU governance. Transparency, successful examples and best practices may lead to a positive convergence of governmental attitudes. They should give rise to discussions in the Council on the various concepts and their practical results.

⁽¹⁸⁾ See EESC opinion entitled 'Universities for Europe' (OJ C 128 of 18.5.2010, p. 48).

⁽¹⁹⁾ See the Communication on Trade Policy, SEC(2010) 1268.

⁽²⁰⁾ See EESC opinions 'The external dimension of European industrial policy – Is the EU's trade policy really taking the interests of European industry into account?' (See page 25 of this Official Journal) and OJ C 128 of 18.5.2010, p. 41.

⁽²¹⁾ See EESC opinion entitled 'Impact of the ongoing development of energy markets on industrial value chains in Europe' (OJ C 77 of 31.3.2009, p. 88), in particular § 1.6.

⁽²²⁾ See EESC opinion on 'The effects of international agreements to reduce greenhouse gas emissions on the industrial change processes in Europe' (OJ C 185 of 8.8.2006, p. 62).

⁽²³⁾ See ILO Declaration on Fundamental Principles and Rights at Work (1998).

⁽²⁴⁾ Among others, the UN Global Compact and International Financial Reporting Standards (IFRS, among which the International Accounting Standards). The UN Guiding Principles on Business and Human Rights, drafted by John Ruggie, is also relevant.

⁽²⁵⁾ Somewhat exaggerated, this amounts to 27 industrial and innovation policies.

7.5 Of course, each Member State is free to define its own strengths and create knowledge and other infrastructures if the actions are in accordance with EU rules. Platforms for discussion on experiences can enhance cooperation between groups of Member States.

7.6 Monitoring and evaluation of national performances can open up new opportunities between governments, between governments and the Commission and, of course, for companies, in particular for the huge number of internationalising SMEs.

7.7 Various countries have their innovation platforms with national targets. These are rarely to the benefit of common European objectives. The EESC advocates examining how cross-border approaches could increase effectiveness. Best practices should be diffused and discussed.

7.8 The annual reports should analyse the coherence of EU industrial policy and national policies. Since recently, Member States – e.g. Germany, France, the United Kingdom, Spain and the Netherlands – are also issuing policy papers on their national policy⁽²⁶⁾. But the link to European objectives and actions remains weak. The EESC recommends an analysis of these national reports by the Commission in a European perspective in its forthcoming annual report.

7.9 Exchanges of view on desirable industrial policies among Member States are also intensifying. Practices of this kind as well as operational results should be diffused across the Union in order to replace national tunnel visions by broader perspectives.

7.10 Also the regions and metropolitan areas must take ownership. They should be empowered to develop clusters and to intensify cooperation between schooling, knowledge centres and industry (e.g. through the development of regional-sectoral networks).

7.11 The Commission's evaluation should embrace performances and practices in specific fields such as public procurement – 17 % of GNP – where, according to analyses and contrary to EU directives, national industrial objectives still prevail.

7.12 A special case in point is military equipment, which is often overlooked. Shrinking budgets often have a damaging effect on military expenditure. Independent examinations must pave the way for better value for money.

7.13 In this field the EESC highlights the need to lift barriers within the EU and, equally, to develop competitive cross-border supply chains. Spill-over and spin-off effects between military and civil production should be promoted. In parallel, European harmonisation of export permits must be envisaged.

7.14 Another interesting field is 'public utilities'. On the basis of an inventory by the Commission, more openness to trans-border cooperation and/or best practices must be envisaged.

7.15 EU analyses can produce interesting data on the quality of a broad spectrum of conditions in Member States. Simplification of administrative practices (without prejudice to product safety and consumer protection) and reduction of financial burdens must be encouraged⁽²⁷⁾. In some areas and countries these processes are underway.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²⁶⁾ In focus: Germany as a competitive industrial nation (Germany), *Feuilles de route des comités stratégiques de filière* (France), the Growth Agenda (United Kingdom; shortly to be followed by a detailed programme), *Plan Integral de Política Industrial 2020* (Spain), *Naar de top: de hoofdlijnen van het nieuwe bedrijfslevenbeleid* (Netherlands).

⁽²⁷⁾ Stoiber Group.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area’

COM(2010) 524 final — 2010/0278 (COD)

(2011/C 218/08)

Rapporteur: **Mr FARRUGIA**

On 6 December 2010 the Council of the European Union decided to consult the European Economic and Social Committee, under Articles 136 and 121 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area

COM(2010) 524 final — 2010/0278 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 8 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May 2011), the European Economic and Social Committee adopted the following opinion by 139 votes to 10 with 33 abstentions.

1. Conclusions and recommendations

1.1 The EESC acknowledges that reforms to the Stability and Growth Pact (SGP) are needed to address the problems following the 2008 crisis as well as long-standing problems which were obvious even before the crisis. Furthermore, the EESC notes that the SGP was not successful at preventing and containing fiscal imbalances originating from other sources including macroeconomic imbalances and insufficiencies in banking and financial practices and regulation.

1.2 While welcoming the proposal for a regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance as one step in the direction of much-needed reform, the EESC expresses the need for adequate review in the preventive and corrective elements of this proposal.

1.3 The EESC believes that fiscal rules should take into strong consideration:

- the issue of quality of fiscal activities, in terms of enhancing the contribution of revenue and expenditure mechanisms to the supply side of the economy;
- that the sustainability of fiscal financial positions is best ensured through a stronger emphasis on preventive rather than corrective approaches; and
- that mechanisms which are based on incentives are most likely to be successful than those based solely on punitive measures.

This viewpoint does not diminish from the importance of the corrective arm which is essential to promote fiscal discipline.

1.3.1 Such an approach is viewed to be congruent with the Europe 2020 objectives of smart, sustainable and inclusive growth.

1.4 With regards to the preventive element, and in consonance with the targets outlined in the Annual Growth Survey, it is proposed that the establishment of numerical targets for fiscal performance be based on a two-pronged system with top-down and bottom-up elements. The top-down element would focus on the establishment of a target determining the fiscal consolidation effort required for the entire euro area while the bottom up approach would entail the distribution of such effort into actions to be undertaken by individual Member States. This would reinforce, through a formal approach, the Commission’s efforts towards a stronger focus on country-specific circumstances in the application of the SGP.

1.5 Within this approach, the positive credibility externalities expected out of a monetary union may require that members would be called to make fiscal consolidation efforts in a manner consistent with their relative size and ability to undertake such efforts.

1.6 The EESC further suggests that the imposition of interest bearing deposits, non-interest bearing deposits and fines is effected in a manner that these are directly funded, first and foremost, through the correction of policy elements which are

leading to unsustainable fiscal positions. The latter would be determined through an assessment of deviations of revenue and expenditure elements from the convergence path as determined through the preventive arm. Furthermore, their value would be computed relative to the magnitude of expenditure and/or revenue elements which can be identified to be directly leading to the unsustainability of fiscal policy. This approach would be conducive to the enhancement of the quality of fiscal policy.

1.7 It is furthermore suggested that penalties undertaken under the corrective arm are accompanied by a rigorous impact assessment so as to monitor an effective improvement in the quality of fiscal policy.

1.8 In order to foster a balance between incentives and punitive approaches in the corrective arm, the EESC proposes that interest on non-interest bearing deposits can be obtained by the Member State concerned once a reduction in public debt, which is at least equivalent to such interest and which is likely to be sustained in future, is achieved. Fines, on the other hand, would be directed to the European Stability Mechanism.

1.9 The EESC believes that the proper reform of budgetary surveillance will be a cornerstone in strengthening governance and restoring credibility in the euro area.

2. Effective enforcement of budgetary surveillance in the euro area

2.1 The 2008 global financial and economic crisis has led to a sharp increase in fiscal deficits and debt. These have exacerbated longer term concerns on fiscal sustainability. The uneven fiscal performance of Member States, with the real possibility of debt default in some instances, coupled with the lack of sufficient fiscal coordination and compensating mechanisms, is another major challenge. Such concerns are compounded by insufficiencies in the financial and banking systems and regulatory infrastructures, and the related possibility of defaults.

2.2 The SGP, a rules-based framework for the coordination of national fiscal policies in the economic and monetary union, was specifically set up to ensure fiscal discipline but recent experience has revealed remaining gaps and weaknesses in the system which could seriously undermine the stability of the euro. This has spurred a debate on the importance of EU economic governance⁽¹⁾ whereby in September 2010, the Commission presented a legislative package of six communications. The package consists of:

— strengthening the SGP with prudent fiscal policy making⁽²⁾,

- preventing and correcting macroeconomic imbalances⁽³⁾,
- establishing national fiscal frameworks of quality⁽⁴⁾, and
- stronger enforcement⁽⁵⁾.

2.3 This opinion focuses specifically on enforcement in terms of the Proposal for a Regulation of the European Parliament and of the Council, on the effective enforcement of budgetary surveillance in the euro area⁽⁶⁾. It is to be also noted that the EESC is currently drawing up an opinion on COM(2010) 527 final⁽⁷⁾.

3. Context

3.1 The key instrument for fiscal policy co-ordination and surveillance in the euro area is the SGP which implements the Treaty provisions on budgetary discipline. The European Council in June 2010 agreed on the urgent need to reinforce the coordination of economic policies and in doing so agreed on:

- (i) strengthening both the preventive and corrective aspects of the SGP, including sanctions, while taking due account of the particular situation of the euro-area Member States;
- (ii) giving, in budgetary surveillance, a much more prominent role to levels and evolutions of debt and overall sustainability;
- (iii) ensuring that all Member States have national budgetary rules and medium term budgetary frameworks in line with the SGP;
- (iv) ensuring the quality of statistical data.

3.2 With respect to effective enforcement of budgetary surveillance in the euro area, the proposal for a Regulation of the European Parliament and of the Council is seeking further amendments to Regulations No 1466/97 and EC No 1467/97 which lay down the foundations of the SGP⁽⁸⁾. In particular, the proposed regulation aims to substantiate the preventive arm and reinforce the corrective arms of the SGP.

⁽³⁾ COM (2010) 527 final.

⁽⁴⁾ COM (2010) 523 final.

⁽⁵⁾ COM (2010) 524 final and COM (2010) 525 final.

⁽⁶⁾ COM (2010) 524 final.

⁽⁷⁾ EESC opinion on *Macro economic imbalances* See page 53 of this Official Journal.

⁽⁸⁾ The regulations were amended in 2005 by Regulations (EC) No 1055/2005 and (EC) No 1056/2005 and complemented by the Council Report of 20 March 2005 on 'Improving the implementation of the SGP'.

⁽¹⁾ See EESC Opinion in OJ C 107 of 6.4.2011, p. 7.

⁽²⁾ COM (2010) 522 final and COM (2010) 526 final.

3.2.1 In terms of the preventive arm, the proposed regulation indicates that the current medium term objective (MTO) outlined in the stability and convergence programmes and the 0,5 % of GDP annual convergence requirement will be maintained, but will be made operational through the provision of a new principle of prudent fiscal policy making. This principle, according to the proposal, indicates that annual expenditure growth should not exceed a prudent medium term rate of growth of GDP unless the excess is matched by increases in government revenues or discretionary revenue reductions are compensated by reductions in expenditure. In case of deviations from prudent fiscal policy making, a recommendation will be issued by the Commission backed with an enforcement mechanism under Article 136 of the Treaty, through the imposition of an interest bearing deposit, amounting to 0,2 % of GDP.

3.2.2 The corrective arm is linked to the obligations for euro area Member States to avoid excessive deficits and debt against a numerical threshold of 3 % of GDP in terms of the deficit and 60 % of GDP in terms of debt, whereby a sufficient decline towards the debt criterion is also deemed acceptable.

3.2.2.1 The Commission proposal recognises that the emphasis on the annual budget balance may result in excessive focus on shorter-term considerations and that debt deserves more consideration as an indicator of longer-term fiscal sustainability.

3.2.2.2 In the corrective element, the proposed regulation states that enforcement would be strengthened by means of the introduction of a new set of financial sanctions for euro area Member States which would apply earlier in the process and according to a graduated approach. A non-interest bearing deposit amounting to 0,2 % of GDP would be applied upon a decision to place a country in excessive deficit. In the event of non-compliance, the deposit will be turned into a fine.

3.2.3 The operational aspects of the enforcement of the preventive and corrective arms is proposed by the Commission to be undertaken through a procedure of reverse voting whereby a recommendation would be made by the Commission to the Council rendering the Member State liable for the provision of the deposit. This recommendation would hold unless the Council decides to the contrary by qualified majority within ten days of the recommendation presented by the Commission.

3.2.4 The Commission's proposed regulation states that the Council could reduce the amount of the deposit unanimously or based on a specific proposal by the Commission on grounds of exceptional circumstances or a reasoned request by the Member State. In the case of the preventive arm, once the Council is satisfied that the Member State has addressed the situation, the deposit will be returned with the accrued interest to the Member State concerned. In terms of the corrective arm, the Commission's proposed regulation states that the non-interest bearing deposit will be released upon correction of the excessive deficit while the interest on such deposit and fines collected will

be distributed among euro area Member States which do not have an excessive deficit and which are not the subject of an excessive imbalance procedure either.

3.2.5 The proposal is made within a wider call for a broader macroeconomic assessment including the determination of structural imbalances which exert a negative impact on competitiveness. Towards this end, a proposal for a Regulation on the European Parliament and of the Council on enforcement to correct excessive macroeconomic imbalances in the euro area⁽⁹⁾ as well as a proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances⁽¹⁰⁾ has also been published.

3.3 Effective budgetary surveillance at the euro area level needs to be complemented by a focus on the national budgetary frameworks.

3.4 These proposals are part of a broader reform of economic governance spurred by the objectives outlined in Europe 2020 strategy. Economic policy coordination including surveillance of the fiscal position through adherence to fiscal rules and to structural reforms is expected to be integrated in the European Semester which outlines a period of time during which the Member States' budgetary and structural policies will be reviewed to detect any inconsistencies and emerging imbalances as well as to reinforce coordination while major budgetary decisions are still under preparation⁽¹¹⁾.

4. General comments

4.1 Reforms to the SGP to tackle the weaknesses of the system are needed to address the weaknesses which became evident out of the exceptional 2008 crisis, but also to address problems that had emerged before then.

4.2 Indeed, for a number of years prior to the crisis, some euro area countries had run fiscal deficits above the reference value of 3 % and had increasing public debt ratios⁽¹²⁾. The onset of the financial and economic crisis resulted in significant widening of the fiscal position such that the average deficit in the euro area is expected to reach 6,3 % of GDP by the end of 2010 and the ratio of debt to GDP is expected to reach 84,1 %⁽¹³⁾. The SGP was not directed to prevent such imbalances which in many instances occurred also as a result of severe tensions in the wider macroeconomic and financial milieu.

⁽⁹⁾ COM(2010) 525 final.

⁽¹⁰⁾ COM(2010) 527 final.

⁽¹¹⁾ The European Semester has been launched through the Annual Growth Survey published in January 2011 (COM(2011) 11 final). The Annual Growth Survey brings together the different actions which are essential to strengthen the recovery in the short terms while also focusing on the Europe 2020 objectives.

⁽¹²⁾ Eurostat Statistics, 16.12.2010.

⁽¹³⁾ European Commission, *European Economic Forecast*, Autumn 2010.

4.3 There are two main observations that need to be addressed with respect to the SGP. The first refers to improvements that may be implemented to enforcement mechanism. The second relates to the excessive reliance on the fiscal deficit criterion with limited consideration to debt. The economic cycle did not feature sufficiently in the application of the SGP.

4.3.1 In terms of the lack of enforcement, a number of countries have over the years violated the deficit and debt criterion. Lack of sanctions led to fiscal behaviour which not only ignored fiscal sustainability at the level of the Member State but also failed to take into account the impact of unsustainable fiscal behaviour by any one Member on the entire monetary union. Lack of enforcement in the past has weakened the SGP and dented its credibility.

4.3.1.1 Reforms to the preventive and corrective arms of the Pact, backed by a new set of tougher financial sanctions, are expected to address this shortfall. However, the extent to which credible enforcement will be practised remains to be seen.

4.3.1.2 From one perspective it can be argued that this time, the stakes of an ineffective package are extremely high. More than ever, the financial market will exhibit heightened caution with respect to euro area countries monitoring fiscal and macroeconomic balances. Lack of credible enforcement would signal the failure of the SGP and would thus seriously undermine the stability of the euro area.

4.3.1.3 At the same time, consideration must be taken of the fact that proposals for enhanced surveillance are being undertaken in the wake of an unprecedented crisis where economic growth remains weak. Governments have had to intervene through capital injections pumped into banks to prevent a total collapse of the financial system. They have also had to intervene to contain the economic and social costs of the crisis.

4.3.2 In terms of the excessive reliance on the deficit criterion, it is noted that the 2005 revision of the SGP tried to shift the focus to structural deficits to take into account the cyclical situation of each Member State. Such emphasis however failed to take into account fiscal discipline from a longer term perspective. Increased emphasis on the debt criterion will to an extent address this shortfall.

4.3.2.1 The mechanism however needs to consider the underlying reasons for the accumulation of debt. Debt-financing of public capital projects which render a high rate of economic and social return cannot be viewed in the same manner as the financing of expenditure which renders a low rate of return.

4.3.2.2 Furthermore, while reform to the surveillance mechanisms is expected to take into consideration country specific features such as the composition of debt, risks linked to the debt structure, private sector indebtedness as well as

liabilities related to ageing, it is important that a distinction between foreign and domestic debt whereby the latter contributes towards macroeconomic stability is also undertaken.

4.3.2.3 A further criticism of the surveillance mechanism is linked to the emphasis on specific reference values, which are essentially arbitrary⁽¹⁴⁾. Notwithstanding, there is acknowledgment that the reference value approach has important merits in terms of simplicity, transparency and the facilitation of governance.

4.3.2.4 On the other hand, the divergences of individual Member States from such reference values indicates the extent to which convergence in the EU is as yet elusive. A rapid convergence between countries is desirable and the recent emphasis placed by the European Council in this regard is appropriate. This, on the other hand, requires a careful balance, at the country level, between the necessary commitment to fiscal discipline, and the specific needs for restructuring, investment and growth which may need to be sustained through fiscal interventions.

4.4 It is important to reiterate that fiscal sustainability cannot be considered in isolation from macroeconomic imbalances. Consequently, broader macroeconomic surveillance to monitor the correction of imbalances is highly warranted.

4.5 The drive towards the setting up of national budgetary frameworks as a complement to the SGP rests on recognition of the fact that while fiscal discipline is a matter of common concern among euro area countries, the legislative power of fiscal policy lies at a national level.

4.5.1 The extent to which a more decentralised approach to fiscal discipline can be undertaken may on one extreme depend on relevant changes to the Treaty which would limit national interest over common interests, but could also be operated through more flexible arrangement at the level of agreement of the Member State. Unless such changes are undertaken, no matter how justified common interests are, national interest may tend to prevail⁽¹⁵⁾. It is thus important to consider the role which fiscal responsibility laws at the national level can play in sustaining fiscal discipline which through their successful implementation can serve as a spur to the promotion of fiscal sustainability across the euro area.

5. Specific comments

5.1 While the aims of the proposed Regulation based on the strengthening of the SGP through the provision of tools leading to effective enforcement are to be commended, there are specific details in terms of the preventive and corrective arms of the Pact which the EESC feels that require reconsideration.

⁽¹⁴⁾ C. Wyplosz (2002), *Fiscal Discipline in EMU: Rules or Institutions?*, Graduate Institute for International Studies, Geneva and CEPR.

⁽¹⁵⁾ Directorate General for Internal Policies - Policy Department A: *Economic and Scientific Policies, Economic and Monetary Affairs, Multi-lateral Surveillance* (Charles Wyplosz).

5.2 The expenditure target, outlined in the preventive arm, based on a prudent medium term rate of growth of GDP fails to take into account the different elements of government expenditure – albeit an overall expenditure target is useful for the purposes of simplicity and facilitating governance. This is also the case with fiscal rules which focus solely on overarching indicators such as the deficit and debt criterion. Such criteria fail to take into account the long-term supply-side growth induced by certain categories of government expenditure as well as the development in the quality of fiscal expenditure and revenue generating mechanisms in general.

5.2.1 Consequently, there needs to be emphasis on the quality of public finances through an assessment of the composition and efficiency of public expenditure. This can be particularly relevant for investment in human capital through expenditure on education and health, expenditure on research and development, on public infrastructure and on the development of institutions⁽¹⁶⁾ (17). It is thus proposed that this type of expenditure is excluded from the expenditure ceiling, especially when it consists of outlays which are financed by EU funding programmes and their national co-financing elements. In the interest of preserving the quality of social expenditure, the non-discretionary elements of unemployment benefits could also be excluded. Furthermore, the implementation of fiscal targets must be fully in line with the attainment of the Europe 2020 objectives which focus on smart, sustainable and inclusive growth whereby the attainment of such goals may require higher government outlays⁽¹⁸⁾.

5.2.2 Furthermore in order for the regulation not to be shrouded in uncertainty the EESC suggests a clear definition of the terms ‘prudent fiscal policy making’, ‘prudent medium term growth rate’ and ‘exceptional circumstances’.

5.3 The enforcement mechanism should not be triggered solely on account of deviations from numeric values but rather wider considerations such as the economic, political and social conditions prevailing in the Member State should also be considered. This proposal is not intended to water down the preventive mechanism but rather to allow for specific considerations prevailing in euro area Member States to be taken into consideration. Indeed, this is congruent with the proposed regulation on macroeconomic imbalances whereby following the alert mechanism, an in depth review on the Member State is carried out.

5.4 It is further suggested that the imposition of interest bearing deposits, non-interest bearing deposits and fines is in each case effected in a manner so that these are directly funded

through the correction of policy elements which would be causing an imprudent and unsustainable fiscal position as determined through deviations from the provisions of the preventive arm. Furthermore, their value would be computed relative to the magnitude of expenditure and/or revenue elements which can be identified to be directly leading to the unsustainability of fiscal policy. Such an approach would avoid the risk that deposits and fines are funded through government expenditure which renders a high rate of return. While it is acknowledged that the identification of unsustainable behaviour is not an easy feat, efforts should be directed towards deriving clear and operationally feasible definitions which can be useful in this context.

5.4.1 Moreover, it is imperative that the deposit is only released once a commitment is made by the Member State involved to redirect such funds towards productive expenditure. In this regard, the use of cost benefit approaches which are similar to those applied in the allocation of Cohesion and Structural Funds⁽¹⁹⁾ could be warranted.

5.5 Furthermore, due consideration must be given to the implications of enforcement whereby the imposition of the non-interest bearing deposit and sanction would be imposed at a point in time wherein the economic and social framework of the Member State may be considered vulnerable. As a result, any recommendations made by the Commission towards the triggering of the corrective arm should be subject to an impact assessment to inform on the manner in which its application would be effectively leading to improvements in the quality of fiscal policy within individual Member States concerned and in the euro area in general. It is important for enforcement to not generate more failure than it is trying to resolve.

5.6 Article 7 of the Regulation refers to the distribution of the interest and fines earned by the Commission, in proportion to the share in the gross national income of euro area Member States which are not liable to an excessive deficit or excessive imbalance. Towards this end, the distribution system may cause greater imbalances within the monetary union potentially resulting in wider divergences between euro area Member States running counter to the requirements of a monetary union.

5.7 In order to foster a balance between incentives and punitive approaches in the corrective arm, the EESC proposes that interest on non-interest bearing deposits can be obtained by the Member State concerned once that a reduction in public debt, which is at least equivalent to such interest and which is likely to be sustained in future, is achieved. Fines, on the other hand, would be directed to the European Stability Mechanism.

⁽¹⁶⁾ Salvador Barrios and Andrea Schaechter (2008), *The Quality of Public Finances and Growth*, European Commission Economic Papers 337.

⁽¹⁷⁾ António Afonso, Werner Ebert, Ludger Schuknecht and Michael Thöne, (2005), *Quality of Public Finances and Growth*, ECB Working Paper Series No 438.

⁽¹⁸⁾ See EESC Opinion in OJ C 107 of 6.4.2011, p. 7.

⁽¹⁹⁾ EU Commission (2008), Directorate General Regional Policy, *Guide to Cost-Benefit Analysis of Investment Projects*, June 2008.

5.8 The premise behind this suggestion is that the SGP should serve as an incentive towards the promotion of sustainable behaviour rather than as a strictly punitive mechanism.

5.9 While it is recognised that the goal of the pursuit of fundamental economic and fiscal convergence must be based on common targets, it is argued that a 'one size fits all' target may need to be flexibly implemented in gauging fiscal sustainability in the immediate short term, at least until sufficient fundamental economic convergence between countries has been attained, but also in consideration of the asymmetric way in which the recent recessionary episode has impinged upon different Member countries.

5.9.1 It is also important to create framework conditions whereby individual Member States would benefit from the positive credibility externalities expected out of the existence of a large monetary area. It may be thus considered that the countries would be called to make fiscal consolidation efforts in a manner consistent with their relative size within the monetary area and ability to undertake such efforts, so that the common overarching target for the euro area is consistently achieved. This approach would directly benefit all countries, through the economic credibility which is established in the area as a whole and especially in the policy-making of the better performing ones.

5.9.2 The effectiveness of such an approach strongly depends on the surveillance mechanism as proposed by the Commission which would ensure that countries lagging behind are making all the effort possible to achieve convergence at an optimal speed. There is also need for consistent emphasis on correct statistical measurement and that statistics and reporting are improved in a manner which ensures reliable and timely availability of credible data.

5.9.3 Consequently the Committee suggests that, for the immediate short term and until sufficient economic convergence between different member states is achieved, a two-pronged system having a top down and a bottom up approach is used to reinforce and complement the efforts currently under way aimed at restoring fiscal sustainability in the euro area by introducing within them necessary elements of flexibility in a planned and well-regulated manner.

5.9.4 The top down approach is based on the establishment of a target for the entire area determining fiscal consolidation effort required at that level. The attainment of such a target enhances the credibility of the euro area in general and all countries would individually benefit from it. The bottom up approach would entail the distribution of the effort to be effected by the entire area into actions to be undertaken by individual Member states. The distribution would take into consideration a number of objective economic criteria such as state of development, investment needs, extent of pension reform, extent of structural reform, the quality of public finances and the efficiency of taxation systems. Furthermore,

this approach would prevent an excessively restrictive approach to the SGP from causing permanent damage to growth in the cases of certain countries.

5.9.5 This approach would on one hand introduce an element of justifiable solidarity across euro area countries, while on the other hand serving as a step towards improved coordination and fiscal integration. In the presence of sufficient fundamental economic convergence, the bottom up distribution of effort among Member States is tantamount to a situation where the different countries would be pursuing common numerical goals. In the interim, the exercise of the necessary flexibility on a country-by-country basis would no longer happen, as has often occurred in past, on apparently ad hoc and perhaps unjustifiable bases, but would form part of a coherent and consistent system to effect the necessary fiscal consolidation efforts at the euro area level. This approach could go a long way towards sustaining credibility in the system.

5.9.6 Such an approach is in nature similar to that adopted in the derivation of targets for the Europe 2020 Strategy, whereby Member states set their own national targets which are congruent with the arching targets set for EU. Indeed Annex 1 of the Annual Growth Survey which presents provisional varying Member States targets refers to the fact that an important element of the strategy is that each Member State sets its own level of ambitions as regards the overall Europe 2020 targets. It is argued that such targets are more likely to be adhered to given the internal political debate required to establish such targets whereby the target is established by taking into consideration starting positions and national considerations. In this context, it can also be proposed that explicit transition periods within a realistic consolidation timeframe, are set for countries requiring particularly large consolidation efforts.

5.9.7 This proposed approach is not tantamount to a watering down of the proposed preventive mechanism in the Commission's proposal as it is based on long term convergence to the same numerical targets by all euro area members. It is however intended to allow for a formal framework to justify different speeds of convergence at the level of individual euro area Member States in the same spirit of the country specific approaches being proposed by the Commission itself. This is also seen as an important way to enhance the credibility of the system by formally embedding flexibility in country specific convergence plans.

5.10 Finally it is important to note that social dialogue has an important role to play. At a national level, social dialogue is important for the development of a national policy framework which focuses on fiscal policy and macroeconomic surveillance. Mature and comprehensive political and social dialogue allows for the confrontation of social and economic challenges particularly those of a long term nature such as pension reform and health expenditure. In order for governments to achieve objectives such as fiscal sustainability and macro-economic balance, there must be a strong degree of social partnership and collaboration, including political consensus.

5.10.1 The EESC also has an important role to play through the provision of effective dialogue amongst its members on fiscal sustainability. Towards this end, the EESC may provide in close coordination with the national social dialogue recommendations and suggestions for reforms. As suggested in the Opinion on Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance the EESC could hold dedicated annual sessions to discuss recommendations and suggestions for reforms. Furthermore, the EESC has a role to play in ensuring that social partners and other civil society organisations are attuned with Community objectives that are conducive towards social and economic development.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area’

COM(2010) 525 final — 2010/0279 (COD)

and the ‘Proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances’

COM(2010) 527 final — 2010/0281 (COD)

(2011/C 218/09)

Rapporteur: **Mr PALMIERI**

On 1 December 2010 the Council of the European Union decided to consult the European Economic and Social Committee, under Articles 136 and 121(6) of the Treaty on the Functioning of the European Union, on the:

Proposal for a Regulation of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area

(COM(2010) 525 final — 2010/0279 (COD)) and the

Proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances

(COM(2010) 527 final — 2010/0281 (COD)).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 8 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 189 votes to two with 11 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the fact that the European Commission has, as part of the move to strengthen European economic governance, taken on board the need to devote greater attention to macroeconomic imbalances, in the same way as to public budget deficits, as factors for economic, financial and social instability in the economies of the European Union (EU) Member States.

1.2 The EESC acknowledges that the current economic crisis has challenged the economic, social and even political resilience of the EU in general and Economic and Monetary Union (EMU) in particular. In order to prevent crisis, it has become clear that that it is not enough to take the purely quantitative aspects of a country’s growth into consideration – the quality of this growth also needs to be evaluated, that is to say, the macroeconomic factors underlying the sustainability or otherwise of the process need to be identified.

1.3 The EESC hopes that the strengthening of European economic governance will focus equally on the need for stability and for growth that produces new jobs.

1.4 For this reason, the EESC hopes that the strengthening of economic governance, the keystone of EU economic, social and

cohesion policies, will effectively help to achieve the objectives laid down by the Europe 2020 strategy and the new European cohesion policy.

1.5 The EESC intends to help secure the broad consensus needed to effectively strengthen economic governance by highlighting, on the one hand, the limitations and risks inherent in the Commission’s approach and, on the other hand, its strong potential.

1.6 If, as emphasised by the Commission⁽¹⁾, continuing macroeconomic imbalances within the Member States are attributable to competitiveness factors and if competitiveness is, in accordance with the Commission’s own definition, understood as ‘the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis’⁽²⁾, then it follows that, as the EESC underlines, a fuller range of economic, financial and social causes needs to be looked at in order to assess these imbalances.

⁽¹⁾ European Commission – DG ECFIN, *The impact of the global crisis on competitiveness and current account divergences in the euro area*, Quarterly Report on the Euro Area, No 1/2010.

⁽²⁾ COM(2002) 714 final.

1.7 The EESC therefore considers that the scoreboard for assessing imbalances should be made up of economic, financial and social indicators. Here, the EESC would point to the need to look at the imbalances arising from wide and widening inequalities of distribution within the Member States, which were among the causes of the recent economic and financial crisis ⁽³⁾.

1.8 Macroeconomic differences are not only the result of the currency union, but also of the creation of the single market. The distribution of labour across borders is based on the different competitive advantages and disadvantages in the different markets. The intended measures should not therefore seek to iron out all possible differences when these arise from internal market dynamics and do not have negative effects.

1.9 Where the evaluation of macroeconomic imbalances is concerned, the EESC underlines the need to frame an accurate and fair assessment of both price and non-price competitiveness factors.

1.10 The EESC hopes that the debate on the indicators to be included in the Commission's planned scoreboard will be broadened to embrace, both nationally and Europe-wide, a wide range of official stakeholders and bodies representing civil society, including the EESC itself and the Committee of the Regions.

1.11 The EESC believes that the scoreboard proposed by the Commission as part of the alert mechanism must essentially be considered as a tool for an initial evaluation, on account of the inherent technical problems of this approach (setting the alert thresholds, the 'weighting' to be given to the various sources of imbalance, relevant timeframe). Consequently, it will, in any case, have to be followed by a more wide-reaching and detailed economic evaluation of the imbalances in the Member State in question.

1.12 The EESC warns that the link between identifying imbalances, applying corrective measures and restoring a balance reasonably rapidly cannot be taken for granted. A number of factors can prolong the process: (a) the complex connections between macroeconomic objectives and instruments; (b) indirect control over these instruments by policy makers; and (c) the possible ineffectiveness of the sanction scheme proposed for the EMU countries.

1.13 The EESC points to the risk that any restrictive rebalancing measures could have the effect of fuelling procyclical

policies, intensifying and prolonging the current phase of economic contraction. The economic policy mix prescribed to individual Member States on the grounds of the need to address internal imbalances might even prove to be unsuitable for the EU as a whole.

1.14 The EESC is convinced that, with respect to measures to prevent macroeconomic imbalances – essentially linked to excessive private sector exposure to debt – the supervisory and control capacity that can be deployed by the European Central Bank (ECB), the European System of Central Banks, the European Systemic Risk Board and the European Banking Authority has been underestimated. As one aspect of coordination between these bodies, the EESC therefore calls for the groundwork to be laid to ensure effective direct or indirect surveillance of the banking system, accompanied by timely interventions to regulate credit: the (regulatory) criteria for such interventions will need to be duly defined.

1.15 The EESC emphasises that the legislative package to prevent and correct macroeconomic balances lacks any discussion of the EU budget. The occurrence of asymmetric shocks in the euro area Member States means that tools to rebalance the macroeconomic system must be used. In this context, the EESC advocates assessing the potential of a more flexible and better-resourced Community budget system than at present. This would enable the necessary transfers to be made between areas benefiting from shocks to those adversely affected, by means of either automatic stabilisers, or pan-European investment project financing (e.g. through issuing eurobonds) ⁽⁴⁾.

1.16 The EESC stresses that effective coordination of European economic policies – capable of gaining strong democratic credentials with the European public – necessarily entails a stronger role for the European Parliament (EP), the EESC and the Committee of the Regions, in other words the institutions representing citizens, the social partners and civil society ⁽⁵⁾.

1.17 The EESC believes that the EP may be crucial to building consensus on the macroeconomic reference framework, the prioritisation of problems to be addressed and the choice of economic policies to be implemented. Here, the EP would take on the key role as the forum for agreement – together with the other European institutions – on a common

⁽³⁾ ILO-IMF, *The Challenges of Growth, Employment and Social Cohesion*, discussion document for the joint ILO-IMF conference, Oslo, 13 September 2010 (pp. 67-73).

⁽⁴⁾ Monti M., *A New Strategy for the Single Market. At the Service of Europe's Economy and Society*, Report to the President of the European Commission, May 2010. Delors J., Fernandes S., Mermet E., *Le semestre européen: un essai à transformer*. Notre Europe, Les Brefs, n. 22 February 2011. Amato A., Baldwin R., Gros D., Micossi S., Padoa-Schioppa C., *A new political deal for Eurozone sustainable growth: An open letter to the President of the European Council*, VoxEU.org, December 2010, available on-line at www.voxeu.org/index.php?q=node/5893.

⁽⁵⁾ Points 1.15 to 1.18 put forward the same recommendations as set out in opinion ECO/282 on *Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance*, OJ 2011/C 107/02 p. 7.

strategy that does more than merely lay down rules and procedures and instead gets to grips with practical policies in order to boost the confidence and expectations of Europe's citizens.

1.18 The EESC welcomes the European Council conclusions of 24-25 March 2011, according to which 'close cooperation' will be maintained with the EESC on implementing the European Semester 'in order to ensure wide ownership'. It declares its readiness to collaborate across the board and hopes that the Council will enter into discussions with the EESC as soon as possible.

1.19 As a forum for civil dialogue, the EESC could hold a dedicated annual session (in the autumn) to discuss recommendations for the Member States, organising a debate with the relevant national economic and social councils, national parliaments and the EP, thus enabling the strategies adopted to be assessed and then disseminated and promoted at national level.

1.20 The EESC hopes that more intensive use will progressively be made of macroeconomic dialogue (MED), so as not to leave the prevention and correction of macroeconomic imbalances to the Commission and Member States governments alone. MED could become an instrument for governments and the social partners to jointly assess the economic situation at EU level and to agree on the steps to be taken, in close coordination with the national social dialogue and consultation processes, thereby bringing overall EU dynamics into line with Member State ones.

2. The measures to correct internal macroeconomic imbalances proposed by the Commission in communications COM(2010) 525 and 527 final

2.1 On 30 June 2010 the Commission presented a communication on *Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance* ⁽⁶⁾. The Commission's purpose with this communication was to further develop the ideas set out in its communication on *Reinforcing economic policy coordination* ⁽⁷⁾.

2.2 In the light of the international financial crisis, the Commission and the Van Rompuy task force have acknowledged that compliance with the parameters laid down by the Stability and Growth Pact (SGP) – subsequently beefed up under the reform of governance – is not sufficient to ensure EMU stability. Moreover, the existence of macroeconomic imbalances within the EU Member States risks damaging the European economic system as a whole, contributing to both the deterioration of both public finances and increased strains on the financial markets.

⁽⁶⁾ COM(2010) 367 final – c.f. EESC opinion on *Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance*, OJ 2011/C 107/02 p. 7.

⁽⁷⁾ COM(2010) 250 final.

2.3 Against this backdrop, on 29 September 2010 the Commission presented a legislative package of six proposals ⁽⁸⁾ aimed at providing a legislative framework to prevent and correct imbalances in the Member States regarding both budgets (in relation to the SGP) ⁽⁹⁾ and macroeconomic aspects. The present opinion concerns the Commission's proposal on surveillance of macroeconomic imbalances, based on COM(2010) 525 and 527 final on the procedure for excessive imbalances in the Member States, with sanctions for the EMU countries only, and the alert system for all the Member States, respectively.

2.3.1 The alert system for all the Member States consists of:

- regular assessment of the risks arising from economic imbalances in each Member State, based on a scoreboard made up of economic indicators and indicative thresholds;
- identification by the Commission, on the basis of an economic rather than mechanical reading of the scoreboard, of those Member States where risks of imbalances are considered to exist, in order to assess their real severity;
- an in-depth review of the general economic situation in any Member State displaying a particularly negative scoreboard;
- in the event of a real risk, a possible recommendation from the Commission to the Member State in question to correct the imbalance, in the framework of the other policy recommendations made in the European semester (Article 121(2) TFEU);
- in the event of a serious risk of imbalance, or – in the euro area – if such an imbalance may spread to other Member States, jeopardising the proper functioning of the EMU, possible opening of an excessive imbalance procedure (Article 121(4) TFEU).

2.3.2 Under the excessive imbalance procedure, the Member State is obliged to present a corrective action plan to the EU Council. If the corrective measures are judged to be sufficient, the procedure is placed in abeyance while the corrective plan is implemented, but the Member State must report periodically to the Ecofin Council. The procedure is only closed once the Council, on the basis of a recommendation from the Commission, decides that the imbalance has been sufficiently reduced no longer to be considered excessive.

⁽⁸⁾ For details, see: http://ec.europa.eu/economy_finance/articles/eu_economic_situation/2010-09-eu_economic_governance_proposals_en.htm

⁽⁹⁾ EESC opinion on *Budgetary surveillance in the euro area* (See page 46 of this Official Journal).

2.3.3 For the EMU countries only, failure to take action regarding excessive imbalances will result in fines (maximum 0,1 % of GDP) when the Member State concerned has failed twice in a row to submit a sufficient corrective action plan, or to implement the planned measures, according to set deadlines.

2.4 The key tool for activating the macroeconomic imbalances alert mechanism is the scoreboard proposed by the Commission, backed up by an in-depth analysis of the Member State's economic situation. It has the following features:

- i) a small number of indicators to highlight imbalances and competitiveness problems;
- ii) alert thresholds which, if passed, trigger analysis;
- iii) differentiated thresholds depending on whether or not the Member State belongs to the euro area;
- iv) it is 'evolutionary', as the composition of the indicators is intended to evolve over time in keeping with changes in the sources of imbalance.

2.4.1 The Commission's initial work on the choice of indicators for the scoreboard⁽¹⁰⁾ suggests that the following, the first three of which concern the external position and the last four the internal situation, will be among them:

- **current account balance as a share of GDP**, reflecting the net lending/borrowing situation with regard to the rest of the world;
- **net foreign financial asset position as a share of GDP**, representing the stock counterpart to the current account;
- **change in the real effective exchange rate** based on unit labour costs, summing up the country's competitiveness (with differentiated thresholds for the euro area);
- **change in real house prices**, in order to assess speculative bubbles, or as an alternative, **change in the value added in the construction sector** as a percentage of total value added;
- **private sector debt to GDP ratio**, to gauge private sector vulnerability to changes in the business cycle, inflation and the interest rate;

⁽¹⁰⁾ European Commission – DG ECFIN, *A structured framework to prevent and correct macroeconomic imbalances: operationalising the alert mechanism and A structured surveillance procedure to prevent and correct harmful macroeconomic imbalances: an explanation of the Commission's proposal of 29 September 2010*, Note for the Economic Policy Committee and the Alternates of the Economic and Financial Committee, 11 November 2010.

- **change in private sector credit**, representing the stock counterpart to changes in private sector indebtedness;

- **public sector debt as a share of GDP**, a traditional indicator of the state of Member State finances.

3. The persistence of disparities in competitiveness within the euro area

3.1 The presence of internal macroeconomic imbalances within Member States is linked to the persistent gaps between aggregate supply and demand in the Member States, leading to systematic surpluses or deficits in a given economy's overall saving. This stems from a wide range of factors that influence aggregate supply and demand, and tends to have a negative influence on the functioning of Member State economies, EMU and the EU as a whole.

3.2 The new attention with which the Commission believes macroeconomic imbalances within the Member States – together with public budget deficit – should be viewed as factors for economic and financial instability for the EU as a whole is therefore to be welcomed.

3.3 After more than a decade during which the Commission had set balanced public budgets as the sole object of EMU surveillance, an approach has been introduced that allows for an assessment of national performance that is certainly more complete and covers all the Member States. It is increasingly clear that it is not enough to take the purely quantitative aspects of a country's growth into consideration – the quality of growth itself also needs to be evaluated, that is to say, the macroeconomic factors underlying the sustainability or otherwise of the process need to be identified.

3.4 It was mistakenly believed that setting up the EMU would ensure that disparities in competitiveness between the Member States would be temporary. Experience with the euro has shown not only that these divergences are tenacious, but also that they undermine the foundations of the EMU itself, creating positions that are hard to maintain, as currently illustrated by the financial crisis over recent months.

3.4.1 More specifically, over the ten years preceding the economic crisis a persistent gap in productivity – reflected in the real effective exchange rate – and in competitiveness (export performance) has emerged between euro area countries (figures 1 and 2 in appendix)⁽¹¹⁾. The significance of this situation lies not so much in its appearance, but in its duration, since in prevent cases (the 1970s and 80s), the divergences were rapidly reversed by realigning the nominal exchange rates of the countries concerned.

⁽¹¹⁾ European Commission – DG ECFIN, *Surveillance of Intra-Euro-Area Competitiveness and Imbalances*, European Economy, No 1/2010.

3.4.2 These divergences have had an impact on the Member States' trade balances. Germany's trade balance and that of the group of 'peripheral' countries comprising Portugal, Ireland, Italy, Greece and Spain have taken opposite courses; the deficits seem to match the surpluses⁽¹²⁾ (figures 3 and 4 in appendix). This dynamic has shown no sign of being temporary; indeed, the divergences have tended to widen since the creation of the EMU, although the 2008 crisis seems to have reduced them.

3.4.3 The continuing divergences in competitiveness and exports are generally reflected in the current account position and the net foreign asset position (figures 5 and 6 in appendix), generating situations that are difficult for some euro area Member States to sustain over the medium term.

4. Key points of the proposed action

4.1 Faced with such a difficult context, demanding equally robust solutions, a number of doubts however remain concerning the Commission's approach and, consequently, the risks it could incur.

4.2 If, as emphasised by the Commission⁽¹³⁾, continuing internal macroeconomic imbalances are attributable to competitiveness factors and if competitiveness is, in accordance with the Commission's own definition, understood as 'the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis'⁽¹⁴⁾, then the EESC believes that consideration should be given to a wide range of underlying economic, financial and social causes of these macroeconomic imbalances, and consequently of indicators to be built into the scoreboard in order to identify potential macroeconomic imbalances.

4.2.1 Competitiveness factors include both price-related factors (reflected in the real effective exchange rate) and equally important non-price factors. These latter encompass features such as product differentiation, technological content, product quality, the quality of product-related services (after-sales), etc. This series of elements is decisive in determining an economy's competitiveness and, although they cannot easily be quantified by a single indicator, an effort needs to be made to identify variables that can indicate their level and evolution within EMU Member States.

4.2.2 The Commission's initial work on the choice of indicators suggests an underestimation of the impact of the

⁽¹²⁾ Altomonte C., Marzinotto B., *Monitoring Macroeconomic Imbalances in Europe: Proposal for a Refined Analytical Framework*, Note for the European Parliament's Committee on Economic and Monetary Affairs, September 2010.

⁽¹³⁾ European Commission – DG ECFIN, *The impact of the global crisis on competitiveness and current account divergences in the euro area*, Quarterly Report on the Euro Area, No 1/2010.

⁽¹⁴⁾ COM(2002) 714 final, *Communication on Industrial Policy in an Enlarged Europe* (p. 2).

wide and growing inequalities between Member States on the creation of imbalances, over a lengthy period (at least the last twenty years), marked by glaring inequalities in distribution and remuneration. This refers in particular to their role in triggering the economic and financial crisis, on account of the imbalances between the global expansion of supply of goods and services and the declining purchasing power of consumers⁽¹⁵⁾.

4.2.3 The set of indicators to be included in the scoreboard should be capable of picking out factors that might generate imbalances in aggregate supply and demand arising from macroeconomic, financial or social circumstances. It would, for example, be helpful for the scoreboard to include both the GINI index, which reveals particularly high levels in the Mediterranean and English-speaking countries⁽¹⁶⁾ and the difference between a country's current and potential output (output gap). This would make it possible to take into account its economic cycle.

4.2.4 The debate on the indicators to be included in the Commission's planned scoreboard should therefore be broadened to embrace, both nationally and Europe-wide, the widest possible range of official stakeholders and bodies representing civil society, including the EESC and the Committee of the Regions.

4.3 Moreover, the link the Commission's approach makes between fiscal governance and macroeconomic governance appears weak and with little scientific basis. While there are indeed valid reasons for keeping the EMU Member States' fiscal policy under observation⁽¹⁷⁾, with regard to internal macroeconomic imbalances the reasons and coordination methods appear far more controversial, although the surveillance procedure reflects specific needs⁽¹⁸⁾.

4.3.1 In view of the numerous reasons for imbalance, the factors to be jointly monitored are numerous (foreign trade, production costs, inequalities of distribution, price and non-price related productivity factors, speculative construction and financial bubbles, etc.) and they also interact with cultural and social factors outside the economic system (for example, consumers' and savers' preferences and habits). In addition to the difficulty in identifying and selecting these factors, problems

⁽¹⁵⁾ ILO-IMF, *The Challenges of Growth, Employment and Social Cohesion*, discussions document for the joint ILO-IMF conference, Oslo, 13 September 2010 (p. 67-73).

⁽¹⁶⁾ OECD, *Growing Unequal? Income Distribution and Poverty in OECD Countries*, October 2008.

⁽¹⁷⁾ Arising from the negative spillover that high-debt countries within a monetary union can cause for better-behaved countries by means of the common interest rate. De Grauwe P., *Economics of Monetary Union*, Oxford University Press, 2009, chapter 10.

⁽¹⁸⁾ Tabellini G., *Reforming the Stability Pact: Focus on financial supervision*, VoxEU.org, October 2010, available on-line at www.voxeu.org/index.php?q=node/5622.

also arise regarding both how to set the alert thresholds and the 'weighting' to be given to the various sources of imbalance ⁽¹⁹⁾.

4.3.2 This is compounded by the fact that the link between identifying imbalances (by means of the alert thresholds), applying corrective measures and rapidly restoring a balance reasonably rapidly cannot be taken for granted. It is far from certain that action to restore the macroeconomic balance will succeed in identifying the most appropriate economic policy responses. Wrong decisions could in fact fuel procyclical policies, intensifying and prolonging the current economic contraction phase through restrictive measures, whereas demand-boosting, expansionist action might be needed. The economic policy mix prescribed to individual Member States on the grounds of the need to address internal imbalances might even prove to be unsuitable for the EU as a whole.

4.3.3 The indicators that seem to have the Commission's preference for surveillance purposes – especially prices and pay, and therefore competitiveness – depend primarily on actors located outside the public sphere (companies and trade unions) and consequently come under economic policy control only indirectly and with a time lag, by means of incentives, regulation of competition, and social dialogue. This makes these variables virtually impervious to automatic mechanisms or early intervention, which explains why the Commission highlights the need for flexibility in applying the new rules, and for the rules to continue to evolve.

4.4 Moreover, the legislative package lacks any proper discussion of monetary and credit policy. This is a more fertile area in which to seek greater coordination in terms of financial supervision and control of excessive debt accumulation (and of the corresponding credit) in the private sector ⁽²⁰⁾, on which the EESC has previously put forward proposals ⁽²¹⁾. There is no mention of the role in terms of economic stability that – in keeping with the statutory independence it quite rightly enjoys – the European Central Bank (ECB) could play, together with the system of national central banks and the newly-established European Systemic Risk Board and the European Banking Authority.

4.4.1 These bodies appear at least potentially capable of ushering in a more prudent and vigilant European credit

surveillance policy than in the past, when unsuitable rules and practices failed to prevent excess and consequently triggered crises in a number of Member States, threatening the stability of EMU as a whole. It should be borne in mind that countries that are now in difficulty, such as Ireland and Spain, had complied with SGP constraints up until 2007, with balanced budgets and low public sector debt, while expanding credit supply, fuelling the property boom – and that this over-expansion of credit did not alarm the EU monetary authorities. These problems are also connected with the role of the rating agencies, and in particular with the impact of their decisions on Member State public finances, on which the EESC has already voiced its concern ⁽²²⁾.

4.4.2 We therefore consider that specific supervisory and regulatory powers should be attributed to the EU to prevent excessive credit growth in the Member States, particularly where granting mortgages is concerned ⁽²³⁾. In an integrated financial area – such as EMU – it would be better for supervisory and regulatory powers to be invested in a third body rather than national authorities. Competences and powers could be attributed to the new European financial authorities so they could effectively carry out direct or indirect surveillance of the banking sector and take steps to regulate credit: the (regulatory) criteria for such steps will need to be duly defined.

4.5 Lastly, the legislative package also lacks a discussion of the Community budget. The possible occurrence of asymmetric shocks in the euro area Member States, i.e. variations in supply and demand that are positive in some countries and negative in others, as they are unable to manipulate either exchange or interest rates ⁽²⁴⁾, means that other tools to adjust the economic system must be used. Apart from prices and salaries, which generally offer little flexibility, economic theory holds that the only effective instrument in such situations is the existence of a more flexible and better-resourced budget system than at present. This would enable the necessary transfers to be made between areas benefiting from shocks to those adversely affected, by means of either automatic stabilisers, or pan-European investment project financing (e.g. through issuing eurobonds) ⁽²⁵⁾.

⁽¹⁹⁾ Belke A., *Reinforcing EU Governance in Times of Crisis: The Commission Proposal and beyond*, Deutsches Institut für Wirtschaftsforschung – DIW Discussion Papers, Berlin, November 2010.

⁽²⁰⁾ De Grauwe P., *Why a tougher Stability and Growth Pact is a bad idea*, VoxEU.org, October 2010, available on-line at <http://www.voxeu.org/index.php?q=node/5615>. Giavazzi F., Spaventa L., *The European Commission's proposals: Empty and useless*, VoxEU.org, October 2010, available on-line at www.voxeu.org/index.php?q=node/5680. Tabellini G., *Reforming the Stability Pact: Focus on financial supervision*, VoxEU.org, October 2010, available on-line at www.voxeu.org/index.php?q=node/5622.

⁽²¹⁾ EESC opinion on *The implications of the sovereign debt crisis for EU governance*, OJ 2011/C 51/03 p. 15.

⁽²²⁾ EESC opinions on *Rating Agencies*, OJ 2009/C 277/25 p. 117 and *Credit rating agencies*, OJ 2011/C 54/12 p. 37.

⁽²³⁾ Spaventa L., *How to prevent excessive current account imbalances*, EuroIntelligence, September 2010, available on-line at [www.eurointelligence.com/index.php?id=581&tx_ttnews\[tt_news\]=2909&tx_ttnews\[backPid\]=901&cHash=b44c8f9ae0](http://www.eurointelligence.com/index.php?id=581&tx_ttnews[tt_news]=2909&tx_ttnews[backPid]=901&cHash=b44c8f9ae0).

⁽²⁴⁾ If the positive and negative variations balance out across a monetary union, then the union's central bank will have no reason to intervene in monetary policy (cf. De Grauwe P., *Economics of Monetary Union*, op. cit., chapter 1).

⁽²⁵⁾ Monti M., *A New Strategy for the Single Market. At the Service of Europe's Economy and Society*, Report to the President of the European Commission, May 2010. Delors J., Fernandes S., Mermet E., *Le semestre européen: un essai à transformer*. Notre Europe, Les Brefs, n. 22, February 2011. Amato A., Baldwin R., Gros D., Micossi S., Padoan P., *A new political deal for Eurozone sustainable growth: An open letter to the President of the European Council*, VoxEU.org, December 2010, available on-line at www.voxeu.org/index.php?q=node/5893.

4.6 In order to help achieve a balance between incentives and sanctions in correcting excessive macroeconomic imbalances in the euro area, the EESC advocates that fines imposed should not be distributed between Member States according to the size of their GNI, as the Commission proposes, but should go into the European Stability Mechanism.

4.7 In the present opinion, the EESC would repeat ⁽²⁶⁾ that rules and automatic procedures run the risk not only of being ineffective in terms of preventing severe crises, as these almost always follow on from extraordinary, unforeseeable events, but also of making the situation worse. Firstly, they may erode confidence in the EU institutions which, in the eyes of the European public, are shying away from political choices and relying on the 'Brussels technocrats', as illustrated by Eurobarometer surveys ⁽²⁷⁾. Further, they encapsulate a traditional approach to resolving issues that considers questions of growth, social equity and environmental deterioration to be of secondary importance, thereby running the risk of nipping the ambitions of the EU 2020 strategy in the bud.

4.8 The same short-termism that affected financial affairs, and which seemed to have been singled out as an underlying factor in the crisis, now appears to be guiding European policy ⁽²⁸⁾. Instant reactions prevail – both within the EU institutions and at intergovernmental levels ⁽²⁹⁾ – to critical situations where rapid decision-making is required, or in response to public opinion trends in the most crucial Member States, that politicians eye with concern, especially during the on-going round of elections.

5. Potential of action against macroeconomic imbalances

5.1 Effective coordination of European economic policies, that is impervious to electoral factors and sudden shifts in public opinion hinges on a stronger role for the European Parliament (EP), the Committee of the Regions and the EESC – in other words, the institutions representing citizens and civil society. This is where the coordination mapped out by the Commission can gain strong democratic credentials for its preventive and corrective procedures, and consequently ensure the wide popular support needed if it is to be implemented effectively.

5.2 In particular, the EP plays only a secondary role in the European semester as currently conceived, being limited to the initial discussion phase and the initial direction taken by the coordination process. In fact, it could play a more useful and

more effective role if it was coordinated with the work of the national parliaments when they discuss and approve the budgets of the individual Member States. The EP could have a decisive effect in terms of adherence to the macroeconomic reference framework, the prioritisation of problems to be addressed and the choice of economic policies to be implemented. It could become a forum for agreeing on a common strategy that is not restricted to laying down formal procedures and rules, but goes into the detail of practical policies to boost the trust and expectations of Europe's citizens.

5.3 Focusing on competitive imbalances entails increasing attention on bargaining between governments, the social partners and civil society, particularly in the euro area, where the Member States no longer have the option of adjusting the exchange rate. Relations between governments, the partners for social dialogue (trade unions and employers' associations) and civil society should therefore be an integral part of the strategy outlined by the Commission.

5.4 In this context, the EESC – in line with its role as a consultative body to the European institutions – can help reinforce EU economic governance, specifically in its capacity as a forum that is able to foster dialogue between representative civil society organisations. The added value of the EESC is precisely that its members include representatives of organisations which can – following careful evaluation – help sustain a consensus for economic policies in the Member States. This enables the EESC to make a significant contribution to ensuring that not only political leaders but also and especially citizens of the Member States and EU's productive, social and civil fabric take an interest and assume responsibility.

5.4.1 The EESC could hold a dedicated annual session to discuss recommendations and how to forge a consensus on reforms at national level, in the light of the social impact of the measures adopted ⁽³⁰⁾. A debate of this kind could be envisaged in the autumn, following the formal adoption of the recommendations by the Member States, and its conclusions would provide a basis for discussion with the national economic and social councils, the national parliaments and the EP, thereby enabling the strategies adopted to be assessed, and for them to be disseminated and support for them to be assured at national level.

5.5 More intensive and operational use of macroeconomic dialogue should also be encouraged. By improving the quality of this dialogue, it would become an instrument for governments and the social partners to jointly assess the economic situation at EU level and to agree on the steps to be taken, in close coordination with the national social dialogue and consultation processes, thereby making EU dynamics consistent with their national counterparts, in a socially acceptable way.

⁽²⁶⁾ As argued in EESC opinion on *Enhancing economic policy coordination*, OJ 2011/C 107/02 p. 7.

⁽²⁷⁾ This erosion in confidence concerns less the Community institutions as such than the benefits of EU membership. Data from Eurobarometer 73 – First results, questions QA9a and QA10a.

⁽²⁸⁾ Monti M., *Europe must buck short-term tendencies*, Financial Times, 13 December 2010.

⁽²⁹⁾ For example, the competitiveness pact proposed by the French and German governments on 4 February 2011.

⁽³⁰⁾ As argued in EESC opinion, OJ C 107, 6.4.2011, p. 7.

5.5.1 Preventing and correcting imbalances cannot be left to the Commission and Member State governments alone ⁽³¹⁾. The process of salary and price formation is a crucial element in the broader mechanism for monitoring macroeconomic imbalances: in consequence, any political action on this front must take into account Article 153(5) of the Treaty on the Functioning of the European Union and involve the social partners at both national and European levels. Against this backdrop, MED can be strengthened at European level by means of a stable structure and organisation, and can be

better pursued at national level with social dialogue and the appropriate institutions. National governments should support and encourage businesses and trade unions to take part in these bodies and the types of collective bargaining that take place within them. In view of the complexity of correcting imbalances by means of national reforms and delays in doing so, strengthening MED could provide a more efficient, speedier and better-coordinated instrument for maintaining consistency between macroeconomic issues and the dynamics of the labour market.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽³¹⁾ Watt A., *Economic Governance in Europe: A Change of Course only after Ramming the Ice*, Social Europe Journal, 30 July 2010, available on-line at www.social-europe.eu/2010/07/economic-governance-in-europe-a-change-of-course-only-after-ramming-the-ice. Watt A., *European economic governance: what reforms are to be expected and what are needed?*, paper for European Alternatives, 2010, available on-line at www.euroalter.com/wp-content/uploads/2010/11/Watt-ENG.pdf.

Opinion of the European Economic and Social Committee on the 'White Paper: Insurance Guarantee Schemes'

COM(2010) 370 final

(2011/C 218/10)

Rapporteur: **Mr WUERMELING**

On 12 July 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

White Paper on Insurance Guarantee Schemes

COM(2010) 370 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 148 votes to seven with ten abstentions:

1. Conclusions and recommendations

1.1 The EESC welcomes the European Commission's White Paper on Insurance Guarantee Schemes. It supports the Commission's efforts to propose measures for protecting policyholders within the EU.

1.2 The EESC backs the Commission's efforts to introduce harmonised rules for insurance guarantee schemes (IGSs). It supports the Commission's intention to provide for a European Directive with a high level of protection in the form of a minimal harmonisation, so that national systems can also provide for further protection. The IGS should be used as a last resort when other instruments (e.g. supervisory instruments) have been exhausted.

1.3 Nevertheless, it should be borne in mind that, over the past few years, there has been a considerable improvement in the provisions relating to insurance company solvency as a result of supervision and capital requirements. In practice, the failure rate of insurance companies is low and these measures should further reduce it. This should be taken into account when designing IGSs so that a balance can be struck between costs and benefits. The EESC therefore favours EU requirements that achieve the goals of safeguarding consumers and employees while keeping costs for companies and policyholders to a minimum.

1.4 The EESC believes that the Commission is right to address the issue of unlimited cover for IGSs in the White Paper. Sound insurance companies should not be placed in difficulty because of unlimited guarantee obligations. The EESC therefore welcomes the fact that, in its White Paper, the Commission is considering setting limits on claims.

1.5 When preparing legislation, the Commission should pay particular attention to the question of when the IGS can be deployed. At all events, it should not be called upon until all

possible supervisory options have been exhausted. Merely falling short of the Minimum Capital Requirement under Solvency II should be sufficient for triggering the IGS.

1.6 As regards the question of financial provision for the IGSs, the EESC recommends re-examining the various options on the basis of the results of the fifth quantitative impact study (QIS5) of the Solvency II directive. It would be advisable to fix a certain level of protection at EU level, but to set the specific provision in terms of the respective national risk and the risk of each business line.

1.7 With respect to the existing national guarantee schemes, European legislation should provide for a high and appropriate level of protection. The organisational questions, such as the details of the amount of contributions, the timing of the financing, the choice of portfolio transfers or awarding compensation, and the introduction of specific guarantee schemes for each business line can then be left to the Member States.

2. Introduction

2.1 Insurance companies cover basic risks for consumers such as sickness, accidents or civil liability and provide for their old age⁽¹⁾. If an insurance company goes bankrupt, this can lead to the irreparable loss of all or a large part of consumers' assets and can drive them into poverty.

2.1.1 The question of the need for an IGS arises in different ways in the various insurance business lines. Whilst there is frequently a danger of losing the capital saved in life insurance, that is not the case for non-life insurance.

⁽¹⁾ OJ, C 48, 15.2.2011., p. 38, point 1.4.

2.1.2 Endowment life insurance policies are intended to provide long-term cover in old age or for survivors. If this is lost and there is no insolvency guarantee, a major part of private provision is lost. State social systems would have to intervene in an emergency. Thus the EESC feels that the introduction of an IGS is most urgent in this area.

2.1.3 In non-life and civil liability insurance, policyholders must be protected if there is an unresolved claim for compensation pending when the bankruptcy occurs. However, for other policyholders, the problem of a new policy from another insurer being offered under less favourable conditions because the policyholder is older or his health has deteriorated does not arise. A new policy can generally be obtained on the market on similar terms.

2.2 According to the Commission's data, 130 out of 5 200 insurance companies (2008 figures) have suspended payments since 1994. However, it should be noted in this respect that the companies are legally obliged to maintain a sufficient level of capital to fully or at least partially meet policyholders' claims in such cases.

2.3 Thus it has so far not been deemed necessary to introduce Europe-wide guarantee schemes for the rare cases of insurance company insolvencies. The Commission began preparing a directive in 2001, but the plan was shelved. Although collective guarantee schemes are not the norm in market economies, they have been set up on many occasions in the financial sector in view of the particular risks for consumers.

2.4 A Europe-wide deposit guarantee has been available in the banking sector since 1994⁽²⁾ because of the risk of a 'run' which would be highly destabilising for the financial markets. This is currently being updated⁽³⁾. Nevertheless, the insurance sector is exposed to different risks from banks. In particular, the former need not fear a run nor does it require refinancing. Therefore, an effective guarantee scheme for the insurance sector must be differently structured from banking sector schemes.

2.5 To protect customers from losing their claims, the legislator has adopted extensive precautions in the insurance sector: comprehensive and proactive supervision, stringent capital requirements, strict laws on investing capital and protecting rights under bankruptcy law. Implementing the Solvency-II directive will further reduce the risk of financial difficulties for insurance companies⁽⁴⁾.

2.6 Moreover, the risks arising from primary insurance will be covered by reinsurance, further reducing the risk of bankruptcy. Grouping and diversifying a wide range of risks through reinsurance creates strong links between insurers, which provides additional protection for consumers.

2.7 Moreover, the EU has placed financial supervision on a totally new European footing in the wake of the financial crisis. As regards the insurance sector, this also includes the creation of a European Insurance and Occupational Pensions Authority (EIOPA).

2.8 The insurance sector remained largely stable during the financial crisis. It was not responsible for triggering it⁽⁵⁾, but was affected by the consequences. European insurance companies had to write off assets and the low interest rates resulting from the bail-outs and monetary policy are making it difficult for insurers to obtain the necessary returns from their capital investments. The spectacular instances of difficulties in the sector, such as the US company AIG or recently Ambac, were not caused by traditional insurance activities, but by bank-style financial derivatives. This may also occur in the future, particularly in the case of businesses and financial conglomerates that operate as both banking and insurance companies.

2.9 Guarantee schemes for insurance companies already exist in 12 of the 27 Member States⁽⁶⁾. They are very complex: in some Member States there is only a guarantee for certain business lines. Moreover, the extent of coverage is different and there are also some state guarantees.

2.10 As a rule, insurance undertakings that operate throughout Europe work on the national markets with independent subsidiaries that pay into the respective national guarantee schemes. If a large European company were to get into difficulty, the national guarantee schemes would in general provide sufficient protection for policyholders. The EESC calls, however, for a European guarantee scheme for transnational companies in the event that national guarantee schemes prove insufficient.

2.11 The costs generated by an IGS are ultimately passed on to policyholders in the form of higher premiums. Whilst individual consumers are protected against insolvency, the body of consumers must bear the cost.

3. Observations on the Commission's arguments in Chapter 3 of the White Paper

3.1 Nature of possible EU action (White Paper 3.1)

There are big differences between the national insurance markets in terms of product and risk structure. A directive for minimum harmonisation should thus be chosen as the instrument, in order to allow Member States to take due account of specific national characteristics under the legislation governing insolvency, contracts, taxation and the social sector and in order to maintain the existing and proven guarantee schemes, where they reflect the provisions of the directive.

⁽²⁾ OJ L 135, 31.5.1994, p. 5; OJ L 84, 26.3.1997, p. 22.

⁽³⁾ COM(2010) 368 final, 2010/0207 (COD), 12.7.2010.

⁽⁴⁾ OJ C 224, 30.8.2008., p. 11, point 3.1.

⁽⁵⁾ OJ, C 48, 15.2.2011., p. 38, point 1.3.

⁽⁶⁾ OECD report No. DAF/AS/WD (2010)20 of 10 November 2010 provides a comprehensive overview of such systems in OECD member states.

3.2 Level of centralisation and role of the IGS (White Paper 3.2)

3.2.1 First and foremost, it is important to ensure that an insurer does not become insolvent. An effective supervisory system should prevent this from happening. If this does not work then the IGSs can be used.

3.3 Geographical scope (White Paper 3.3)

The Commission rightly favours the home country principle, which is in line with the principles of European insurance supervision. In accordance with the Solvency II directive, the supervision of all the activities of insurance companies established in the EU is carried out in the home country. This also applies to the activities carried out under the freedom of establishment via dependent branches or under the free provision of services through cross-border services.

3.4 Policies covered (White Paper 3.4)

3.4.1 Because of the differences between the life insurance and non-life insurance business lines, it would be wise to create separate guarantee structures for these categories. The risk within a business line is more or less the same, which justifies reciprocal assistance. However, it is difficult to justify house contents insurance policyholders, for example, having to pay into an IGS whose funds will be used to rescue a life insurer. Since this can depend on special national characteristics, such as whether there is an obligation in the market in question for a legal separation of companies in the different business lines (the separate business line principle), the European legislator should allow the Member States a degree of latitude.

3.4.2 As regards motor insurance and in line with the opinion drawn up by the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), the EESC considers that this subject should be included in the future directive on IGS, for reasons of clarity, competitive balance and greater ease of understanding for consumers.

3.4.3 The Commission proposals do not cover protection for occupational pensions. Only insurance-based occupational pension schemes in the traditional sense come under the IGS. The EESC also sees the need for action with other occupational pensions and is in favour of including this question in the context of the follow-up to the Pensions Green Paper.

3.4.4 An appropriate and affordable contribution by policyholders is an effective incentive for them to find out how sound the insurer is, in so far as this is possible for consumers.

3.4.5 It would also be advisable to set upper limits or other forms for limiting the obligations of insurance schemes, such as de minimis thresholds or excesses, as CEIOPS also proposed in its opinion, whilst not overburdening policyholders with a plethora of restrictions. This would significantly reduce the burden on the IGS and would be reflected in the costs. Policyholders, who ultimately bear the costs, would also benefit.

3.5 Eligible claimants (White Paper 3.5)

3.5.1 The Commission rightly explains that a guarantee for all market operators would generate excessively high costs. The first sentence of the White Paper presents IGSs as a consumer protection measure. This does not mean, however, that the group of those benefitting from protection should be limited to consumers. However, entities that receive the same protection granted to consumers under the national legislation of some countries, whether they are policyholders, the insured or beneficiaries should also be covered.

3.5.2 Member States should from the outset be free to exclude purely commercial insurance covering periods of inactivity or transport, for example, from the scope of the IGSs. Similarly, they should decide whether it is sensible to include small undertakings in the scope of the directive.

3.6 When preparing legislation, the Commission should pay particular attention to the question of when the IGS can be deployed and who should take the decision. The Commission is considering not waiting for bankruptcy to occur before deploying the IGS, but rather using it to prevent bankruptcy. The EESC believes that, for reasons of efficiency and to reflect the nature of the scheme and the purpose for which it was designed, falling short of the Minimum Capital Requirement under Solvency II should be sufficient for triggering the IGS.

3.7 Funding (White Paper 3.6)

3.7.1 Timing of the funding (White Paper 3.6.1)

3.7.1.1 The question of whether to opt for ex-post or ex-ante funding or a combination of the two is the subject of thorny discussion. All the systems have advantages and disadvantages.

3.7.1.2 Ex-post funding removes less liquidity from the market, which reduces the premiums for policyholders because the costs are lower. It also avoids the problem of temporary investment of the funds collected. With ex-post funding, no part of the resources is used for administrative costs before a case of insolvency arises.

3.7.1.3 On the other hand, ex-post funding makes it difficult to combat the problem of moral hazard, since it is precisely the least reliable market operators that are excluded from the market because of their insolvency and can no longer share the burden of costs at the time of funding.

3.7.1.4 The advantage of ex-ante funding is above all the fact that contributions can be quantified against the risk of insolvency. Market operators with riskier commercial practices will be required to pay more. Furthermore, procyclical effects can be prevented more effectively with ex-ante funding than with ex-post funding.

3.7.1.5 The question of the timing of the funding can be crucial for the effectiveness of the IGS. The advantages of an ex nunc financing scheme far outweigh the disadvantages and it is hard to see why national characteristics and traditions mean that the decision is best left to the Member States. To ensure the scheme's efficiency, the directive should include a single ex nunc form of financing.

3.7.2 Target level (White Paper 3.6.2)

3.7.2.1 Financial contributions to the IGS should be limited, as CEIOPS has also called for in its opinion. Unlimited compulsory cover would make it impossible to calculate the risk for individual companies. It would lead to every insurer being liable for the whole market⁽⁷⁾. An individual company's risk management would no longer depend on its own decisions, but to a great extent on the risk approach of its competitors.

3.7.2.2 The Commission has set a target level of 1.2 % of the gross written premiums as a starting point. The EESC would like the various options to be re-examined on the basis of the currently available figures for the Solvency II directive. In this respect it should also be borne in mind that the Solvency II directive and other intervention mechanisms have been created to give policyholders greater protection, an aspect also emphasised by CEIOPS in its opinion.

3.7.2.3 The Commission's calculations are based on an average probability of the IGS being called on of 0.1 %. However, this assumes own capital cover of 100 % of the Solvency Capital Requirements (SCR). If capital is higher than the SCR in some Member States and business lines, the bankruptcy risk diminishes correspondingly. The directive should thus make it possible for national guarantee schemes to assess capital requirements in terms of the real risk of losses on the national markets and in the various business lines.

3.7.2.4 In its White Paper the Commission does not address the question of whether a fresh contribution to the IGS should be made following a loss. Clear rules and limits are needed to rule out the possibility of unlimited liability and to enable companies to assess their obligations in advance and make the necessary provisions.

3.7.3 Contributions (White Paper 3.6.3)

3.7.3.1 The size of the contribution should be based on available data to reduce administrative costs. In the case of life insurance, this could be linked to the capital accumulated and in the case of non-life insurance, to the amount of technical provisions. Own capital in relation to the SCR could also be a criterion. The European legislator should fix the methodology and allow Member States to settle the details of the amounts of the contributions, so that they can take account of their specific national characteristics.

3.7.3.2 Before having recourse to IGSs, solvent insurers should be given the opportunity to take over endangered companies, without a financial contribution, if they wish to take on their customers.

3.8 Portfolio transfer and/or compensation of claims (White Paper 3.7)

3.8.1 There are two different approaches available for IGSs: a one-off payment for damages to the policyholder, or the contract can be continued through an insolvency guarantee undertaking which would take over the client portfolio. The EESC considers that portfolio transfer offers advantages to life insurance policy holders. However, compensation payments should provide sufficient protection for consumers in non-life and accident insurance. In any event, the European directive should not prevent the use of the scheme that is more advantageous for the consumer.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁷⁾ OJ, C 48, 15.2.2011., p. 38, point 2.7.3.1.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 54 (3) of the Rules of Procedure):

Point 2.10

Amend as follows:

'2.10 As a rule, insurance undertakings that operate throughout Europe work on the national markets with independent subsidiaries that pay into the respective national guarantee schemes. If a large European company were to get into difficulty, the national guarantee schemes would in general provide sufficient protection for policyholders. The EESC calls, however, to consider at a later stage ~~for~~ a European guarantee scheme for transnational companies in the event that national guarantee schemes prove insufficient.'

Reason

At this stage a European-wide mutual bail out of insurance companies seems to be premature.

Result of the vote:

For:	68
Against	78
Abstentions	13

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission on the monitoring and reporting of data on the registration of new passenger cars’

COM(2010) 657 final

(2011/C 218/11)

Rapporteur: **Mr MANOLIU**

On 10 November 2010 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

Communication from the Commission on the monitoring and reporting of data on the registration of new passenger cars

COM(2010) 657 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 148 votes with four abstentions.

1. Conclusions

1.1 The EESC considers that *sustainable mobility* is about moving people and goods across Europe in the most efficient way, cutting emissions and saving fuel. That means information and access to the most appropriate transport mode or modes and investing in the technology, infrastructure, and management systems that encourage *free and sustainable movement*.

1.2 In the opinion of the EESC, sustainable mobility means *designing a regulatory framework that allows Europe's auto industry to thrive* and to go on innovating and delivering the technologies and low-emission vehicles for a sustainable future.

1.3 The EESC emphasised that the legislative framework for implementing the average new car fleet target should ensure competitive neutral and socially equitable and sustainable reduction targets in line with the diversity of the European automobile manufactures and to avoid any unjustified distortion of competition between automobile manufacturers.

1.4 The Committee is pleased that, *in the spirit of better regulation*, the European Commission is aiming 'to promote coherent interaction between different policy areas, provide predictability and seek the protection of public interest (e.g. environment and safety) while attempting to reduce the regulatory burden on industry'.

1.5 The Committee welcomes the commitment to a holistic approach and the willingness to take on board the different dimensions of *industry development and competitiveness and the different stakeholders involved*.

1.6 In setting emission standards the EESC considers that it is important to take into account the implications for

consumers, markets, and manufacturers' competitiveness, stimulating innovation and reducing energy consumption. It is important to provide planning security for vehicle manufacturers.

2. Background

2.1 The EU market for new passenger cars declined by 5.5 % in 2010, with a total of 13 360 599 new units registered throughout the year according to figures provided by the European Automobile Manufacturers' Association (ACEA). The 2010 results were marked by the ending of government fleet renewal schemes in many EU countries. Registrations in December amounted to 1 009 638 units, down 3.2 % year-on-year.

2.2 In December (- 3,2 %), demand for new cars declined significantly in Spain (- 23,9 %), Italy (- 21,7 %), and the UK (- 18,0 %). The French market remained stable (- 0,7 %) while the German market expanded by 6,9 %.

2.3 The passenger car segment encompasses a larger array of models than ever before. Versatile new vehicle types like sport wagons, and wagon/SUV crossovers compete with sedans, coupe, convertibles, hatchbacks and wagons for market share. And these new body styles are well distributed among vehicle segments, from compact cars to luxury vehicles.

2.4 This is good news for buyers, who have more choice in terms of price, as well as style and functionality. Consumer behaviour has an effect on overall emissions from passenger cars. Consumers should be provided with information regarding whether new passenger cars meet the emission targets.

2.5 Sustainable mobility is about ensuring consumers have real choices, but also encouraging them to buy the most suitable vehicle for their needs and educating them in eco-driving techniques to cut unnecessary pollution and save money.

2.6 In the manufacture of vehicles, it means finding more sustainable materials, improving logistics in the supply chain to cut unnecessary waste and emissions, and designing more parts to be recycled at the end of their lives.

2.7 Government policies must also involve more cost-effective means of driving down CO₂, joined-up fiscal incentives and the development of alternative fuels and renewable energies as well as their infrastructure.

2.8 A new methodology should therefore be designed through which fair consideration may be given to the CO₂ savings from bi-fuel and flex-fuel vehicles capable of running on alternative fuels.

2.9 Industry will need to invest even more in emission reduction technologies, including smart traffic management technologies and further improve engine efficiency.

2.10 The EU has set out an ambitious strategy to reduce CO₂ emissions from road vehicles and much has been achieved already. Regulation (EC) No 443/2009 setting emission performance standards for new passenger cars⁽¹⁾ requires a fleet average emission of 130 g CO₂/km for new passenger cars to be achieved by 2015.

2.11 Auto makers are working towards tough 2012 targets on CO₂ for new cars and further goal set for 2020. The industry will actively engage in the debate about sustainable transport.

2.12 In the last twenty years, CO₂ emissions from cars and commercial vehicles have come down dramatically, a drop of about 20 % since 1995. The European Commission has acknowledged this progress and the fact that investment in vehicle technology has been its primary driver; to achieve further significant cuts the EESC consider that society must look beyond vehicle technology.

2.13 In the EESC's opinion this is called the integrated approach, ensuring the competitiveness and sustainability growth of the automotive industry to safeguard automotive manufacturing in Europe, and to provide an efficient framework for the development and market update of clean and energy efficient vehicles.

2.14 Member States should monitor the number of vehicles registered in order to assess the impact on monitoring process

and the attainment of the EU's average CO₂ emissions target for new passenger car fleets in accordance with the opinion of the Climate Change Committee.

2.15 The EESC considers that Community targets for new passenger cars are necessary to prevent fragmentation in the internal market resulting from adoption of different measures at Member State level.

2.16 Common targets provide manufacturers with more planning certainty and more flexibility to meet the CO₂ reduction requirements than would be provided by separate national reduction targets.

3. Data, data transmission, data sources, data maintenance and control

3.1 According to Article 8 of Regulation (EC) No 443/2009 Member States must every year record and transmit certain data to the Commission about new passenger cars registered in their territory in the previous year⁽²⁾.

3.2 Those data are to serve as basis for determining the specific CO₂ emissions target for manufacturers of new passenger cars and for the assessment of whether manufacturers comply with those targets; *it is necessary to harmonise these rules on collection and reporting of those data.*

3.3 In order to assess fully whether each manufacturer complies with its specific CO₂ emissions target and to gain the necessary experience of the application of the regulation, the Commission needs detailed data. Member States should ensure that such data are recorded and transmitted to the Commission.

3.4 Irrespective of the data source used by each Member State to prepare the aggregated monitoring data and the detailed monitoring data, these data shall be based upon information contained in the certificate of conformity of the relevant passenger car.

3.5 The main data sources to be used by the Member States to collect the data are *the certificates of conformity* or the type approval documentation. The registration certificate may not replace the certificate of conformity for the purpose of registering a vehicle. The registration certificate is issued only after the vehicle is registered.

3.6 It is important that the data on the registration of new passenger cars are accurate and can be processed effectively for the purpose of establishing the specific emission target. Member States should record and report information about newly registered vehicles that are designed to use alternative fuels, including the proportion of filling stations in their territory.

⁽¹⁾ OJ L 140, 5.6.2009, p. 1.

⁽²⁾ Commission Regulation (EU) No 1014/2010 on 'Monitoring and reporting of data on the registration of new passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council', OJ L 293 of 11.11.2010, p. 15.

3.7 The Member States shall ensure the maintenance, collection, control, verification and transmission of the aggregated monitoring data and the detailed monitoring data.

3.8 Data have to be monitored and recorded in relation to a manufacturer, as a result it is important that the manufacturer is identified and distinguished from the trade name of the manufacturer.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws’

COM(2010) 791 final — 2011/0001 (COD)

(2011/C 218/12)

Rapporteur: **Mr HERNÁNDEZ BATALLER**

The Council and the European Parliament decided, on 19 and 18 January 2011 respectively, to consult the European Economic and Social Committee under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

COM(2010) 791 final — 2011/0001 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 104 votes to 13 with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Commission’s proposal and welcomes its intention to introduce greater legal security, certainty and clarity into EU legislation.

1.2 However, the EESC regrets that the proposed revision is so short on content and does not deal with all of the aspects of the regulation that need to be amended in light of experience since the entry into force of Regulation (EC) No 2006/2004.

1.3 The EESC calls upon the Commission, in its revision of Regulation (EC) No 2006/2004, to take account of the recommendations contained in this document aimed at improving the workings of the current cooperation between authorities responsible for consumer affairs.

2. Background

2.1 The EESC expressed its support for the Proposal ⁽¹⁾ for a Regulation (EC) No 2006/2004, although it regretted certain shortcomings in the arrangements for mutual assistance and reciprocity, which could lead to situations at odds with the operation of the internal market.

2.2 On 27 October 2004, Regulation (EC) No 2006/2004 ⁽²⁾ on cooperation between national authorities responsible for the

enforcement of consumer protection laws was adopted, essentially in the form contained in the proposal.

3. Implementation report

3.1 On 2 July 2009, the Commission presented a report on the application of Regulation (EC) No 2006/2004 ⁽³⁾. The report examines the institutional and enforcement framework and the establishment of the network, the functioning of the network and the framework for cooperation. In its opinion ⁽⁴⁾ the EESC expressed its regret that it had not been consulted by the Commission on this implementation report.

3.2 The Commission concludes that the network has not yet achieved its full potential. It points out that the functioning of the network must be made more efficient, by means of a series of measures which would, when appropriate, also include a review of aspects of Regulation (EC) No 2006/2004 relating to the implementing rules; the adoption of an annual action plan to implement the legislation on joint exercises such as ‘sweeps’, or promoting a uniform interpretation of EU legislation and raising the network’s profile.

4. Commission proposal

4.1 On 3 January 2011, the Commission presented a proposal to amend Regulation (EC) No 2006/2004 in order to update its Annex to reflect recent legislative developments in the field of consumer protection.

⁽¹⁾ OJ C 108 of 30.4.2004, p. 86.

⁽²⁾ OJ L 364 of 9.12.2004, p. 1.

⁽³⁾ COM(2009) 336 final.

⁽⁴⁾ OJ C 18 of 19.1.2011, p. 100.

4.2 The update of the Annex involves removing legislation which is not relevant for consumer protection cooperation between national enforcement authorities, and updating references to old legislation which is no longer in force by providing references to the consumer protection legislation replacing it.

4.3 This includes the deletion of certain references (such as the Directive on misleading and comparative advertising)⁽⁵⁾ or their replacement (such as the Directives on consumer credit, audiovisual media services, and timeshare).

5. General comments

5.1 The EESC welcomes the Commission's proposal, since it believes that the clear formulation of EU legislation offers all citizens greater legal certainty and security. The EESC is concerned about the situation faced by the self-employed and small companies, which is similar to that faced by consumers in transactions with large companies, particularly in relation to network industries.

5.2 The EESC once again supports the Commission in promoting this administrative cooperation in a coherent fashion. The Committee considers this cooperation necessary for the proper functioning of the internal market and acknowledges the Commission's efforts to promote transparency through the adoption of the Recommendation of 1 March 2011 containing the *Guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System*⁽⁶⁾.

5.3 However, the EESC considers the proposal to be too narrow and believes that it does not deal with many of the current issues affecting cooperation between consumer authorities. The Commission does not even address the issues which it described as 'shortcomings' in its report on the application of Regulation (EC) No 2006/2004.

5.3.1 The EESC believes that some of the following issues could have been dealt with in the proposed amendment:

5.4 Systematic market surveillance

5.4.1 The monitoring and inspection of goods and services regulated by EU legislation requires maximum joint planning in the programming of actions to be taken in each case by Member States' consumer authorities, both in terms of time and in terms of content. Equivalent verification mechanisms should be established to ensure compliance with supranational provisions, by means of systematic market surveillance campaigns to maintain a high and uniform level of consumer protection within the single market at all times.

⁽⁵⁾ Directive 2006/114/EC is intended to protect the interests of consumers only in relation to comparative advertising. The annex to the Regulation will only include a reference to the relevant articles of this Directive.

⁽⁶⁾ OJ L 57 of 2.3.2011, p. 44.

5.4.2 This annual coordination of inspection activities, particularly under horizontal provisions, could be backed up with information and market-research initiatives using the corresponding screenings, which would standardise the 'sweeps' currently carried out.

5.5 Penalty procedure

5.5.1 In order to prevent a border effect in the application of corrective measures resulting from infringements of the EU legislation in force, there should be minimum harmonisation of the common criteria for the penalty procedure and of the penalties handed out by consumer authorities in order to ensure equivalent guarantees and efficiency in the launch and settlement of cases involving the same infringements.

5.6 The EESC believes that differences in key aspects of penalty systems may lead to non-compliance with EU provisions, seriously jeopardise consumer protection and market integrity, distort competition in the internal market and, ultimately, harm consumer confidence.

5.7 The EESC considers that further convergence and reinforcement of penalty systems is essential in order to prevent the risk of improper functioning of the Single Market. It therefore suggests that minimum common criteria be set to ensure a minimum approximation of national penalty systems, which would include:

- appropriate types of administrative penalties for the breach of key provisions;
- publication of serious penalties;
- a sufficiently high level of administrative fines, in accordance with the infringement committed;
- criteria to be taken into account when applying penalties;
- penalties for natural and legal persons;
- possible introduction of criminal penalties for the most serious breaches;
- appropriate mechanisms supporting effective enforcement of penalties.

5.8 Quality monitoring of goods and services

5.8.1 One particular issue in relation to the aforementioned 'systematic market surveillance' initiative is the methodology for the monitoring of goods and services and the relevant analyses to verify compliance with the relevant legislation and the information they authorise and, in particular, prevention and ensuring the quality of goods and services.

5.8.2 A common procedure must be established for monitoring with a view to harmonising its methodology. There must also be cross-border planning in order to extend the spectrum of monitoring, using the resources made available in each participating administration as efficiently as possible, preventing duplications and overlapping, which may lead to unwanted differing burdens in this area.

5.8.3 As well as establishing uniform criteria for the selection of products to be monitored, the common procedure must also cover aspects relating to the identification of samples, the recording of documentation, the carrying out of initial, comparative and decisive analyses, and all other issues not covered by the quality provisions or any other relevant legislation.

5.9 This initiative is clearly necessary in a global market in which it is becoming increasingly normal for consumers to look to cross-border trade for the goods and services they want and need.

5.10 **Product safety.** Although this is clearly the key area for cooperation and there is therefore a higher degree of harmonisation, there are still certain shortcomings beyond the rapid exchange of information system, commonly known as the rapid alert system, which could be improved as a complement to the implementation of tools and instruments for the identification, management and communication of risks, as happens in the case of food safety risks.

5.10.1 In particular, a periodic Eurobarometer to analyse consumers' perceptions of the risks of non-food products is undoubtedly useful when dealing with other related aspects, including consumer information and education.

5.10.2 Another measure, with a view to making the current alert systems more efficient, would be to merge all of them into a single tool for interoperability, i.e. the exchange of information from all origins and sources and from all competent management bodies (health, agri-food, consumption, fiscal etc).

5.11 **Consideration of ethical and environmental factors in the marketing authorisation of goods and services.** It is essential that the procedures relating to the aforementioned alerts be extended to products which must be withdrawn from the market for ecological, ethical or other reasons relating to business practices that violate people's dignity or their environment, i.e. the violations stipulated in the Conventions of the International Labour Organization, environmental degradation or the depletion of natural resources, amongst others, both in the production and distribution stages and in the marketing and provision of goods and services.

5.11.1 Lack of consumer information regarding the origin of products is particularly critical when manufacturing is relocated. This information should indicate where and how products have been produced and distributed and the economic and social impact on the community producing or manufacturing them. Consumers must therefore, where possible, have access, where possible, to information via web pages or other media regarding products, as well as information ensuring that they do not unwittingly consume products resulting from illegal practices. Furthermore, information must be provided enabling consumers to make purchasing decisions on the basis of criteria other than the traditional criteria of quality and price. This should ensure that, in purchasing products, they do not unwittingly help to perpetuate illicit practices directly or indirectly relating to the product in question, which they would certainly not have purchased if they had had access to the relevant information.

5.11.2 The consumer's right to full information regarding the goods on offer – the 'social traceability of products' – is linked to both safeguarding competition and to enhancing the empowerment of consumers and the role they play on the market when freely choosing to purchase a particular product ('your purchase is your vote').

5.12 *Promoting good business practices in relation to responsible consumption*

5.12.1 In view of the increasing importance and spread of Corporate Social Responsibility programmes, consumer policies must play a key role and consumers must be consulted for the purposes of the corresponding responsibility reports.

5.12.2 The adoption of common criteria and policies to promote the evaluation of social responsibility programmes for cross-border companies, in terms of their impact for consumers and users at supranational level, must be complemented by incentivising mechanisms for the recognition of good practices, such as self-regulation, codes of conduct, quality marks and any other voluntary initiative aimed at bringing together the different interests concerned.

5.12.3 These practices also increase companies' competitiveness in the context of a market based on fair competition, a market which can benefit all agents operating within it (producers, distributors, consumers) through synergies which demonstrate that antagonism is not inevitable, particularly when there is reciprocity in the various areas of activity and when consumers and users are aware of the added value it represents.

5.12.4 This initiative must also take specific account of agri-environmental issues, fair trade, responsible purchasing, food sovereignty and other topical issues, such as those relating to genetically modified organisms.

5.13 *Collective actions*

5.14 Collective actions for injunctions are regulated at Community level, although this does not currently include collective actions for compensation, for which the EESC has repeatedly advocated the establishment of a harmonised Community framework, to include the possibility of claiming so-called 'bagatelle' damages.

5.15 In the event of serious infringements, the confiscation of unlawful profits resulting from infringements and punitive damages should be provided for as measures to accompany the penalty handed down by authorities and, as the EESC has stated on various occasions, ⁽⁷⁾ the resulting amounts should be paid into a 'support fund for collective action' which would help consumers' associations to launch this kind of collective action for compensation. On the other hand, consumer organisations and authorities should also participate in managing this fund. To this end, the EESC ⁽⁸⁾ would remind the Commission of the need to adopt harmonised supranational legislation on collective actions, in order to ensure a high degree of protection for consumers' economic interests.

5.16 The Committee reiterates its call for an article to be included in the main body of the Regulation providing for greater cooperation between authorities and consumer associations, enabling the relevant national authority to make 'other bodies' responsible for stopping or prohibiting intra-Community infringements.

5.17 *Alternative dispute resolution mechanisms*

5.17.1 The Commission has published a consultation document on 'The use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions

and practices in the EU', on which the EESC has not been consulted. The Committee therefore eagerly awaits the Commission's proposal in order to give its opinion once again on these complementary systems for access to effective legal protection.

5.17.2 In this regard, in order to increase consumer confidence, consideration should be given to the possibility of establishing a 'European label' for establishments and companies signing up to these systems.

5.18 *Resource networks and hubs*

5.18.1 Promoting European hubs through measures to develop the current cooperation networks to promote the information, training and education of consumers (e.g. European Consumer Centres, publications, programmes and projects).

5.19 **Price traceability.** In a single market in which consumers have common concerns and difficulties, and whose global nature can hinder access to reliable information and obscure the setting of product prices, a method for tracing prices of similar basic products should be established. This would make the single market more cohesive and transparent for consumers, thereby helping to restore consumer confidence, which is a crucial indicator of an area's economic health, that of the European Union in this case.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁷⁾ OJ C 162 of 25.6.2008, p. 1 and OJ C 175 of 28.7.2009, p. 20.

⁽⁸⁾ OJ C 324 of 30.12.2006, p. 1.

APPENDIX

to the Opinion of the European Economic and Social Committee

- A) The following Section Opinion text was modified in favour of an amendment adopted by the assembly but obtained at least one-quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

'5.7 The EESC considers that further convergence and reinforcement of penalty systems is essential in order to prevent the risk of improper functioning of the Single Market. It therefore suggests that minimum common criteria be set to ensure a minimum approximation of national penalty systems, which would include:

- appropriate types of administrative penalties for the breach of key provisions;*
- publication of penalties;*
- a sufficiently high level of administrative fines;*
- penalties for natural and legal persons;*
- criteria to be taken into account when applying penalties;*
- possible introduction of criminal penalties for the most serious breaches;*
- appropriate mechanisms supporting effective enforcement of penalties.'*

Result of the vote on the amendment:

Votes in favour: 82
 Votes against: 44
 Abstentions: 10

- B) The following amendments, which received at least one-quarter of the votes cast, were rejected in the course of the debate (Rule 54(3) of the Rules of Procedure):

Point 5.11.2

~~*'5.11.2 The consumer's right to full information regarding the goods on offer — the "social traceability of products" — is linked to both safeguarding competition and to enhancing the empowerment of consumers and the role they play on the market when freely choosing to purchase a particular product ("your purchase is your vote").'*~~

Reason

In practice it is unfeasible to put all the requested information on the product label, especially for SMEs. This will put an extra (administrative) burden on SMEs producing and distributing goods and services, create a competitive disadvantage and problems when importing products from third countries.

Moreover: do consumer organisations already have studies concerning the use of this information by consumers and the willingness of consumers to pay the extra costs encountered by the provision of this information?

Result of the vote:

Votes in favour: 45
 Votes against: 75
 Abstentions: 4

Point 5.16

~~*'5.16 The Committee reiterates its call for an article to be included in the main body of the Regulation providing for greater cooperation between authorities and consumer associations, enabling the relevant national authority to make "other bodies" responsible for stopping or prohibiting intra-Community infringements.'*~~

Reason

It is not acceptable that an organisation representing one party will be made responsible for stopping or prohibiting intra-Community infringements.

Result of the vote:

Votes in favour: 38
 Votes against: 76
 Abstentions: 8

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009'

COM(2010) 775 final — 2010/0373 (COD)

(2011/C 218/13)

Rapporteur: **Mr WUERMELING**

On 18 January 2011, the European Parliament and, on 28 January 2011, the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009

COM(2010) 775 final - 2010/0373 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4-5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 137 votes to eight, with 19 abstentions:

1. EESC conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) supports the European Commission in the establishment of the single euro payment area (SEPA). The fact that cashless transactions can be performed from one account to anywhere in Europe using uniform payment procedures is an important step towards completion of the single market.

1.2 However, the EESC considers that individual points of the proposal for a regulation put forward by the Commission need to be modified to ensure a smooth transition in the interests of consumers and businesses, as users, and banks as providers.

1.3 The EESC considers the deadlines stipulated in the proposed regulation for the mandatory transition to SEPA payment transactions to be too short. Fitness for purpose, security and user-friendliness can only be ensured if all financial institutions have sufficient time to prepare. For credit transfers, the implementation deadline should not be just one year, but three years following entry into force of the regulation. For direct debits, the deadline should not be two years after the regulation enters into force, but four years.

1.4 The empowerment to adopt delegated acts provided for in the proposed regulation should be significantly curtailed or removed, as adjusting the requirements for payment transactions laid down in the regulation to technical progress and market developments will have significant practical consequences. Such decisions must be made by the legislator in accordance with the legislative procedure – including consultation of the EESC.

1.5 The EESC expressly welcomes the fact that the proposed regulation will in future prohibit multilateral interchange fees

for direct debits. This creates clarity and transparency in the complex contractual relationships underlying payment transactions. This will be of particular benefit to small and medium-sized enterprises.

2. Background to the opinion

2.1 Completion of the single euro payment area is one of the European Commission's priorities for completing the single market. Users of payment instruments can, thanks to the new European procedures for SEPA transfers and SEPA direct debits, make cashless domestic and cross-border payments using one and the same procedure. This makes payments easier, cuts administration costs and saves money for all operators in intra-community trade, be they consumers or businesses. In future, the more than 500 million people and more than 20 million businesses in the single market will benefit from the new procedures.

2.2 The first substantive legislative framework for the SEPA was already established in previous years. Directive 2007/64/EC on payment services in the internal market introduced harmonised conditions and rights for customers of payment services in the EU. Whilst this opened the single market to payment services, the variety of national systems and differences in procedures for domestic and cross-border payments remained. Nonetheless, a legal basis was established for creating a uniform procedure for all cross-border payments.

2.3 Regulation (EC) No 924/2009 on cross-border payments in the Community stipulated that charges for cross-border and national direct debit payments must be essentially the same. At the same time, the basis for the SEPA payment infrastructure was established.

2.4 The EESC issued opinions on both legislative procedures⁽¹⁾. It welcomed the fact that the single euro payment area was to be created, now that the euro had been introduced.

2.5 Banks have been offering SEPA transfers when processing payments since 28 January 2008. Since November 2009, the maximum permitted processing time for a transfer has been three bank working days. From 2012, the processing time is to be reduced to one bank working day.

2.6 SEPA direct debits have been possible since 2 November 2009. Provision is made for two different types of transaction: the SEPA Core Direct Debit as the standard procedure, and the SEPA Business to Business Direct Debit. Since November 2010, all banks have been required to be reachable for SEPA Core Direct Debits.

2.7 The use of SEPA payment transactions is currently still limited. At the beginning of 2011, i.e. three years after their introduction, the number of SEPA transfers was around four percent. If this trend continues, it will take over 25 more years until the full benefits of SEPA are realised.

2.8 The European Commission thus considers that inadequate progress has been made under the purely market-based approach to the SEPA. It is therefore proposing legislative measures to make the introduction of SEPA payment instruments mandatory. National payment instruments are to be replaced by the SEPA procedures by a specified deadline.

2.9 The European Commission has had calculations done that indicate that the banks, as providers, will have to write off EUR 52 billion for the transition to SEPA payment procedures. Conversely, the calculations show that users on the demand side will enjoy lower prices and practical benefits.

2.10 The European Commission's proposal of 16 December 2010 thus sets the deadlines for phasing out national transfers and direct debits, after which only SEPA payment instruments are to be used. Once the regulation enters into force in the euro area countries, national transfers are to continue to be possible for 12 months and national direct debits for 24 months.

2.11 For consumers and businesses, a significant difference between SEPA transfers and direct debits on the one hand, and, on the other, current national transactions is that the International Bank Account Number (IBAN) and Bank Identifier Code (BIC) must be used even for purely national payments instead of the national sort code and account number to which they are accustomed. An IBAN is a standardised international bank account number with a maximum of 34 characters. A BIC is the international sort code of a financial institution and has a maximum of 11 characters.

3. General comments

3.1 The EESC welcomes the European Commission's proposal. The proposed regulation is a decisive step towards making a properly functioning single euro payment area a reality.

3.2 The single market is one of the main drivers of economic growth in the EU. The introduction of the euro was an important step that allowed Member States to continue to grow together. Thus, the EESC considers that it is merely being consistent to now ensure that the project of a Europe-wide single payment system is successful.

3.3 However, the EESC considers that the proposed regulation is too ambitious in the deadlines it is setting for phasing out national payment procedures. It is the success of the project that counts, not the speed of implementation. Payments are a very sensitive issue for consumers, but also for other economic operators. As with the introduction of the euro, every imaginable precaution such as tests, trial periods, information campaigns and so on must be taken to preclude service disruptions, breakdowns, misdirected payments, loss of transferred sums or such like. It is essential that sufficient time be allowed for this. The EESC therefore warns against unseemly haste, which could jeopardise the success of the project with the public. However, consideration should also be given to the fact that excessively long transition periods could give rise to additional costs.

3.4 Nor have all the questions been resolved adequately so as to ensure a smooth transition to SEPA payments. In this context, it is important to be mindful of the fact that many of the remaining questions can only be resolved at national level between the parties involved in the SEPA project. In particular, a balance needs to be struck between the interests of the banks on the supply side and of users on the demand side.

3.5 Both consumers and businesses often wonder why tried and tested national payment systems are to be given up to make way for the SEPA. Those concerned are familiar with the old account numbers and bank sort codes that they have been using for years. To be sure, the new SEPA payment procedures make cross-border transfers and direct debits simpler. However, the SEPA is to become mandatory even for national transactions, which account for the majority of payments. The European Commission and the banks have a duty to do more to publicise the advantages of SEPA payments as regards speed and cost.

3.6 The success of the SEPA project depends in large part on it being accepted by users (consumers and businesses). For this to happen, the first - urgent - step is to raise public awareness about SEPA payment instruments and their components, the IBAN and BIC. The financial services sector needs to wage a higher-profile information campaign in this area. This has not yet happened enough in all Member States. Consequently, broad swathes of the population are not properly aware of the new SEPA product requirements, nor are many small and medium-sized enterprises.

⁽¹⁾ OJ C 318, 23.12.2006, p. 51 and OJ C 228, 22.9.2009, p. 66.

3.7 The IBAN, which can have up to 34 characters, could at least be made more user-friendly by inserting a separator (space, hyphen, new field) between each group of four characters. Consideration should be given to the fact that older consumers in particular may have difficulties with the new data and rows of figures. The banks should therefore provide assistance to consumers, for example through conversion programmes.

3.8 In addition, the new payment instruments need to be adequately tested. This has not yet been possible for all SEPA products, since, for example, the SEPA direct debit has only been widely available since the mandatory reachability of all banks in November 2010. Only practical tests give the interested parties (banks and users) the opportunity to identify and eliminate teething problems and obstacles to workability. Above all, lead times must be long enough to ensure that the new SEPA payments can be processed automatically and are suitable for widespread use.

3.9 The EESC considers that mandatory introduction of the SEPA must be accompanied by sufficient security measures, while maintaining the user-friendliness of the procedures, particularly for retail banking. The payer, payee and payment provider must all have a guarantee that payments will be processed correctly, punctually and reliably.

3.10 In particular, there may be implementation problems at national level when moving to SEPA payment procedures. For example, in Germany, the country with by far the highest level of direct debit use in the whole EU, it is not yet clear whether existing direct debit mandates can also be used for SEPA direct debits. An efficient and legally water-tight solution to this needs to be found, and must put neither consumers nor businesses at undue disadvantage. It would be indefensible if all customers had to be contacted and asked to issue new mandates. This would give rise to disproportionate administrative and financial costs. It would not do consumers any good either, as they would be subjected to an avalanche of correspondence from their contract partners.

3.11 In addition, users should be consulted more at European and national level when payment procedures are being devised. This is not only true for the current phase of implementing the SEPA payment instruments, but also with a view to further development of the procedures. The European Commission and the European Central Bank have, by setting up the SEPA Council, taken a first step towards involving users more in the development process. Unfortunately, however, the users represented on the SEPA Council do not adequately reflect the stakeholders in the SEPA project. It would also be important to set up an expert group within the SEPA council, made up of equal numbers of supplier and user representatives, to look into the further technical development of SEPA payment procedures.

4. Specific comments

4.1 Article 5(1) and (2) – Sufficient time for transition to the SEPA

4.1.1 The EESC considers the deadlines proposed by the European Commission for the mandatory transition to SEPA

payment transactions to be too short. Steps must be taken to ensure that the new SEPA products are just as efficient and secure as the current national payment procedures.

4.1.2 For credit transfers, the implementation deadline should not be just one year, but three years following entry into force of the regulation.

4.1.3 For direct debits, the deadline should not be two years after the regulation enters into force, but four years.

4.1.4 These longer deadlines are needed not least to gain the trust of consumers in the new SEPA payment procedures. Public awareness about the SEPA must be raised: this applies particularly to the IBAN and BIC. In addition, more needs to be done to explain the advantages of SEPA payments. The new products must be shown to be efficient and secure when used in practice. Moreover, national problems such as mandate migration still have to be resolved.

4.1.5 From the perspective of businesses, longer deadlines are needed because changes to processing procedures are time-consuming and costly. Businesses need to make additional investments and adjust working practices and business systems. This includes, for example, migrating entire customer databases to the IBAN and BIC. The European Commission itself stated in the impact assessment that the usual investment cycle for IT systems in businesses lasts from three to five years.

4.2 Article 5(4) in connection with Article 12 – No excessive transfer of competences

4.2.1 The EESC considers it necessary that key decisions on developing the SEPA continue to be taken by the European legislator in future, with the involvement of the consultative bodies, including the EESC. The Committee considers that general empowerment of the European Commission, in the form of delegated acts, to carry out any adjustments to technical progress and market developments, goes too far. Even small changes to procedures for European payment transactions can have a significant impact on consumers, businesses and payment providers, which should be thoroughly discussed and decided upon in accordance with proper legislative procedure.

4.2.2 Article 290 of the Treaty on the Functioning of the European Union (TFEU) stipulates that the transfer of power to adopt delegated acts is only permitted for the purpose of supplementing or amending certain non-essential elements of the relevant legislative act.

4.2.3 The requirements for SEPA transfers and direct debits listed in the annex to the proposed regulation are decisive criteria for future SEPA products. Even minor changes to these requirements are likely to have a major impact on the technical procedures followed by providers and users. Ultimately the list of requirements also includes the requirement to abolish national procedures, as these no longer meet SEPA specifications. A change in specifications without sufficient involvement of the European Parliament and the Council should therefore be rejected.

4.3 Article 6 – clarity as to the future cost structure

4.3.1 The EESC welcomes the fact that multilateral interchange fees for direct debits will in future be prohibited. It must be ensured that future transaction fees are transparent and can be attributed to specific services provided by the banks.

4.3.2 The European Commission has stressed from the outset of the project that the new SEPA payments must not be more expensive than the old national ones. The EESC strongly supports this requirement and urges the Commission to take up all necessary measures to ensure that the new SEPA payments do not become more expensive than the old national ones by raising national charges, as was done during the implementation of the euro. Otherwise, acceptance of the new payment procedures, not least by consumers, cannot be

ensured. Multilateral interchange fees are not customary in all euro area countries. It would therefore send out a completely wrong signal if these were to be introduced in individual euro area countries along with the SEPA payment procedures.

4.3.3 The EESC furthermore stresses that, for direct debit transactions which cannot be properly executed by a payment service provider, because the payment order is rejected, refused, returned or reversed (R-transactions), consumers shall be charged a multilateral interchange fee only in case of insufficient funds on their accounts at the time the direct debit payment is due. In all other cases such a fee shall be paid by the payee. The payee, the payee's bank or the payer's bank shall not be allowed to pass on to the payer fees for R-transactions not caused by the payer.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 54(3) of the Rules of Procedure):

Point 3.11 (new)

Add new point:

The EESC considers that the mandate should stay with the debtor's bank, because if it is stored with the creditor it carries more risks in terms of safety, as the consumer's bank (debtor's bank) does not have control over the mandate. The EESC also believes that the IBAN of the payer should never be communicated to the payee automatically and without the payer's consent.

Reason

The safety of a Europe-wide payment system is crucial for strengthening consumers' confidence in payment services.

Outcome of the vote on the amendment:

64 in favour,
74 against and
13 abstentions.

Point 3.12 (new)

Add new point:

The EESC fully supports the measures which allow the consumer to instruct his bank to limit a direct debit collection to a certain amount or periodicity or both and to block any direct debits to the payer's account. However, as far as the right to a refund is concerned, the EESC stresses that since it is not granted by the payee, it cannot be excluded by the payee.

Reason

To be in accordance with article 62 of the Payment Services Directive.

Outcome of the vote on the amendment:

64 in favour,
83 against and
10 abstentions.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters’

COM(2010) 748 final — 2010/0383 (COD)

(2011/C 218/14)

Rapporteur-general: **Mr HERNÁNDEZ BATALLER**

On 15 February 2011, the Council decided to consult the European Economic and Social Committee, under Articles 67(4) and 81(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

COM(2010) 748 final/2 — 2010/0383 (COD).

On 1 February 2011 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Hernández Bataller as rapporteur-general at its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), and adopted the following opinion by 162 votes to 1, with 2 abstentions.

1. Conclusions and recommendations

1.1 The Committee supports the Commission’s proposal, considering that it should enable the goal of removing legal barriers to be achieved: this will make life easier for people and businesses, improving effective remedies.

1.2 The Committee urges the Commission to pursue its initiative to remove legal barriers in the European Union, to achieve a genuine European judicial area, taking into consideration all the comments the EESC has made on the matter in its various opinions.

2. Introduction

2.1 On 1 March 2002, Regulation 44/2001 replaced the Brussels Convention, together with all of the bilateral instruments between the different Member States on this subject. Also known as the Brussels I Regulation, it is the EU’s most important piece of legislation so far on judicial cooperation in civil matters.

2.2 Basically, Regulation 44/2001 allows, in particular circumstances, for any natural or legal person involved in cross-border court proceedings and domiciled in a different Member State from that where the case is brought, to bring a case before the courts of a Member State, favouring the closest connecting factor.

2.2.1 Article 5 of the Regulation also establishes that in matters relating to a contract, particularly in the case of the

sale of goods, it is possible to sue the company in the Member State where the goods were delivered, or should have been delivered.

2.2.2 The areas in which the new legislation applies are listed in Article 5 (contractual and non-contractual liability, civil claims for damages, operation of a branch or agency, etc.).

2.2.3 A whole section of the Regulation – Section 3 – is devoted to jurisdiction in matters relating to insurance. This section states that the policy holder may use the courts for the place where he/she is domiciled to sue the insurer, even if the insurer is domiciled in a different Member State. However, if the insurer wants to sue the policy holder, the insured or a beneficiary, he/she may bring proceedings only in the courts of the Member State in which the defendant is domiciled.

2.3 Regulation 44/2001 consists of a set of explicit conferrals of jurisdiction, and focuses in places on improving protection for particular groups (consumer contracts, individual contracts of employment). However, the traditional rules on jurisdiction still apply to lawsuits on immovable property, dissolution of legal persons or entries in registers and enforcement of judgments.

2.4 Two lengthy sections of Regulation 44/2001 deal with the enforcement of judgments and the recognition of authentic instruments in another Member State. It ends with a series of final and transitional provisions, which set out how this new instrument for legal cooperation relates to other more specific conventions that Member States have signed.

2.5 On 21 April 2009 the Commission adopted a report on the application of the Regulation and a Green Paper. The EESC issued an opinion ⁽¹⁾ on the Green Paper, supporting some of the Commission's proposals for reform.

3. Proposal for a Regulation

3.1 The overall objective of the revision is to further develop the European area of justice by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition. The importance of this aim was emphasised by the European Council in its 2009 Stockholm Programme ⁽²⁾. More specifically, the proposal aims at facilitating cross-border litigation and the free circulation of judgments in the European Union. The revision should also help to create the necessary legal environment for the European economy to recover.

3.2 The proposed elements of the reform are as follows:

- abolition of the intermediate procedure for the recognition and enforcement of judgments (exequatur) with the exception of judgments in defamation cases and judgments given in collective compensatory proceedings; and various options for preventing in exceptional circumstances that a judgment given in one Member State takes effect in another Member State;
- the proposal also contains a series of standard forms which aim at facilitating the recognition or enforcement of foreign judgments in the absence of the exequatur procedure as well as the application for a review under the procedure safeguarding the rights of defence;
- extension of the jurisdiction rules of the Regulation to disputes involving third country defendants, including regulating situations where the same issue is pending before a court inside and outside the EU. The amendments will ensure that the protective jurisdiction rules available for consumers, employees and the insured will also apply if the defendant is domiciled outside the EU;
- enhancement of the effectiveness of choice of court agreements, which includes two modifications:
 - where the parties have designated a particular court or courts to resolve their dispute, the proposal gives priority to the chosen court to decide on its jurisdiction, regardless of whether it is first or second seised;

- the proposal also introduces a harmonised conflict of law rule on the substantive validity of choice of court agreements, thus ensuring a similar outcome on this matter whatever the court seised;

- improvement of the interface between the Regulation and arbitration;

- improvement of access to justice for certain specific disputes;

- clarification of the conditions under which provisional measures can circulate in the EU.

4. General comments

4.1 The Committee warmly welcomes the Commission's proposal and supports the adoption of a recast version of Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

4.2 The Commission proposal is clearly necessary to improve the operation of the area of freedom, security and justice and the internal market, which can only be promoted from supranational level. The initiative will also be a valuable legal tool in a globalised world: it will facilitate international commercial transactions and solve conflicts that arise in relations involving countries outside the EU.

4.2.1 It should be noted that all of the innovations contained in the legal mechanisms proposed, together with the clarification of some rules and principles in this area that already apply in the EU, stem from the experiences that cross-border lawyers, experts and competent bodies of the Member States have passed on publicly to the European Commission.

4.2.2 The principle of subsidiarity is taken into overall account: supranational action is justified given the fact that it is not in the power of Member States to modify unilaterally certain aspects of the existing Regulation Brussels I, such as the exequatur, and provisions on jurisdiction and coordination of legal proceedings between Member States, or between Member States and arbitration proceedings. Functional subsidiarity is also highlighted as an integral part of the principle of participative democracy which is set out in the TEU following the Lisbon Treaty. The Committee has already in the past supported many of the proposals now being made by the Commission ⁽³⁾.

⁽¹⁾ OJ C 255, 22.9.2010, p.48.

⁽²⁾ Adopted at the meeting of the European Council on 10 and 11 December 2009.

⁽³⁾ OJ C 117, 26.4.2000, p. 6.

4.3 The proposal is realistic, well thought-through and flexible in the way in which it recommends technical solutions to problems encountered while the Brussels I Regulation has been in force. To summarise, these solutions are: abolition of the exequatur with the exception of judgments in defamation cases and judgments given in collective compensatory proceedings; extension of the regulation to disputes involving third country defendants; enhancement of the effectiveness of choice of court agreements; improvement of the interface between the Regulation and arbitration; classification of the conditions under which provisional and protective measures issued by a court in a Member State can apply in other Member States; and in brief, improvement of access to justice and the functioning of certain pending procedures in national courts.

4.3.1 There is no substantial reason for the proposal to exclude collective proceedings when abolishing the exequatur, and so the wording of Article 37 is unsatisfactory. The Committee has already, on a number of occasions, supported supranational regulation of collective proceedings. The Commission should consider amending Article 6 of Regulation 44/2001 in order to allow actions brought by different claimants to be dealt with collectively, providing that the grounds for their cases are so closely linked that it is appropriate to process and pronounce judgment on them at the same time, so as to avoid decisions which could be incompatible if cases were dealt with separately.

4.3.2 As regards exclusion of defamation, in actual fact the scope of Article 37(3)(a) is broader, encompassing judgments given in another Member State concerning non-contractual obligations arising out of violations of privacy and rights relating to personality. The Commission should give thought to the extent of this exception and the possibility of curtailing it, so that common aspects of people's daily lives are not excluded.

4.3.3 To flesh out the debate on the changes which need to be made on the legal procedures and mechanisms dealt with in the proposal, the Committee would like to make the following points for the Commission to consider.

4.3.4 Article 58(3) of the recast version of the Regulation establishes that the competent court shall give its decision 'without delay' on appeals against a decision on objections to an application for a declaration of enforceability of a judgment. The maximum duration should be more precise, in order to avoid unjustified delays or delays which would be damaging for parties involved.

4.3.5 A deadline could therefore be set: either the 90-day deadline established in Article 58(2) for decisions on appeals contesting a declaration of enforceability, or a deadline between the six weeks provided for in Article 11(3) of Regulation

2201/2003 (on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility) and the 90 day deadline.

4.3.6 Similarly, the new mechanism for legal cooperation (established in Article 31 of the recast version of the Regulation) could be redrafted to strengthen the role of the court with jurisdiction on the substance and guard against potential actions in bad faith that could delay the resolution of the dispute.

4.3.7 There is a rather vague requirement that 'coordination' should be ensured between the court with jurisdiction on the substance and the court in another Member State which is seised with an application for provisional, including protective measures. The latter court is responsible for seeking information from the other court on all relevant circumstances of the case (such as the urgency of the measure sought or any refusal of a similar measure by the court seised as to the substance). This obligation could be complemented with another provision establishing the exceptional nature of the admissibility of these measures, or even, in general terms, discontinuance in favour of the judge making a decision on the substance.

4.3.8 This would also be fully in line with the central role that (for speed and to guarantee the principle of mutual recognition) the Court of Justice gives to the court with jurisdiction to resolve disputes on substance in the interpretation of associated regulations, such as Regulation 2201/2003 mentioned above.

4.4 The fact that the clause on public policy is maintained, only in cases where the exequatur is abolished, should be highlighted (Article 34(1) of the existing Brussels I Regulation, and Article 48(1) of the proposal of the recast version). This clause enables the courts of a Member State in which recognition is sought not to recognise judgments that are manifestly contrary to its public policy.

4.4.1 Of course, this is an option which could give rise to interpretations and give judges a margin of discretion. This provision has been used while the Brussels I Regulation has been in force however, and it is clear that this risk is currently kept in check by at least three legal limits: the criteria established on the matter by the Court of Justice⁽⁴⁾, the fact that the Charter of Fundamental Rights of the EU is now in force and binding, and the consolidation of the Court of Justice's case-law that restricts the notion of public policy in favour of the effectiveness of EU law.

⁽⁴⁾ ECJ Judgment of 28 March 2000, case C-7/98, Krombach, European Court Reports 2000 p. I-01935.

4.4.2 However, the EESC calls on the European Commission to keep a particularly close eye on the conduct of courts in the Member States, to ensure that the principle of mutual recognition of judgments is implemented correctly whenever decisions are made on jurisdiction for reasons of public policy.

4.5 The proposed recast version of the regulation establishes a new rule on the recognition of arbitration agreements which designate a forum in an EU Member State to reduce the risk of forum-shopping. The issue is only touched upon however, and does not seem to be dealt with sufficiently.

4.5.1 This approach to dispute resolution is becoming increasingly popular – particularly in commercial matters – and it would make sense to extend this approach to other key areas of interest for European citizens (e.g. consumer law and labour law). The Committee therefore calls on the Commission to consider creating, as soon as possible, a supranational legal instrument for the recognition and enforcement of arbitration decisions. In fact, although the proposal favours legal monitoring, arbitration is expressly excluded from the scope of the regulation (Article 1(2) point d).

4.6 The Commission could also promote the development of a communication or guide on how to interpret Article 5 of the proposal (which is pretty much identical to the terms of the existing article in the Brussels I Regulation). This would clarify Article 5 and speed up the process of adopting judgments.

4.6.1 According to both provisions, in matters relating to a contract the courts for the place of performance of the obligation in question shall have jurisdiction. The exception is for the sale of goods, where it shall be the place in a Member State where the goods were delivered or should have been delivered,

and in the case of the provision of services, the place in a Member State where the services were provided or should have been provided.

4.6.2 The case-law of the Court of Justice – which interprets the concepts of ‘service’ and ‘goods’ in relation to the freedoms of the internal market – does not apply to the Brussels I Regulation. Up until now, the Court of Justice has resolved issues on interpreting the scope of Article 5 by referring to certain international regulations. Yet as these regulations are not binding to the EU or to any of the Member States, they do not amount to common rules for intra-Community contracts.

4.7 Paradoxically, an attempt to speed up legal proceedings seems to be behind the new wording at Article 24(2) of the proposal: Article 24(2) only affects the application of Article 24(1) (which states that a court of a Member State before which a defendant enters an appearance shall have jurisdiction) by establishing that the document instituting proceedings must contain information for the defendant on his right to contest the jurisdiction of the court and the consequences of entering an appearance. This provision could easily be implemented by inserting standard formulas, but could undermine the rights of the weaker parties in a contract, especially given that Article 24(2) limits its scope to insurance contracts, consumer contracts, and individual contracts of employment.

4.7.1 Given that it is the court where the claim is brought that will have to check whether the defendant was given the information, yet no specific requirements are established on the matter, the Committee would like to stress that implementing this provision could lead to uncertainty and considerable room for discretion across the 27 different national jurisdictions in the EU. The EESC therefore calls on the European Commission to review the wording of this provision in order to strengthen the legal position of consumers and employees and ensure that the same procedure is followed, regardless of which court has jurisdiction.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority'

COM(2011) 8 final — 2011/0006 (COD)

(2011/C 218/15)

Rapporteur: **Joachim WUERMELING**

On 3 February 2011, the European Parliament and, on 2 March 2011, the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a directive of the European Parliament and of the Council amending directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

COM(2011) 8 final — 2011/0006 COD.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 111 votes to one with four abstentions.

1. Conclusions and recommendations

1.1 The EESC warmly welcomes the European Commission's Proposal for a Directive amending Directives 2003/71/EC and 2009/138/EC. It supports the Commission's efforts to change sectoral legislation to enable the European System of Financial Supervision (ESFS) to work effectively. The Committee reiterates its firm support for the new supervisory rules for insurance ('Solvency II') in particular in view of the experiences of the recent financial crisis.

1.2 However, the quest for sound solvency standards **should take into account the need to ensure the capacity of the insurance markets** to bear their customer's risks and carry out their role as providers of financing for communities and undertakings of all sizes.

1.3 The EESC welcomes the further amendment of the Solvency II Directive in respect of **transitional rules** in addition to the two-month extension to the implementation date.

1.4 The EESC underlines the need for the principle of a transition from the current system (Solvency I) to the new system (Solvency II). There should be a **smooth transition to the new regime**. Market disruption should be avoided by an approach which links supervisory measures to transitional rules in a consistent manner. Solvency II should not result in market consolidation, especially in respect of small and medium insurers.

1.5 The transitional measures as set out in the current proposal should allow a **phasing in/phasing out process**

which takes into account the capacity of the firms to realise the changes. The duration of the transition set as a maximum could be shortened by the Commission if and when there is consistent evidence that would permit this. It is obvious that transitional periods will differ in respect of different areas.

1.6 The implementation **schedule should realistically reflect the capacity of both supervisors and insurance undertakings**, including smaller-size companies, to reach the objectives set by the Solvency II directive. The EESC urges the Commission and EIOPA to ensure that the new regime does not lead to any administrative overload and that it is not of an unmanageable complexity, which could have a negative impact on the quality of the service delivered to consumers.

1.7 The EESC endorses the **democratic legitimisation of the future European set of rules** ('single rulebook') for insurers. The definition of an appropriate scope of technical standards should also be considered as an additional tool for supervisory convergence and with a view to developing a single rule book.

1.8 The EESC feels that a clear **distinction** should be made between, on the one hand, **purely technical issues and**, on the other, issues that are **political** and a matter for Community institutions that have a political mandate.

1.9 However, the EESC stresses the status of **EIOPA** as an **autonomous body**. In its task of contributing to the establishment of a single rule book, EIOPA acts within the mandates as set by the legislative institutions with a political responsibility.

1.10 The EESC believes that the insurance industry should continue to offer consumers **guaranteed long term pensions** and should remain a reliable partner for their old-age provision. Therefore, an appropriate interest rate term structure is indispensable for the calculation of the solvency capital. The EESC advocates a solution that enables to ensure that such products remain economically viable.

1.11 The EESC further recommends that the methods used with regard to such calculations should not be seen as a technical issue alone, but should be defined under the supervision of the Parliament and the Council, **reflecting the political implications** which the setting of such methods may have for the overall level of preparedness of citizens regarding increasing life expectancy and the low replacement rate by younger generations.

1.12 The EESC underlines the importance of **continuously consulting the EIOPA Stakeholder Groups** which include representatives of industry trade unions, consumers of financial services as well as academics in the field of regulation and supervision.

2. Context and general observations

2.1 On 19 January 2011, the Commission adopted a proposal for a directive aimed at amending two earlier Directives dealing with activities in the financial services sector, the Prospectus directive and the Solvency II Directive. The proposal is called 'Omnibus II-Directive', because it is the second directive grouping together various amendments to existing directives in order to adapt it to the new European structure for financial supervision.

2.2 The Solvency II Directive covers the taking-up and pursuit of the business of insurance and reinsurance. The thoroughly prepared reform of European insurance supervision aims to sustainably strengthen the insurance industry and make it more competitive: capital requirements for insurers will be much more risk-based (Pillar I). Requirements for qualitative risk management (Pillar II) and reporting by insurers (Pillar III) will also be modernised.

2.3 The Omnibus II Directive aims to adapt European supervisory arrangements, following the conclusions of the high-level group chaired by Mr Jacques de Larosière and the Commission Communication of May 2009, which proposed establishing a European System of Financial Supervisors (ESFS), consisting of a network of national supervision bodies working in tandem with the new European Supervisory Authorities (ESAs).

2.4 The EESC adopted opinions (inter alia EESC 100/2010 and 446/2010) on the new supervision architecture, expressed broad support for the reforms and emphasised the distinction that was to be made between technical issues and political questions, which were seen as a matter for Community institutions that have a political mandate. The opinions of the EESC stressed the need for the new authorities to maintain a dialogue with the representative bodies of the financial services

industries, the trade unions, the consumers of financial services and similarly with the EESC as the representative of organised civil society in Europe.

2.5 The EESC expressed its general support for the Commission's work in providing the newly established Authorities with powers enabling them to set technical standards and to resolve the differences between national supervision bodies, which the current proposal intends to do in the field of securities and insurance and occupational pensions.

2.6 The EESC commends the overarching objectives of the Directive, namely to protect all customers of financial services and to ensure the stability of the markets through a flexible approach, its commitment to the principles of necessity and proportionality in progressing towards supervisory convergence as well as the development of a single rule book. These objectives can contribute to the process of making the Single Market more of a reality and to keeping Europe at the forefront of international standards, without losing touch with international financial services markets.

2.7 Omnibus II primarily amends the Solvency II directive, providing for new powers for binding technical standards and aligning the procedures for implementing measures with the Lisbon Treaty. The proposal includes general amendments which are common to most sectoral legislation in the financial sector as included by the 'Omnibus-I-Directive' and necessary for the directives to operate in the context of the new authorities, for example, renaming CEIOPS as 'EIOPA' and ensuring that appropriate gateways are available for the exchange of information.

2.8 It also adjusts the existing regime of implementing powers ('Level-2') to the Lisbon Treaty. The Solvency II Directive entered into force before the new Treaty. Therefore, the transformation of existing Level 2-Mandates into mandates for delegated acts, for implementing measures or for regulatory technical standards is necessary. Appropriate control procedures should be foreseen.

2.9 Transitional arrangements are introduced in the Solvency II Directive as well. This is necessary to allow a smooth transition to the new regime. Market disruption should be avoided, and it should also be possible to take account of the impact on the range of important insurance products.

3. Amendments to the Solvency II Directive

3.1 In its opinion on the Solvency II Directive (EESC 976/2008), the EESC **welcomed the fundamental endeavours made to strengthen the insurance industry** and to make it more competitive, through better capital allocation, better risk management and better reporting. In this regard, in the view of the EESC, Solvency II also represents the right response in light of the experiences of the recent

financial crisis. It supports the Commission in its approach of not making any fundamental changes to the Solvency II Directive. However, in cases where the adjustment of implementing measures appears inappropriate, more changes may be necessary in specific areas which are limited in scope.

3.2 Over time, as the crisis caused by trading in credit derivatives raised concerns about the soundness of all financial activities, a number of fears arose that the fine-tuning of the solvency standards applicable to insurance activities would be affected by assumptions inspired by a bias towards extreme risk avoidance. The EESC acknowledges the statements made by the Commission to confirm its commitment to a balanced view regarding these standards. It calls on the Commission to **avoid creating volatility problems** in an industry where long term commitments are the rule.

3.3 Several rounds of quantitative impact studies have taken place since the launch of the Solvency II reform process, with the most recent, known as QIS 5, involving about two thirds of the European insurance market. The results were recently published by the EIOPA and require further in-depth analysis. Through the impact studies that have been carried out, it has however become clear that the timing and scope of the migration towards the new regime might have **severe consequences for the availability and affordability of insurance** for communities, businesses and private households, as well as for the operating conditions of insurance undertakings.

3.4 The Committee reiterates its previous support for the principles of proportionality and flexibility. It insisted that this should lead to clear and adequate requirements, while the diversity of the insurance market, in terms of both the size and the nature of insurance undertakings, would justify due consideration. At the current stage, the EESC is concerned that implementing Solvency II will bring about a degree of **complexity which small and medium sized insurance companies will be unable to cope with**.

3.5 An appropriate design of the Solvency II transitional rules and of the EU financial supervision is essential for ensuring the **stability of the insurance markets**. These objectives will be put at risk if the course is not set now in the right direction.

Delay to 1 January 2013

3.6 The EESC **approves of the two month extension** to the implementation date of Solvency II, which will now come into force on 1 January 2013.

3.7 The EESC agrees with the Commission that it is better to **begin the new Solvency II** regime with its new calculation, reporting and other requirements **at what is the normal beginning of the financial year** for the majority of insurance undertakings (1 January) rather than to start Solvency II during the course of the financial year, as suggested in the Solvency II Directive (1 November). Consequently, the other dates in the Solvency II Directive,

especially in respect of the transitional rules and review clause, need to be extended by two months as well, as provided for in Omnibus 2.

Transitional Regime

3.8 The Commission's proposal answers the call to make the **transition** between the upgraded Solvency I standards and the Solvency II standards **smoother, to avoid market disruption**. Groups with activities both within and outside the EU should be able to manage the development of their business more effectively.

3.9 It is important that the **transition covers all three pillars of Solvency II**: The EESC agrees with the Commission that transitional rules should be possible with regard to the calculations, governance and reporting. There is a need to take account of the impact on the range of insurance products important for national markets. The fifth Quantitative Impact Study (QIS5) should be seen as a primary source of considerations for transitional requirements. The QIS5 reveals that there is an urgent need for a consistent transitional concept (phase-in / phase-out), so that companies and supervisors have **sufficient time to prepare** themselves accordingly.

3.10 The EESC recommends that a proper assessment be carried out of how these transitional rules may be consistently **linked with supervisory actions** in the case of non-compliance with the new rules. A smooth transition should take into account the current supervisory intervention levels as well which ensure that **protection of policyholders will be not lower** than it is today.

3.11 The EESC recommends that the **transition should refer more explicitly to the upgraded Solvency I standards** as an (optional) minimum level.

3.12 As regards reporting, the EESC recommends working out in more detail not only the methods but also the content and timing of the reporting during the transitional period. Since there are doubts as to what should be included in the quarterly reports or even in the opening statement, it seems better to allow for adjustment to the reporting standards beyond the date of 1 January 2013. This will be essential for small and medium undertakings. In particular, mutual societies and other insurers with no access to the stock market should not be required to meet the same reporting obligations as international listed companies that have prepared IFRS accounts from the beginning or to work within the same short timelines.

Ensuring long-term guarantees for pensions

3.13 The EESC has stressed the **importance of sound and well-managed pension insurance** and other forms of old-age provision in the context of Europe's ageing societies, most recently in its opinion on the Commission's Green Paper on adequate, sustainable and safe pensions in Europe (EESC 72/2011).

3.14 The elaboration of policies on interest rate calculations for pensions is of paramount importance for the terms under which such protection may be obtained by consumers. The EESC is **concerned about the interest rate term structure** which is currently under discussion. It will probably lead to a massive decline in supply and a rise in the costs of pension products.

3.15 In this respect, the EESC takes a critical view of the fact that, according to the Omnibus II proposal of the Commission, the interest rate term structure and the illiquidity premium will not be determined by legislative bodies. The interest rate term structure and the interest rate risk determine the future of private old-age provision. Such an **important political decision cannot be taken only at the administrative level** of the EIOPA.

Challenges for EIOPA

3.16 More fundamentally, since both this proposal and the implementing measures still have to be adopted, the **timeframe for the effective launch of Solvency II would appear to be particularly challenging**. Insurance companies cannot be held accountable for instructions that are to be published at a late stage. The EESC therefore encourages the Commission to promptly issue such instructions or to allow for reasonable adjustment terms.

3.17 Similarly, the EESC acknowledges the important workload that the EIOPA has assigned itself, particularly as it is still in the process of expansion and has not yet reached its expected staffing levels. Therefore, the EESC considers that the proposal under consideration may **overstretch its available capacities**, and expects the Commission to take due account of the balance of priorities that need to be assigned.

3.18 The EESC is of the opinion that careful consideration should be given as to whether the EIOPA will have sufficient resources for the powers and tasks assigned to it by the 2nd Omnibus Directive, particularly regarding technical input data and binding mediation, when Solvency II comes into effect. The proposal that the EIOPA develop draft implementing measure by 31 December 2011 at the latest would seem to be somewhat ambitious.

3.19 The EESC is aware of the fact that EIOPA is in the process of building up its personnel and knowledge. The transitional regime should reflect the resources conferred to EIOPA to avoid disruptions. The resources should be aligned with the powers and tasks.

3.20 This could affect the **balance of duties between the Member State supervisory bodies**, which should carry out the everyday supervision of companies falling under their remit in a consistent manner, and the new Authority.

3.21 More specifically, the EESC considers that the **group supervisor should be confirmed as having a leading role** in the approval of group-wide internal models, and that the Directive should leave no doubt as to the respective powers and responsibilities in place.

3.22 The EESC believes that the Commission is right to address the various different roles of the national supervisors and of the new EU insurance supervisory authority, the EIOPA. It is important to appropriately **include the possibility for the EIOPA to settle disagreements in a balanced way** in those areas where common decision making processes have already been foreseen in the Solvency II Directive or other sectoral legislation

Implementing power

3.23 The EESC holds the view that the functioning of the 'Lamfalussy system' of implementing financial regulation at different legal levels requires a **consistent cascade system** to ensure that technical standards build upon implementing measures, so that **no issues are regulated without a politically accountable basis**, especially with regard to subsidiarity, and that the focus of the implementing measures remains uniform and clear.

3.24 The EESC takes note of the Commission proposal for binding technical standards (Level 3) in areas where implementing measures (Level 2) have already been provided for. **Additional binding technical standards should be limited** in scope. It would be desirable if the future balance between the European institutions by delegating powers could be characterised by a greater clarity.

3.25 The EESC holds the view that the prioritisation of binding technical standards may be crucial for ensuring the quality of the harmonised rules. Certain implementing technical standards may not be necessary at the beginning of Solvency II and the EIOPA would be granted more time to develop them taking into account industry practice and the experiences of supervisors. Other implementing technical standards could be treated as optional ('may') and should be put in place only where there is a need for harmonisation in future.

3.26 Careful consideration should be given to the scope of technical standards. It is worth **raising the question of whether the foreseen density of regulation is really necessary** at European level in terms of subsidiarity. In case of any doubts, for individual implementing measures (Level 2), no additional technical standards (Level 3) should be provided for; e.g. Level 3 would not appear to be necessary in respect of the own risk and solvency assessment (ORSA), the classification of own funds or ring-fenced funds.

3.27 The rules at several levels would not be transparent. Moreover, it is possible that there may be national deviations for the same subjects of regulation. This would involve **too much complexity** – particularly for SMEs. One aspect which also needs careful consideration is the proposed extension of certain implementing measures on content.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the response to the report of the Expert Group on the Interim Evaluation of the Seventh Framework Programme for research, technological development and demonstration activities and to the Report of the Expert Group on the Interim Evaluation of the Risk-Sharing Finance Facility’

COM(2011) 52 final

(2011/C 218/16)

Rapporteur-General: **Gerd WOLF**

On 9 February 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Response to the Report of the Expert Group on the Interim Evaluation of the Seventh Framework Programme for Research, Technological Development and Demonstration Activities and to the Report of the Expert Group on the Interim Evaluation of the Risk-Sharing Finance Facility

COM(2011) 52 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 14 March 2011.

Given the urgent nature of the work (Rules 20 and 57(1) of the Rules of Procedure), the European Economic and Social Committee appointed Mr Wolf as rapporteur-general at its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), and adopted the following opinion by 118 votes to one with three abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the report of the Expert Group and fully supports its recommendations; it also supports the Commission’s response to the report, set out in the communication, on which it expresses specific views.

1.2 With reference also to the report of the Expert Group, the Committee recommends in particular that:

— the budget for supporting research and innovation be increased to a proportion of the overall budget which definitely reflects the stated importance and weight of this area in the 2020 strategy,

— support be concentrated on those tasks, the success of which depends on trans-national cooperation,

— collaborative research be retained and strengthened,

— major infrastructures be included in support,

— greater emphasis be given to ‘key enabling technologies’, without which we can neither meet the challenge of global competition nor address the major societal themes,

— greater participation of hitherto under-represented Member States be facilitated through improved connections between the Structural Funds and the Framework Programme,

— at least 20 % of the overall programme budget should be available for R&D governed by the European Research Council,

— administrative procedures be radically simplified and consideration given to a moratorium on new instruments.

1.3 The Committee appeals to the Member States to definitely fulfil their ‘3 % obligation’ and to clearly exceed this goal if economically possible.

1.4 With regard to the terminology used for the three research categories in the report of the Expert Group, the Committee has reservations about the concept ‘science for science’. Instead it suggests using the concept ‘science for knowledge’.

1.5 The Committee welcomes the Commission’s opinion on the Expert Group’s report on the Risk-Sharing Finance Facility (RSFF). It agrees with the assessment in the Expert Group’s report and believes that the RSFF is a very helpful financial instrument that encourages innovation.

2. Commission communication

2.1 In accordance with decisions of the European Parliament and the Council, an interim evaluation of the Seventh Framework Programme ⁽¹⁾ was carried out by a group of external experts. The report contained ten very clear and worthwhile recommendations. The Commission has now published a communication on the report and its recommendations in which it also responds to the recommendations set out in the interim evaluation.

This Committee opinion comments on the communication and thus also on the report of the Expert Group and its recommendations.

2.2 In its communication the Commission focuses in particular on the following recommendations of the report of the Expert Group:

- 1) To advance the European Research Area (ERA) and Innovation Union objectives, integrating the research base.
- 2) To develop and implement high quality research infrastructures.
- 3) The level of funding should, at least, be maintained.
- 4) A well-articulated innovation strategy is needed.
- 5) Simplification needs a quantum leap.
- 6) The mix of funding measures in FP7 and successor programmes should strike a different balance between bottom-up and top-down approaches to research.
- 7) A moratorium on new instruments should be considered.
- 8) Further steps to increase female participation in FP7 should be taken in its remaining years.
- 9) To pave the way for increased participation from Member States that are under-represented through improved connections between the Structural Funds and the FP.
- 10) Opening of the FP7 to international cooperation.

2.3 The Commission on the whole endorses these recommendations of the report of the Expert Group and it undertakes to give them due consideration in the next Framework Programme. The Commission does, however, add a few, rather minor changes of emphasis and explanations or interpretations.

3. General comments

3.1 The Committee recognises that the report of the Expert Group and the Commission's response to this in its communication form the basis for the Green Paper ⁽²⁾ in which the Commission sets out the principles for future support for research and innovation. As a consequence, these two documents are more important than a normal mid-term review.

3.2 The Committee is very pleased to note that most of the recommendations of the report of the Expert Group referred to above (point 2.2) largely coincide with the statements and recommendations made by the Committee in earlier opinions.

3.3 The Committee responds to the Commission's comments on some of the recommendations of the report of the Expert Group as follows:

3.3.1 To advance the European Research Area (ERA) and Innovation Union objectives, integrating the research base.

The Committee wholeheartedly supports the recommendation of the report of the Expert Group that EU support should concentrate on areas, where a critical mass is vital and where the success depends on trans-national cooperation. In the Committee's view this applies in particular to the successful collaborative research, which plays a key, decisive and integrating role and should be retained and developed.

3.3.2 To develop and implement high quality research infrastructures.

The Committee fully agrees, as already expressed in previous opinions. Since major infrastructures generally exceed the capacity of individual Member States to fund and utilise them, they fulfil the condition set out under point 3.3.1 and thus should receive reliable support from the Commission during their construction and operation phases.

3.3.3 The level of funding should, at least, be maintained.

Whereas the report of the Expert Group states that: 'The percentage of the total EU budget that FP7 will have when it ends should be regarded as a minimum', which the Committee considers to be the minimum position still worth supporting, the Commission in its communication displays an even more defensive attitude. The Committee is extremely concerned about this tendency; it contradicts all previous political statements and objectives connected with the EU 2020 strategy. The Committee therefore urges the Commission and all relevant political decision-makers to give research and innovation definitely the required status and weight within the EU budget and the EU 2020 strategy.

⁽¹⁾ Available online at <http://ec.europa.eu/research/evaluations>.

⁽²⁾ COM(2011) 48 final.

3.3.4 A well-articulated innovation strategy is needed.

The Committee fully agrees and refers to its opinions INT/545⁽³⁾ and INT/571. Innovations lead to progress, growth, prosperity, social security, international competitiveness and employment. They require and reinforce a social climate of confidence and self-belief that can generate further progress and a constructive dynamic with which to take on global competition. To flourish, they need a European approach and a European single market, in which the European Research Area with a powerful R&D Framework Programme plays a key role.

3.3.5 Simplification needs a quantum leap.

The Committee fully agrees and refers to its opinion⁽⁴⁾ on that subject (even if the quantum leap metaphor is a misinterpretation of the relevant concept in physics). The increasing number of diverse projects and tools which often follow very different rules and procedures have created a key problem for EU research funding. This complexity is further aggravated by, in some cases, widely differing sets of rules in the individual Member States and their national funding providers. Therefore, a radical simplification is needed, including acceptance of Member States' usual accounting practices.

3.3.6 The mix of funding measures in FP7 and successor programmes should strike a different balance between bottom-up and top-down approaches to research.

Correct, if this means that bottom-up approaches should be given greater weight. While top-down approaches result from a strategic perspective of the leading stakeholders based on the state of present knowledge, bottom-up approaches use the creative potential of scientists and engineers working directly on the objects to be investigated or improved. Even where major social issues like health, climate and energy, or where key enabling technologies are concerned, more emphasis should be placed on bottom-up ideas and proposals emerging from the broad knowledge community rather than only on directives from above. 'Innovation policy should be targeted at organisational and employee-driven innovations in the workplace⁽⁵⁾'.

3.3.7 A moratorium on new instruments should be considered.

Correct, as already expressed in a number of Committee opinions which address the problem of the increasing proliferation of instruments; this refers also directly to point 3.3.5. If the clear statements in the report of the Expert Group⁽⁶⁾ are not considered sufficient, an analysis of support instruments should be carried out in cooperation with a broad range of

users in order to establish which instruments have been successful and to eliminate or scale down the less useful instruments.

3.3.8 Further steps to increase female participation in FP7 should be taken in its remaining years.

Correct: to begin with, this requires encouraging more women to study science and technology. Then it also applies to the general gender issue of women in professional positions. Concerning careers in R&D, a specific issue is to provide sufficient dual career possibilities⁽⁷⁾ which are particularly important in view of the required mobility of researchers.

3.3.9 To pave the way for increased participation from Member States that are under-represented through improved connections between the Structural Funds and the FP.

Correct: see also the Committee opinion on the Green Paper. The Committee supports the statement made in the Commission Green Paper⁽⁸⁾ that: 'In the long term, world class excellence can only thrive in a system in which all researchers across the EU are provided with the means to develop into excellence and eventually compete for the top spots. This requires Member States to pursue ambitious modernisation agendas for their public research base and sustain public funding. EU funding, also through the Cohesion policy Funds, should assist to build up excellence where and as appropriate'.

3.3.10 Opening of the FP7 to international cooperation.

Correct: the Committee has also already expressed its support for this important move⁽⁹⁾. International cooperation has a favourable impact on scientific and technical progress but also on understanding between nations. It should be recognised that much has already been achieved in this area. However, the success of international cooperation also depends on the attractiveness of the European Research Area and on the performance of European universities and research institutes.

3.4 The Committee welcomes the Commission's opinion on the Expert Group's report on the Risk-Sharing Finance Facility (RSFF). It agrees with the assessment in the Expert Group's report and believes that the RSFF is a very helpful financial instrument that encourages innovation. It would also refer here to its calls for risk capital, particularly for business start-ups, such as in point 4.8 of its opinion on the Innovation Union⁽¹⁰⁾.

⁽³⁾ OJ C 132, 3.5.2011, p. 39 (Innovation Union).

⁽⁴⁾ e.g. OJ C 48, 15.2.2011, pp. 129-133.

⁽⁵⁾ OJ C 132, 3.5.2011, p. 22 –(Innovative workplaces), point 2.6.

⁽⁶⁾ See report of the Expert Group, point 4.3 onwards.

⁽⁷⁾ CESE 305/2004, in particular point 5.5.5.2, OJ C 110/3, 30.4.2004.

⁽⁸⁾ COM(2011) 52 final.

⁽⁹⁾ OJ C 306, 16.12.2009.

⁽¹⁰⁾ OJ C 132, 3.5.2011, p. 39 (Innovation Union).

4. Specific comments

4.1 In this section of the opinion the Committee would like to address aspects which it feels do not receive adequate treatment in the Commission communication or where comments on the report of the Expert Group are needed.

4.2 Key enabling technologies

The Commission has already devoted a communication and the Committee has issued an opinion⁽¹⁾ on the importance for global competitiveness of a leading position in the development of key enabling technologies. The development and availability of key enabling technologies are a vital precondition for the European economy to face global competition and to solve the tasks posed by the grand societal challenges. However, the communication under discussion here does not give sufficient weight to this essential topic. The Committee therefore recommends explicitly that greater weight and visibility be given to this issue in the preparations for FP8.

4.3 European Research Council

The recommendations of the report of the Expert Group and the communication responding to them do not pay sufficient attention to the already visible success of the Ideas programme assessed and governed by the European Research Council or to the high standard of the work carried out in this connection. The Committee therefore reiterates its recommendation that 20 % of the total FP8 budget be assigned to this programme.

4.4 Terminology

The report of the Expert Group recommends the following programme structure with a view to tackling the major challenges:

— Science for science - the researchers set the agenda

— Science for competitiveness - industry sets the agenda

— Science for society - civil society actors set the agenda.

The Committee finds these headings thorough and well chosen but is concerned that they might not sufficiently reflect the complex relationship between the bottom-up and top-down approaches or between basic and applied research. It refers in this connection to its opinion INT/571 and would merely stress that there is in fact no such thing as 'science for science' research, but only 'science for knowledge'. The three categories listed in the report of the Expert Group are more concerned with the question of whether, or to what extent, the new knowledge expected to be generated by the research findings can automatically be regarded as relevant and usable in solving problems.

4.4.1 The Committee also refers to the statements made in its opinion INT/545 in connection with incremental and revolutionary innovations, from which it is clear that revolutionary, breakthrough innovations have not – or only rarely – in the past arisen from existing industries but have instead led to the creation of entirely new industries and sectors.

4.4.2 The Committee therefore recommends that this terminology, for all its pithiness, be reconsidered in order to prevent any risk of misunderstanding which could lead to wrong decisions and misallocation of resources.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ OJ C 48, 15.2.2011, p. 112.

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament and the Council — the EU Counter-Terrorism Policy: main achievements and future challenges’

COM(2010) 386 final

(2011/C 218/17)

Rapporteur: **Mr PÎRVULESCU**

On 20 July 2010 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament and the Council — The EU Counter-Terrorism Policy: main achievements and future challenges

COM(2010) 386 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 March 2011.

At its 471st plenary session, held on 4-5 May 2011 (meeting of 5 May 2011), the European Economic and Social Committee adopted the following opinion by 167 votes to 2 with 1 abstention.

1. Conclusions and recommendations

1.1 In view of the effects of the current economic crisis, the EESC draws attention to the growing danger of radicalisation, as regards both religiously and ideologically motivated terrorism. Protection of fundamental rights must be a key criterion for evaluation when planning and implementing counter-terrorism policy.

1.2 The EESC believes that the prevention aspect should be reviewed, and a new dimension added further upstream, involving the development of cooperation and the timely resolution of tensions. This is a horizontal issue which is connected to both counter-terrorism policy and other EU and national policies, in areas such as youth, culture, education and political and civic participation.

1.3 The EESC recommends that the term ‘terrorism motivated by bigotry, racism and xenophobia’ be used in official documents of the EU and its agencies instead of ‘Islamist terrorism’.

1.4 The EESC recommends that all the EU institutions and national governments should shape their policies using qualitative and quantitative information on the dynamics of terrorism. Terrorism has many facets and so a one-size-fits-all policy could be inappropriate, costly and ineffective. The principle of proportionality must also be brought into play, so that the response is proportionate in terms of effort and cost to the scale of this type of threat.

1.5 The EESC recommends that in addition to the four strands (prevent, protect, pursue, respond) and horizontal issues (respect for fundamental rights, international cooperation and partnerships with non-EU countries, funding), strategic documents on combating terrorism in the EU should also

refer to types of terrorism, classified by motivation and impact: separatist, left-wing or anarchist, right-wing, single issue and religiously motivated terrorism. This strategic structure would help national governments, EU institutions and other stakeholders to adapt their approach and instruments to the specific challenges of the different types of terrorism.

1.6 The EESC recommends that the EU Strategy for combating radicalisation and recruitment to terrorism and the related action plan should include practical measures to curb inequalities and discrimination and should build interalia upon the work of the European Agency for Fundamental Rights.

1.7 The EESC recommends that the Commission and national governments should thoroughly assess the economic impact of security measures on the activities of private operators. The EESC warns that the development of costly technologies and the introduction of complicated procedures may affect the activities of economic operators and members of the public.

1.8 The EESC warns that unlawful or inappropriate use of (sometimes sensitive) personal information, coupled with the broad powers held by authorities, may lead to discrimination and stigmatisation of specific persons and/or groups of people.

1.9 In order to boost the credibility of counter-terrorism policy and to drive home the importance of respect for fundamental rights, the EESC recommends that the Commission should accede to the European Parliament's request, set out in the 2007 resolution on the alleged use of European countries

by the CIA for the transportation and illegal detention of prisoners, for an evaluation of counter-terrorism legislation at Member-State level and of other procedures which could open the door to such actions.

1.10 The EESC recommends that the EU should be more vigorous in promoting the counter-terrorism model based on democratic standards and procedures in countries where counter-terrorism policy can affect the quality of democracy and respect for fundamental rights.

2. Introduction

2.1 This communication provides the core elements of a political assessment of the current EU counter-terrorism strategy, as requested by the European Parliament, and constitutes an important preparatory step in the framework of the broader internal security strategy.

2.2 Taking stock of past achievements and looking ahead to future challenges is particularly relevant following the entry into force of the Lisbon Treaty, as well as the adoption of a new multi-annual work programme and action plan for the area of justice, freedom and security (the 'Stockholm programme'), and such an assessment is needed. This communication builds upon and complements the counter terrorism-related measures and initiatives identified in the Stockholm programme⁽¹⁾ and its implementing action plan⁽²⁾ which broadly outline the EU's future actions.

2.3 The 2005 EU counter-terrorism strategy⁽³⁾, which continues to be the main reference framework for EU action in this field, consists of four strands: prevent, protect, pursue and respond. This communication follows that structure. For each of the four strands some major achievements have been highlighted and future challenges identified.

2.4 The EESC salutes the integrated assessment of EU counter-terrorism policy and considers that it is an important step towards achieving a balanced approach to terrorist threats and the instruments to combat them.

2.5 The EESC calls for the revised counter-terrorism strategy, together with the new internal security strategy, to establish objectives and instruments which will ensure that the imperatives of individual security do not affect the protection of fundamental rights and freedoms. These rights and freedoms are the cornerstone of the rule of law and democratic society and must not be suspended or limited in any way.

2.6 The EESC has already issued two opinions which directly addressed the issue of counter-terrorism policy. These two opinions focused on prevention, particularly on combating

radicalisation, and outlined the Committee's position. The main thrust of this position will be revised and reformulated in order to help gear counter-terrorism policy to new trends.

3. General comments

3.1 The economic crisis has shaken up not only Europe's economies but also its social, political and cultural relationships. It has weakened the links of solidarity between people, groups and political institutions. In this context, mistrust and intolerance towards minority communities have spread swiftly, pushing them into a defensive position.

3.2 The EESC considers that the EU's counter-terrorism policy is a complex and delicate area in which the imperatives of guaranteeing security and the development of technologies and legislative instruments must always fall in the context of protection of fundamental rights.

3.3 In view of the many facets of terrorism and its underlying causes, the EESC recommends completing the EU's counter-terrorism policy with a broad strategy for political cooperation and integration which would render terrorist actions pointless. Consolidating objectives such as social inclusion, combating poverty, gender equality and improving employment quality, particularly within the social dimension of the Europe 2020 Strategy, has become an urgent and pertinent factor in the debate on prevention.

3.4 The latest Europol report provides information on the dynamics of terrorism in the EU⁽⁴⁾. In 2009, the number of failed, foiled or completed terrorist attacks fell. Compared to 2007, the number fell by half, reflecting a clear downwards trend.

3.5 Not only the impact but also the structure of terrorist attacks has undergone a change. In 2009, the most common type was separatist attacks (257), followed by left-wing or anarchist attacks (40), right-wing attacks (4) and 'single issue' attacks (2). It should be pointed out that religiously motivated terrorism, publically perceived as the most common and dangerous type of terrorism, is in fact the rarest; in 2009, only one such attack took place, in Italy.

3.6 The EESC deplores the loss of human life and the material damage caused by terrorist activities. The decreasing impact of terrorism shows that through an intelligent and judicious combination of policies and actions this phenomenon can be contained. Counter-terrorism policies must tailor their response to terrorism depending on the arena, motivation, type and causes.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1.

⁽²⁾ COM(2010) 171 final, 20.4.2010.

⁽³⁾ Doc. 14469/4/05, 30.11.2005.

⁽⁴⁾ 2010 Europol terrorism situation and trend report (TE-SAT), available online at http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/Tesat2010.pdf.

3.7 In view of the profound differences between the public perception of terrorism and the reality, the EESC urges governments and EU institutions to play their part in educating people on its causes, scale and effects. The EESC highlights the risks of incorrect and incomplete information about terrorism, as well as the danger of turning the terrorist threat into a pretext for social exclusion, intolerance and discrimination. As the aim of terrorism is to spread fear, overstating terrorist threats could serve the interests of those who might carry out such actions. On the other hand, it is vital to block the trend towards a 'terrorism market' which supports the special interest of various economic and institutional operators in the field of combating terrorist threats.

3.8 There is an important trend as regards the prosecution and punishment of terrorism-related offences. Most arrests have been on the grounds that the suspects are members of terrorist organisations and not for offences related directly to preparing or implementing attacks. This shows that national authorities are successful in preventing the planning and perpetration of terrorist attacks at the earliest stages.

3.9 The development and use of technology in this area, especially for surveillance and data collection and storage, must be proportionate to the severity of the threat. Counter-terrorism policy must not become an invasive presence in people's lives. This would encourage rather than curtail a general feeling of insecurity, and could undermine confidence in the actions of national governments and EU institutions.

3.10 The EESC considers that European civil society has an important role to play in limiting the spread of terrorist threats. Despite a broad spectrum of values, organisational models and means of taking action, civil society must be involved in every aspect of counter-terrorism policy and especially in prevention. Similarly, civil society can be involved in constructing a communication, cooperation and solidarity model to precede actual prevention (the phase when individuals are already prepared to undertake terrorist actions) ⁽⁵⁾. The EESC believes that the most effective way of combating terrorism is to tackle the causes rather than the effects.

3.11 The EESC believes that European civil society has the capacity to form a bridge between the general public, national and local governments and communities and groups which may support terrorist actions. Civil society can take on a specific role

alongside public intervention, contributing by means of specific instruments and programmes (such as mediation and education).

4. Specific comments

Main EU achievements and future challenges

4.1 Prevent

4.1.1 The EESC welcomes the recent policy shift towards prevention. Under the Stockholm programme, this strand of the strategy is set to be reinforced in the next five years, with particular regard to security research as well as policy-related and societal aspects. The Committee also welcomes the priority being given to the way terrorists use the Internet – for communication, fund-raising, training, recruitment and propaganda. Such monitoring of communications should not, however, be developed into an instrument that can impinge on the privacy of the general public.

4.1.2 The EESC backed the initiative to draw up a specific EU strategy for combating radicalisation and recruitment to terrorism ⁽⁶⁾. This strategy has three main targets: to disrupt the activities of the networks and individuals who draw people into terrorism; to ensure that the voices of mainstream opinion prevail over those of extremism and to promote democracy, security, justice and opportunity for all. The Committee awaits with interest the findings of the interim assessments of the implementation of this strategy and is willing to help adjust the strategy in light of these findings. The EESC would point out, however, that the recent counter-terrorism action plan does not include any actions in the area of targeting inequality and discrimination wherever it may be found in the EU and promoting long-term integration wherever necessary ⁽⁷⁾.

4.1.3 Although the focus on prevention is to be welcomed, it is still not properly tackling the causes of terrorism. As the Committee has previously pointed out, '*many lapses into terrorism may be explained as the end result of processes of alienation, radicalisation and recruitment fed by broad inequalities between groups in an area, exclusion and discrimination (social, political or economic)*' ⁽⁸⁾. We would thus propose stepping up dialogue aimed at identifying political responses to the development of terrorism. These responses should reconsider political, institutional, social and economic relations at Member State level and aim to effectively pacify historically rooted tensions.

⁽⁵⁾ OJ C 128, 18.5.2010, p. 80.

⁽⁶⁾ The EU strategy for combating radicalisation and recruitment to terrorism was revised in November 2008 (CS/2008/15175).

⁽⁷⁾ Council of the European Union; *EU Action Plan on combating terrorism*, Brussels, 17 January 2011.

⁽⁸⁾ OJ C 211, 19.8.2008, p. 61.

4.1.4 The EESC endorses the European Commission's establishment of a European Network of Experts on Radicalisation (ENER) in 2008, and believes that an institutional contribution that takes account of the specific nature of each society and type of terrorist act could help adjust EU and Member State policies in this area.

4.1.5 As the majority of terrorist acts carried out in the EU derive from historical, separatist issues, the EESC believes that the Committee of the Regions should be more closely involved in the European debate, as the EU body that brings together local and regional representatives, with which it is more than willing to engage in dialogue.

4.1.6 The EESC welcomes the Commission's intention to issue a communication which will look at the best practices developed by Member States in countering radicalisation and recruitment linked to terrorism. The Committee recommends that in this forthcoming Communication to the Commission takes into account the conclusions and recommendations in the Committee's opinion on the role of the EU in the Northern Ireland peace process⁽⁹⁾. The best practices identified will help all stakeholders to gain a better understanding of the different types of terrorism, categorised according to their motivation and impact. This would be a step towards framing specific policies for each Member State and each type of terrorist threat.

4.2 Protect

4.2.1 The EESC welcomes the efforts by the Commission, Member States, research community and private sector to protect people and infrastructure. This strand of the strategy, which covers EU-wide threat assessments, security of the supply chain, protecting critical infrastructure, transport security and border controls, as well as security research, is the most complex and costly. The development of protection systems should, however, be proportional to the scale of the threat and adapted to the different types of terrorism.

4.2.2 The security of transport in the Member States is a key area. The internal market is based on the free movement of goods, capital, services and people. The mobility of Europeans within and beyond the borders of the EU Member States is an important element of Europe's economies and lifestyles. Mobility facilitates mutual understanding, communication and tolerance. The Committee believes that transport security in all of its facets merits considerable attention from the EU institutions and national governments.

4.2.3 The EESC notes the efforts of the security research community to develop technologies to protect people and infrastructure. However, the research community should be mindful of the impact such technologies can have on people's lives and privacy, and must ensure that they cannot be used abusively or in a way that affects people's dignity and rights.

4.2.4 The EESC welcomes the cooperation of the private sector, including the ICT and chemical industries, in countering the terrorist threat. It also welcomes the openness of private transport operators to heightened security measures, which could potentially generate losses. The EESC therefore urges the Commission and national governments to thoroughly assess the economic impact of security measures on the activities of private operators. The EESC warns that the development of costly technologies and the introduction of complicated procedures may affect the activities of economic operators and members of the public.

4.2.5 In view of the fact that in Europe many of the activities relating to passenger transport security are carried out in cooperation with private agents, these agents must be included in training and information programmes so that security procedures do not jeopardise passengers' security or dignity.

4.3 Pursue

4.3.1 The EESC welcomes the recent developments in this strategic strand, which covers issues such as information gathering and analysis, impeding terrorists' movements and activities, police and judicial cooperation, and combating terrorist financing. In this strand, all stakeholders can demonstrate their vision in framing their responses to the different types of terrorist threat.

4.3.2 The EESC believes that successfully countering terrorism also depends on bilateral cooperation between national authorities and between those authorities and specialist European agencies. However, attention should be drawn to the delicate issues related to the collection and use of private information. Protecting the right to privacy should be a constant concern underpinning counter-terrorism efforts. As pointed out by the European Data Protection Supervisor (EDPS), unlawful or inappropriate use of (sometimes sensitive) personal information, coupled with the broad powers held by authorities, may bring about discrimination and stigmatisation of specific persons and/or groups of people⁽¹⁰⁾.

⁽⁹⁾ The EESC opinion on *The role of the EU in the Northern Ireland Peace process* of 23/10/2008, OJ C 100 of 30.04.2009, p. 100.

⁽¹⁰⁾ EDPS 2010. Opinion on the European Commission's Communication on the EU Counter-Terrorism Policy, Counter-Terrorism Policy and Data Protection – contribution by Mr Giovanni Buttarelli at the EESC hearing on 9 February 2011.

4.3.3 Curbing terrorist financing is an important element of counter-terrorist policy. The EESC notes that EU legislation concerning the procedures for listing persons and entities related to terrorism has been amended to ensure its compliance with fundamental rights. The EESC believes that procedures for sanctions against individuals such as freezing assets must be correct, clear and transparent. Suspects must be able to defend themselves and to contest authorities' decisions.

4.3.4 The EESC agrees that transparency, good governance and accountability are vital for NGOs. Voluntary procedures at European level could be helpful but must not result in the creation of another layer of rules (introducing unrealistic regulatory and/or financial barriers) which go against Member States' legislation and which could have an impact on the sector's ability or the public's willingness to support those they aim to help. The EESC is willing to cooperate in order to identify solutions with a view to framing a common strategy for counter-terrorism policy and bolstering the public's right and wish to organise themselves in independent associations, a fundamental right which must be respected.

4.4 Respond

4.4.1 The EESC welcomes the recent developments in this strand of the strategy, which covers strengthening the civilian response capacity to deal with the aftermath of a terrorist attack, early warning systems, crisis management in general and assistance to victims of terrorism. The EESC believes that the Member States should bolster their response capabilities, with the aim of ensuring efficient protection of human life and safety in crisis situations.

4.4.2 The EESC welcomes the efforts to limit access to chemical, biological and radiological/nuclear (CBRN) materials, which could be used in terrorism. The implementation of the EU's CBRN action plan – which consists of 130 specific actions in the areas of prevention, detection and response to CBRN incidents – should be pursued as a priority, taking account, however, of the potential effects of the proposed measures on the sector in question. Extensive consultations should be held with industry representatives.

4.4.3 The EESC also appreciates the Commission's efforts to assist victims of terrorist attacks by providing around EUR 5 million in victim support and by funding a network of associations of victims of terrorism. It would like to see this support continued and increased.

Horizontal aspects

4.5 Respect for fundamental rights

4.5.1 The EESC is pleased that respect for fundamental rights has been made a horizontal priority. However, the Commission's commitment to respect for fundamental rights

should be coupled with a similar commitment from national governments. Moreover, the protection of fundamental rights should not be limited to devising and drawing up instruments, but should also encompass their implementation.

4.5.2 The European system for the protection of human rights is legally sound and this must be reflected more clearly in the Commission's communications and actions. National governments must display greater determination in using specific instruments. Political commitments must be reflected in governments' actions. The practice of tolerating or carrying out torture in the Member States must be penalised and eradicated. The principle of non-refoulement must be upheld. Discriminatory practices explicitly identified and penalised in international, European and national law must be sought out and opposed.

4.5.3 The EESC suggests that the Commission identify the fastest feedback and decision-making mechanisms in respect of protecting fundamental rights in the context of counter-terrorism policy. To this end, there is scope to further tap the potential of European civil society, whose inherent concern is to safeguard the rights and freedoms of the European people.

4.6 International cooperation and partnerships with non-EU countries

4.6.1 Terrorism, particularly that motivated by religion, has a significant international dimension. The EU should cooperate with other countries with a view to curbing terrorist threats, even though, as discussed above, there is no longer a preferred target for these types of threat.

4.6.2 In its relations with non-EU countries, the EU should promote democratic counter-terrorism procedures and standards. A range of systems exist in the EU for properly guaranteeing and promoting human rights. In many countries outside the EU, however, counter-terrorism policy risks being diverted and impinging on the quality of democracy and the defence of fundamental rights.

4.7 Funding

4.7.1 The EESC endorses the programme on *Security and Safeguarding Liberties*, which includes the specific programme for prevention, preparedness and consequence management of terrorism. The weight of expenditure on each strand of the strategy (prevent, protect, pursue, respond) must be rebalanced and the political commitment to prevention must be flanked by appropriate budgetary resources. There must also be a stronger focus on public-private relations in the fight against terrorist threats. The EESC awaits with interest the findings of the interim assessment of this programme; it hopes that the funds available have been easily accessible and that their use has produced the desired results.

5. Way forward

5.1 The entry into force of the Lisbon Treaty paves the way for closer coordination between Member States, including in the area of counter-terrorism policy. The Treaty also extends the EU's responsibilities with regard to respect for human rights. It is therefore possible to construct a counter-terrorism policy which incorporates into every stage, including implementation, the most advanced standards of and procedures for respect for human rights. The EESC believes that counter-terrorism policy should be brought in line with actual trends in terrorism, with the emphasis placed firmly on prevention, understood in its broad sense as a process whereby the societal, political and economic causes of terrorism are dealt with directly.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment'

COM(2010) 379 final — 2010/0210 (COD)

(2011/C 218/18)

Rapporteur: **Ms Christa SCHWENG**

On 29 September 2010, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment

COM(2010) 379 final — 2010/0210 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 March 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 165 votes to 3, with 9 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the proposed directive, which is part of European efforts to develop a broad-based approach to legal migration. The proposed directive can help meet increased demand for seasonal labour that cannot be covered by national workers. The proposal also makes a key contribution to combating illegal immigration.

1.2 The Committee is particularly pleased about the simplified and accelerated admission procedures as seasonal work is, by its very nature, time-limited and businesses face staffing shortages during these particular periods.

1.3 The Committee is also happy that it is left up to the Member States to decide whether to carry out a labour market test. In that connection, the Committee would recommend involving the social partners in any measures relating to the admission of third-country nationals as seasonal workers.

1.4 The Committee would call on the Council, the Commission and the European Parliament to review the provision on the maximum duration of stay, as a period of six months in any calendar year fails to meet the needs of businesses in, for instance, two-season countries. The Committee therefore suggests that, where justified, it should be possible for national exceptions from the maximum duration of stay to be made in close consultation with the social partners. It is important to ensure that this does not become a way of circumventing the seasonal nature of the employment contract and the attendant system of checks and balances.

1.5 The Committee calls for the directive to contain clear rules on which economic sectors may comprise activities dependent on the passing of the seasons. It should be possible to make exceptions at national level in close consultation with the social partners.

1.6 The Committee would point out that seasonal workers are given temporary access to the labour market of the Member State concerned. In line with the *lex loci laboris* principle (the law of the place of work), they must therefore, under employment law, be granted equal treatment with nationals of the host Member State, regardless of whether the rights concerned accrue from legislation, generally applicable collective agreements or regional collective agreements. However, equal treatment in social security matters should be conditional on appropriate bilateral agreements being in place.

2. Introduction and gist of the proposal for a directive

2.1 The Commission communication *A Policy Plan on Legal Migration* ⁽¹⁾ provided for the adoption of a total of five legislative proposals on labour immigration between 2007 and 2009, including a proposal for a directive on the conditions of entry and residence of seasonal workers. The Stockholm Programme adopted by the Council on 10/11 December 2009 reiterated the Commission and Council's commitment to implementing the Policy Plan on Legal Migration.

2.2 The Commission submitted its proposal ⁽²⁾ on 13 July 2010, citing as justification the fact that ever fewer EU citizens are available to meet Member States' need for seasonal work. Despite growing demand for highly skilled workers in the EU, traditional sectors will, for structural reasons, continue to need increasing numbers of low-skilled workers. The Commission also points to evidence that certain third-country seasonal workers face exploitation and sub-standard working conditions which may threaten their health and safety.

2.3 The preparatory consultations for the proposed directive revealed the need for common EU rules regulating the conditions of admission for some key categories of

⁽¹⁾ COM(2005) 669 final.

⁽²⁾ COM(2010) 379 final.

economic immigrants, most notably highly qualified workers subject to intra-corporate transfers and seasonal workers. The conditions for admission should be as simple, unbureaucratic and flexible as possible.

2.4 The Commission proposal establishes a simplified procedure for the admission of third-country seasonal workers, based on common definitions and common criteria. Under certain conditions, seasonal workers would receive a joint residence and work permit entitling them to stay for a period of six months in any calendar year. Member States may grant seasonal workers multi-seasonal permits for up to three years or provide a facilitated procedure for re-entry in subsequent years. The working conditions for seasonal workers are clearly set out, so that, in respect of certain rights, seasonal workers are entitled to equal treatment with nationals of the host Member State.

3. General considerations

3.1 As the Commission impact assessment shows, the extent of seasonal work carried out by third-country nationals varies considerably across the EU: in 2008, Hungary admitted 919 seasonal workers, France 3 860, Sweden 7 552 and Spain as many as 24 838. In many Member States, seasonal workers take up low-skilled jobs in sectors such as agriculture (60 % of the seasonal labour force in Italy, 20 % in Greece) and tourism (in Spain 13 % of all work permits issued in 2003 were for the hotel and catering sector). Certain regions of Austria rely on seasonal workers – hence the quota of 8 000 for the 2008/2009 winter season.

3.2 A number of Committee opinions have already addressed the issue of uniform admission conditions for third-country nationals. During the consultation process for the green paper on economic migration⁽³⁾, the Committee advocated specific rules for seasonal workers and the mandatory production of a work contract.

3.3 The Commission has chosen Article 79(2)(a) and (b) as the legal basis. The Committee wonders whether consideration could also have been given to additionally basing the proposed directive on Article 153, as it also regulates terms and conditions of employment. In this case, the social partners should also have been consulted. However, the Committee is aware that, under settled ECJ case law, a proposal for a directive that pursues two aims, one of which can be considered to be the main or overarching one, should take the legal basis required by that main or overarching aim.

3.4 An EU-wide procedure for seasonal residence and work permits for third-country nationals would do much to match seasonal peaks in demand for employment with available supply. Businesses need and will continue to need both low- and higher-skilled workers. Despite the rise in unemployment as

a result of the crisis, it is, in some countries, sectors and professions, impossible to find enough EU staff to meet seasonal demand.

3.5 The Committee recalls that European employees, regardless of whether they are working as mobile workers or seasonal workers in a country other than their own, are subject to both European and the relevant national law. The directive relating to seasonal workers from third countries must not lead to the creation of a special category of worker. The employment law of the country in which the work is done must apply in full.

3.6 The Committee agrees that an EU-wide procedure can also help secure legal employment for seasonal workers and prevent the exploitation that exists in a number of regions. Account must thereby also be taken of the sanctions directive (2009/52/EC)⁽⁴⁾, which obliges employers to ensure that their employees hold a valid residence permit and provides for sanctions in the case of non-compliance. Any illegal continued residence by third-country seasonal workers on expiry of their residence permits is prohibited by Directive 2008/115 (the Return Directive) which provides for a fair and transparent procedure for ending the residence of illegally staying third-country nationals, with preference given to voluntary rather than forced return.

3.7 Seven national parliaments⁽⁵⁾ have conducted more in-depth subsidiarity and proportionality checks on the proposed directive, with some criticism, among other things, of the duration of residency entitlement and the issue of accommodation.

3.8 In order to take account of the national parliaments' concerns about compliance with the subsidiarity principle, the Committee recommends that the duration of the residency permit be dealt with at national level so as to reflect national conditions. In this way, Member States requiring more seasonal workers in both winter and summer would be able to retain their current arrangements.

4. Specific comments

4.1 The Committee notes that the definitions of 'seasonal worker' and 'activity dependent on the passing of the seasons' are wide in scope, leaving it up to the Member States to decide which specific sectors are to be considered season-dependent. This is not wholly consistent with recital 10, which clearly states that activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture, during the planting or harvesting period, or tourism, during the holiday period. The directive should therefore contain clear rules defining which specific sectors may comprise activities dependent on the passing of the seasons. It should be possible to make exceptions at national level in close consultation with the social partners.

⁽⁴⁾ Directive 2009/52/EC, OJ L 168/2009, p. 24, 30.6.2009.

⁽⁵⁾ http://www.ipex.eu/ipex/cms/home/Documents/dossier_COD20100210.

⁽³⁾ OJ C 286/20, 17.11.2005.

4.2 The definition of an 'activity dependent on the passing of the seasons' as an activity requiring labour levels that are **far above** those necessary for usually ongoing operations is open to interpretation and thus generates legal uncertainty. The Committee feels that the text should speak of a '**significantly higher**' or 'higher' demand for labour. Whether such '(significantly) higher' demand for labour actually obtains in practice should be a matter for the appropriate authority to decide, in conjunction with the national social partners.

4.3 The Committee expressly welcomes the provision whereby the combined seasonal worker permit is issued only on production of a valid temporary work contract or a binding job offer specifying the rate of pay and the working hours. This enables the authority responsible for issuing the residence permit to examine the contractual basis for employment of third-country nationals. It also ensures compliance with national employment rules.

4.4 An application for admittance may be rejected, among other things, if the employer has been sanctioned for 'undeclared work and/or illegal employment'. The Committee deplores undeclared work in the strongest of terms, but notes that such grounds for rejection could be interpreted in such a way that even minor infringements would result in applications being permanently refused. In the interests of legal certainty and along similar lines to the sanctions directive, it should be made clear that such grounds for rejection may be invoked only for a certain period, which must be proportionate to the severity of the infringement, after the sanction is imposed.

4.5 The Committee is pleased that Member States may, if they wish, continue to carry out a labour market test. The Committee is also pleased that volumes of admissions may be used as grounds to reject applications. That said, the social partners of the countries concerned and the public employment agencies must be involved both in labour market tests and in establishing admission quotas. Quotas should be fixed in such a way that this does not greatly prolong the procedure for individual permits.

4.6 The Committee feels that the provision of Article 11, under which seasonal workers are allowed to reside for a maximum of six months in any calendar year, is too inflexible and might well contravene the subsidiarity principle: to enable businesses in two-season Member States to take on seasonal workers on both occasions, Member States should be able to provide for exceptions to the maximum duration of seasonal workers' residence and work permits within a specific timeframe. This should happen in consultation with the national social partners. It is important to ensure that this does not become a way of circumventing the seasonal nature of the employment contract and the attendant system of checks and balances.

4.7 Taking the calendar year as a base is impractical and fails to take account of tourist areas with both a winter and a summer season. This provision would force employers and/or employees to submit a new application during the ongoing employment period.

4.8 The Committee also feels that Article 11(2), which states that 'within the period referred to under paragraph 1 (...), seasonal workers shall be allowed to extend their contract or to be employed as seasonal worker with a different employer', is unclear and raises questions such as whether 'the period referred to under paragraph 1' means the calendar year or the six months that are also mentioned. Does this mean, for instance, that a seasonal worker can extend his or her residence permit to eleven months per calendar year?

4.9 The Committee calls for the provision allowing workers to change employer to be made subject to certain conditions and to compliance with the relevant national law: seasonal workers are generally employed to meet the employment requirements of one specific employer. This is also reflected in the duration of the residence permit. In any case, any change in employer should be reported to the competent authority so that checks can be carried out.

4.10 In principle, the Committee endorses the provision facilitating re-entry, as this will enable employers to re-employ seasonal workers with whom they have had good dealings in the past. Under the proposal, employers who have not fulfilled their obligations resulting from the work contract and have been subjected to sanctions as a result are barred from applying for seasonal workers. To avoid a situation where even the most minor misdemeanours preclude the hiring of seasonal workers, the key issue should be whether the sanctions involved were imposed for the infringement of **fundamental provisions of employment law**.

4.11 Under the heading *Procedural safeguards*, the directive stipulates that Member States must adopt a decision on the application and notify the applicant accordingly within 30 days. The Committee in principle welcomes a fixed deadline for decision-making but notes that the relevant authority must in all cases have due opportunity to check the submitted information within the set timeframe.

4.12 Under Article 14, employers are required to furnish evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living. That raises the question of whether this also obliges employers to provide that accommodation. If that interpretation is correct, the Committee feels such a provision would be impractical. However, should an employer provide accommodation, this should at all events be open to inspection by the competent authority.

4.13 The Committee would point out that seasonal workers are given temporary access to the labour market of the Member State concerned. In line with the *lex loci laboris* principle (the law of the place of work), they must therefore, under employment law, be granted equal treatment with nationals of the host Member State, regardless of whether the rights concerned accrue from legislation, generally applicable collective agreements or regional collective agreements. The Committee therefore feels that the reference to, and definition of, generally applicable collective agreements in the second paragraph of Article 16(1) should be dropped.

4.14 The provision whereby seasonal workers are entitled to equal treatment with nationals of the host Member State in respect of certain branches of social security should, as a matter of principle and at least in the areas of pensions, early retirement benefits, survivors' pensions, unemployment benefits and family benefits, be conditional on appropriate bilateral agreements being in place. That said, any requirement to pay contributions into the relevant national system should also give this category of persons entitlement to receive the corresponding benefits.

4.15 In addition, the Member States should be encouraged to provide their supervisory authorities (e.g. labour

inspectorates) with the resources and training they need to perform their duties with due regard for fundamental rights.

4.16 In addition to the appropriate authorities, the national social partners are key players on their own national labour market. They should therefore be intimately involved in any decisions relating to the sectors in which season-dependent work is allowed, labour market checks and the monitoring of compliance with the provisions of the work contract.

Brussels, 4 May 2011

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer’

COM(2010) 378 final — 2010/0209 (COD)

(2011/C 218/19)

Rapporteur: **Oliver RÖPKE**

On 29 September 2010, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

COM(2010) 378 final — 2010/0209 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion 24 March 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 152 votes to two, with six abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes the European Commission's efforts to set up, in the proposal for a directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, transparent and harmonised conditions of admission for this group of temporarily seconded workers.

1.2 However, the EESC has serious concerns about some of the content of the proposal for a directive and about the way the European Commission communicated with the European social partners prior to its publication.

1.3 The Committee finds it regrettable that Article 79 TFEU was chosen as the sole legal basis for the directive, given that it includes important provisions concerning the position of managers, specialists and graduate trainees under employment law and will therefore have a significant impact on Member States' labour markets. The social partners should therefore be formally consulted under Article 154 TFEU on an initiative of this kind before the Commission distributes a specific proposal for a directive. This consultation would not only have fulfilled the Lisbon Treaty's aim of boosting the role of social dialogue in the EU, but would also have provided an opportunity to resolve some of the current sticking points with the social partners prior to publication.

1.4 The proposal for a directive, which lays down conditions of entry for third-country nationals and their families in the framework of an intra-corporate transfer, relates not only to a relatively small group of managers but also to specialists and

graduate trainees; in the Committee's view, a directive focusing only on managers would do more justice to the particular position and needs of this group of people. It is even more important, however, for the principle of equality and equal treatment to apply to all employees covered by the directive with regard to salary and working conditions, and for it to be ensured that the directive is not abused.

1.5 The EESC therefore suggests that intra-corporate transferees should be given equal treatment with employees in the host country or the permanent staff not only in terms of salary but with regard to all conditions of employment. This equality must not be restricted to generally applicable collective agreements, but must apply to all provisions in legislation and collective agreements, including company agreements. In the EESC's opinion, the rules on family reunification should be similar to those in the Blue Card Directive (Directive 2009/50/EC).

1.6 The proposal has been published in the middle of the biggest financial and economic crisis in EU history. Some Member States are still a long way from economic recovery, and have such high unemployment rates that higher rates of migration within the EU are likely. In its 2011 Annual Growth Survey ⁽¹⁾, the Commission makes specific reference to the risk that even a return to economic growth might not lead to sufficiently dynamic job creation and to the consequent need to increase the relatively low utilisation of labour within the EU. On the other hand and in line with the last Joint Employment Report (2010), the EESC takes into account the fact that certain Member States and employment categories continue to experience a shortage of labour.

⁽¹⁾ COM(2011) 11 final, 12.1.2011.

1.7 The employees in question are transferred from third countries where wages and levels of social protection are considerably lower than in the EU. It is therefore necessary to monitor compliance with the directive effectively, whilst avoiding imposing unnecessary bureaucratic burdens on businesses. To this end, the Commission is currently developing, in conjunction with the Member States, an electronic exchange system to facilitate cross-border administrative cooperation in connection with the directive on the posting of workers (Directive 96/71/EC). This system should also cover intra-corporate transfers of third-country nationals.

1.8 In the EESC's view, the definitions of 'manager', 'specialist' and 'graduate trainee' should be made clearer, in order to give the companies concerned greater legal certainty and also to ensure that they do not go beyond the obligations set out under GATS and bilateral agreements with third countries. The definitions should be phrased such that they cover exactly the three categories of highly skilled employees whose transfers the directive is intended to regulate.

1.9 The EESC believes that, if the directive meets these requirements, it could indeed help to facilitate the intra-corporate transfer of know-how into the EU and to improve the EU's competitiveness.

2. The proposal for a directive

2.1 This directive aims to make it easier for business groups with subsidiaries both within and outside the EU to transfer third-country nationals employed in a company headquartered outside the EU to subsidiaries or branches within EU Member States. It should be possible to transfer managers, specialists and graduate trainees.

2.2 'Manager' means any person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent.

2.3 'Specialist' means any person possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge.

2.4 'Graduate trainee' means any person with a qualification following at least three years of university or technical university study who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial position within the company.

2.5 The directive is not intended to apply to researchers, as a separate directive is already in place for them (Directive 2005/71/EC).

2.6 The Member States may require the transferee to have had a contract of employment with the group for at least 12

months prior to the transfer, and may also place a limit on the number of people thus admitted. The duration of such transfers is limited to a maximum of three years for managers and specialists, and one year for graduate trainees.

2.7 A fast-track admission procedure and a combined residence and work permit should increase the attractiveness of such transfers.

2.8 Intra-corporate transferees may also work in any other entity established in another Member State and belonging to the same group of undertakings, and at the sites of clients of the host subsidiary in other Member States, provided the transfer to the other Member State does not exceed 12 months. There are, however, exceptions to this rule.

2.9 Minimum wage agreements and/or collective agreements in the host country must be complied with. Rights such as freedom of association, affiliation and membership of a trade union or employers' association, recognition of diplomas in accordance with national procedures, access to goods and services and access to social security systems must also be respected, but it is not intended that the host country's labour and social law should apply in its entirety.

3. Introduction

3.1 Migration policy has fallen partially within the EU's sphere of competence since the Treaty of Amsterdam, and the European Council and the Council of the European Union have both directly called for an EU migration policy to be developed on a number of occasions (in the 1999 Tampere Council conclusions, the 2004 Hague Programme, the 2009 Stockholm Programme and the Pact on Immigration and Asylum).

3.2 In 2005, following public consultation in the form of a green paper, the European Commission published a 'Policy Plan on Legal Migration' that heralded several proposals for directives on labour migration. The Council adopted a directive⁽²⁾ on immigration of highly qualified workers (the 'blue card directive') on 25 May 2009, while the single permit directive is still being negotiated in the Council and European Parliament. The European Commission also published a proposal for a directive on seasonal work at the same time as the proposal to which this opinion relates.

3.2.1 The Commission originally published a proposal for a horizontal directive covering all forms of immigration for work purposes back in 2001. It has now decided to take a sectoral approach, as a horizontal measure turned out not to be feasible.

3.3 On 13 July 2010, the European Commission published a proposal for a directive on intra-corporate transfers, the aim of which is to harmonise at EU level the rules on admitting third-country nationals who are transferred from a business headquartered outside the EU to a business in the same group within the EU.

⁽²⁾ COM(2007) 637 and 638, 23.10.2007.

3.4 The draft directive lays down rules for those workers who are residents and nationals of a non-EU country, have a contract of employment with a company within a business group that is established in that country and are transferred from that company to an associated company in an EU Member State.

3.5 In its explanatory memorandum, the European Commission states that the proposed directive is expected to help achieve the goals of the Europe 2020 strategy: setting up transparent and harmonised conditions of admission for this group of temporarily seconded workers should make it possible to respond promptly to demand from multinational companies for the intra-corporate transfer of managerial and specialist employees from non-Member States. Transfers should make it possible to prepare graduate trainees to take on a management position within the group. The Commission is convinced that the proposed directive helps to reduce unnecessary administrative obstacles, while at the same time protecting employees' rights and providing adequate safeguards in times of economic difficulty.

3.6 The aim of European migration policy should essentially be, firstly, to be attractive to 'top talent', but at the same time to ensure that labour and social standards are not undermined and that appropriate complementary monitoring mechanisms are in place to prevent this. Although this directive does not primarily relate to long-term migration, this requirement should be taken into account.

3.7 Promotion of such transnational movements requires a climate of fair competition and respect for the rights of workers, including creating a secure legal status for intra-corporate transferees. The proposal also sets out certain rights for intra-corporate transferees, such as payment of the remuneration laid down in collective agreements in the host country, though it is not intended that the full spectrum of labour law should apply. Managers are usually paid more than that minimum salary, but this is not generally true of specialists and graduate trainees.

3.8 In its opinion on the proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment⁽³⁾ the EESC took the position that, as legislation on the admission of immigrant workers is linked to labour market trends, there should be dialogue between the national authorities and social partners. The EESC also stated, in its opinion on the proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State⁽⁴⁾, that each Member State could decide, in cooperation with the social partners, on what kind of immigration it requires.

3.9 In its opinion on the integration of immigrant workers⁽⁵⁾, the EESC stated that workplace integration accompanied by equal opportunities and equal treatment represented a

challenge for the social partners too, which they must uphold in collective bargaining and social dialogue, including at European level.

3.10 It should be clear from the above that the EESC is convinced that the social partners should be involved in the legislative process at both Member State and European level.

3.11 In connection with intra-corporate transfers and the issue of 'outward mobility', it is worth considering the conditions under which citizens of EU Member States may be seconded to third countries. In particular, it should be ensured that the proposed directive will not undermine the capacity of the Union to obtain reciprocal commitments under mode 4 of GATS or bilateral agreements. This is of peculiar importance for sectors such as the construction industry which is so far 'unbound' under GATS.

4. General considerations

4.1 The initial reaction of the European social partners to the proposed directive was extremely varied. For example, BUSINESS EUROPE welcomed the proposal in principle, and felt that it made a contribution towards greater transparency and a simplification of the admission process for intra-corporate transferees. It also, however, had certain criticisms concerning the proposals, relating particularly to the option of requiring a period of 12 months of prior employment within the transferring company and also to the possibility that the restrictions on Member States applying more favourable rules could lead to a deterioration in the national rules currently in place.

4.2 The European Trade Union Confederation (ETUC), in contrast, expressed serious concerns regarding the proposed directive, and called on the Commission to withdraw it. The ETUC criticised the decision to use Article 79 TFEU as the sole legal basis for the directive, given that both it and the seasonal workers directive would have a significant impact on Member States' labour markets, and stated that the social partners should be consulted on such proposals under Article 154 TFEU. It also felt that the proposal did not guarantee equal treatment for intra-corporate transferees or provide inspection mechanisms and sanctions in the event of breaches of the regulations.

4.3 In terms of migration policy, this approach at least partly follows on from the concept of 'circular migration': it is, at any rate, intended to be temporary migration. This concept is frequently regarded as unsuccessful in terms of integration and labour market policies. If Europe does have a shortage of skilled workers and young people in some countries, sectors and professions over the long term, this shortage should be tackled in the first instance through a training offensive and by making use of the free movement of workers within Europe; only after that should consideration be given to controlled labour migration with gradually increasing rights and the prospect of permission to reside longer in the country concerned.

⁽³⁾ OJ C 27, 3.2.2009, p. 108.

⁽⁴⁾ OJ C 27, 3.2.2009, p. 114.

⁽⁵⁾ OJ C 354, 28.12.2010, p. 16.

4.4 Others, in contrast, see the concept of temporary or circular migration as the right way of encouraging the migration into Europe of highly skilled workers who can then apply the experience they gain in their country of origin, while at the same time allowing Europe to create a level playing field with its competitors in the global competition for top talent.

4.5 Specific versions of the 'temporary migration' approach have already failed in some Member States in the past: because it was assumed that migration was temporary, investment in integration measures was neglected, and these failures have still not been fully made up for.

4.6 In 2007, the European Commission published an important communication on circular migration and partnerships between the EU and third countries⁽⁶⁾ which set out the advantages but also the specificities of this concept. The EESC contributed to this debate in an objective manner with its own-initiative opinion⁽⁷⁾ recognising that temporary entry arrangements may also be useful and that the current inflexibility of legislation in Europe is a major barrier to circular migration.

4.7 This is, of course, also connected with the issue of family reunification, which is particularly relevant where temporary migration lasts for several years or turns into permanent immigration. The rules on family reunification should therefore be similar to those in the Blue Card Directive (Directive 2009/50/EC).

4.8 Finally the EESC has highlighted the importance of integration in many of its opinions⁽⁸⁾.

4.9 The EU and the national authorities must work together to promote integration policy. The EESC recently stated⁽⁹⁾ that the common immigration policy should include integration, a two-way social process of mutual adaptation between immigrants and the host society, which should be supported through good governance in the EU, at the national level, and at the regional and local levels. In its opinion on integration and the social agenda⁽¹⁰⁾, the Committee proposes that a process of mainstreaming integration be provided for in the EU's different political, legislative and financial instruments, in order to promote integration, equal treatment and non-discrimination.

4.10 The draft directive under consideration, however, conflicts with these integration efforts, since the assumption that the migration is temporary could discourage integration measures.

4.11 In order to avoid unfair competition, intra-corporate transferees should have at least the same working conditions as the group's local staff, not only as regards the minimum wage, but also in terms of all the labour law standards in the host country, i.e. all elements of the host country's labour law must apply across the board.

4.12 With regard to these rights, the EESC stated the following in its opinion on the Green Paper on an EU approach to managing economic migration⁽¹¹⁾: *'The starting point for this debate must be the principle of non-discrimination. Migrant workers, whatever the period for which they are authorised to reside and work, must have the same economic, labour and social rights as other workers.'*

4.13 In its opinion on the 'single permit directive'⁽¹²⁾, the EESC highlighted the role of the social partners at the different levels (business, sector, national and European) in promoting equal treatment at work. European Works Councils will also be key players in this connection: after all, this draft is intended to relate primarily to large business groups with a large number of subsidiaries.

4.14 It will be especially important to monitor compliance with the rules. The EESC notes, in its opinion on the proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals⁽¹³⁾, that monitoring will not be easy because i) the monitoring bodies do not have enough qualified staff, ii) there are difficulties in dividing up responsibilities between the bodies concerned and iii) there are a large number of companies for which monitoring is envisaged. The Member States must therefore be careful to ensure that the monitoring bodies have the resources to perform their duties effectively.

4.15 The scope of the directive is unclear and too broadly defined: in particular, the definition of 'specialists' must be clearly delimited in order to avoid a situation where, *de facto*, all employees in a group can work for up to three years in a subsidiary in a given Member State. The definition of 'graduate trainees' should also be re-examined, so that only people being prepared for very specific management duties can actually be transferred as graduate trainees. The wording should reflect the EU's GATS offer from 2005.

4.16 The possibility of excluding certain sectors from the scope of the directive should be examined, at the mutual request of both employers and trade unions in the sector concerned.

⁽⁶⁾ COM(2007) 248 final

⁽⁷⁾ OJ C 44, 16.2.2008, p. 91.

⁽⁸⁾ See the following EESC opinions: OJ C 125, 27.5.2002, p. 112; OJ C 80, 30.3.2004, p. 92; OJ C 318, 23.12.2006, p. 128; OJ C 347, 18.12.2010, p. 19; OJ C 354, 28.12.2010, p. 16; EESC opinion on the new challenges of integration (rapporteur: Mr Pariza Castaños).

⁽⁹⁾ OJ C 48, 15.02.2011, p. 6.

⁽¹⁰⁾ OJ C 347, 18.12.2010, p. 19.

⁽¹¹⁾ OJ C 286, 17.11.2005, p. 20.

⁽¹²⁾ See footnote 4.

⁽¹³⁾ OJ C 204, 9.8.2008, p. 70.

4.17 In the case of transfers from one Member State to another, there are practical problems regarding the payment of the salary to which the transferee is entitled. The concerns that are regularly raised concerning wage dumping in connection with transfers from other Member States (within the scope of the directive on the posting of workers) also apply to the scope of this proposal. For example, the European Economic and Social Committee's opinion on the posting of workers⁽¹⁴⁾ stresses that deficiencies in the system of checks and balances could cause problems.

5. Specific comments

5.1 The definition of a 'specialist' is confusing, and is liable to encompass virtually any kind of employment, since - in the German version in any case - it merely requires 'branchenspezifische Fachkenntnisse [sector-specific specialist knowledge]'. This definition (in the English version this is: 'any person possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge') is much broader than the corresponding definition in the part of the GATS agreement that is binding on the EU, as the German version does not require any 'uncommon knowledge' (*). This means that any specialist worker can be transferred, which significantly increases the risk of wage pressures.

5.2 Even though intra-corporate transfers are currently used mainly by large multinational companies, there should be minimum requirements for the host entity, in order to avoid cases of abuse. For example, it should at any rate be of a certain size - e.g. have a certain number of employees - in order to avoid the kind of abuse where intra-corporate transfers are used to establish single-person enterprises comprising the transferred manager/specialist.

5.3 It should also be ensured that temporary work agencies belonging to a group cannot post workers to other subsidiaries in the group.

5.4 The proposal for a directive specifies that Member States shall reject an application for an intra-corporate transfer if the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment. This should be extended to include cases where wage levels agreed in collective bargaining are not respected. For the sake of proportionality, employers should only be excluded from applying for transfers temporarily, not permanently as provided for in the proposal. It should also be possible to differentiate according to the severity of the offence.

5.5 It is also not enough for there simply to be the possibility of returning to a subsidiary in the sending country: rather, at the very least a contract that is valid until after the end of the secondment should be provided, in order to ensure that workers are not employed solely for the purpose of secondment.

5.6 The draft provides only for compliance with national legislation regarding salaries. In sensitive areas such as intra-corporate transfers, however, the directive should state that all provisions of labour law (both legislation and collective bargaining) in the host country should also apply to intra-corporate transferees and that the transferring organisation or the host entity should undertake to respect these provisions prior to the start of the transfer. It is vital to avoid precarious jobs and differences from the permanent staff.

5.7 Article 16 effectively gives Member States the power to issue residence and work permits also for the territory of other Member States, but the authorities of the individual Member States do not have the competence to issue such authorisations and permits; nor can the EU transfer this competence, because it does not itself have the power to issue residence or work permits for individual Member States. Moreover, the second Member State is not given any opportunity to verify in any way the work permit that was issued in the first Member State along with the residence permit. It therefore needs to be clarified that a permit can only be valid in the Member State that issued it.

5.8 It is also currently unclear which system applies in the event of a further transfer to a second Member State, as this would then be a secondment from one Member State to another. It will in any event be necessary to provide specific procedures for administrative cooperation between the Member States.

5.9 The proposal provides for the introduction of a simplified procedure, but it is not clear exactly what the simplifications comprise. A fast-track procedure must not work to the detriment of accuracy in inspection: it should in any event be ensured that the authorities can examine every individual case carefully and without any major delay, particularly with regard to the payment of salaries.

5.10 The intention is for secondments totalling up to three years to be possible. Secondments of this length cannot be regarded as internally necessary short-term postings, and the transferee should be integrated normally into operations in the host country. The full spectrum of labour and social law in the host country should therefore apply.

5.11 In many sectors, three-year postings are longer than the usual duration of employment contracts. However, Framework Directive 2009/50/EC (the blue card directive) has already been adopted with regard to labour migration of highly qualified workers.

5.12 Moreover, minimum salaries cannot in all cases prevent wage dumping because, in the event of a further transfer to a second Member State, the draft provides that the conditions applicable in the country issuing the permit should apply. This would lead, in such cases, to the applicable minimum salary being not that in the country of employment (which may be higher) but that in the country issuing the permit. It should therefore in any event be clarified that the transferee must be paid the minimum salary applicable in the state

⁽¹⁴⁾ OJ C 224, 30.8.2008, p. 95.

(*) Translator's note: this applies only to the German version. The English version does refer to 'uncommon knowledge'.

where he/she is actually working. It must be ensured that all the provisions of collective agreements are applied, as well as the principle of equality.

5.13 The draft directive to which this opinion relates does not provide any possibility for transferees to bring actions against their employers before courts within the European Union: the court of jurisdiction for employees transferred from third countries – for example in cases concerning the payment of salaries in line with the collective agreements in the host country – would generally be the sending state, not the relevant Member State. This would make it unacceptably

difficult for intra-corporate transferees to pursue justified complaints. Access to this right is, however, one of the fundamental principles of a democratic society, and must therefore be provided in the host country.

5.14 The EESC calls on the European Parliament and the Council to endeavour to resolve the shortcomings mentioned in relation to this proposed directive in the subsequent legislative process in order to ensure that the directive can really make a positive contribution to facilitating the necessary intra-corporate transfer of know-how into the EU.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime'

COM(2011) 32 final — 2011/0023 (COD)

(2011/C 218/20)

Rapporteur-General: **Mr RODRÍGUEZ GARCÍA-CARO**

On 2 March 2011, the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

COM(2011) 32 final – 2011/0023 (COD).

On 14 March 2011, the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Rodríguez García-Caro as rapporteur-general at its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), and adopted the following opinion by 80 votes to two with seven abstentions.

1. Conclusions

1.1 In the present opinion, the European Economic and Social Committee expresses some reservations regarding the proposal for a directive, and voices its concern that the often-cited choice between security and freedom or, in more practical terms, stepping up security at the expense of citizens' rights, with regard to personal data, must under no circumstances run counter to the general principles underpinning fundamental personal rights.

1.2 The EESC agrees with the general opinion of the European Data Protection Supervisor, the Article 29 Working Party on Data Protection, the European Fundamental Rights Agency and the European Parliament. Moreover, we do not believe that the proposal provides sufficient evidence of the need for blanket, indiscriminate use of the PNR data of all citizens travelling on international flights. We therefore view the planned measure as disproportionate.

1.3 In particular, the EESC backs the observation made by the European Data Protection Supervisor in its most recent opinion on the proposal to the effect that PNR data should not be used systematically and indiscriminately, but rather on a case-by-case basis.

1.4 The EESC considers that the option of a centralised single Passenger Information Unit, instead of the decentralised Member State-based option as set out in the proposal, could be less costly for airlines and for the Member States themselves,

and could allow for better supervision and control of the personal data contained in the PNR, by preventing repeated transmission of such data.

2. Introduction to the proposal for a directive

2.1 The purpose of the proposal for a directive is to regulate the transfer by air carriers of Passenger Name Record (PNR) data from international flights to or from the Member States, as well as the processing and exchange of such data between the Member States and with third countries. It sets out to harmonise Member States' provisions on data protection with a view to using PNR data to combat terrorism⁽¹⁾ and serious crime⁽²⁾, as defined by Community law.

2.2 The proposal includes a definition of the ways in which the Member States can use PNR, the data that need to be collected, the purposes for which they may be used, the communication of the data between the Passenger Information Units of the various Member States, and the technical conditions for such communication. Hence the choice of a decentralised system for the collection and processing of PNR by each State.

3. General comments

3.1 As the legitimate representative of organised civil society, the EESC is ideally placed to express its opinion. It is therefore grateful to the Council for the optional referral to the EESC of the proposal in question.

⁽¹⁾ OJ L 164, 22.6.2002, p. 3.

⁽²⁾ OJ L 190, 18.7.2002, p. 1.

3.2 The proposal for a directive that the Council has referred to the EESC could be described as representing prior harmonisation of Member State legislation in this area, since the majority of the Member States have no specific rules on the use of PNR data for the purposes set out in the proposal. The EESC therefore considers it appropriate to establish a common legal framework to which the Member States' legislation should be adapted, in such a way that guarantees and certainty of data protection for citizens are identical throughout the Union.

3.3 In the light of the proposal's content, what we are looking at is legislation allowing a wide range of data about millions of citizens who have never committed any of the offences set out in the directive, and who never will, to be processed and analysed. This means that data concerning absolutely normal people will be used to establish the profiles of dangerous criminals. The EESC believes that we face a choice between security and freedom or, in more practical terms, stepping up security at the expense of citizens' rights where personal data are concerned.

3.4 Due to the proposal's lengthy gestation, key stakeholders in this field have been able to express a wide range of qualified opinions on several occasions. Since the Commission's adoption in 2007 of the draft Council Framework Council Decision on the use of PNR data, a predecessor of the proposed directive, comments have been made by the European Data Protection Supervisor⁽³⁾, which in March of this year issued a further opinion on the new text, the Article 29 Working Party on Data Protection which also published an opinion in April of this year⁽⁴⁾, the Fundamental Rights Agency and the European Parliament, which adopted a resolution on the 2007 proposal⁽⁵⁾, and is involved in the legislative procedure regarding the present proposal under the terms of the Treaty on the Functioning of the European Union.

3.5 The EESC agrees with the general opinion of all these qualified stakeholders. Moreover, we do not believe that the proposal provides sufficient evidence of the need for blanket, indiscriminate use of the PNR data of all citizens travelling on international flights. We therefore view the planned measure as disproportionate, particularly since in the grounds for the proposal, it is recognised that '*... at EU level, detailed statistics on the extent to which such data help prevent, detect, investigate and prosecute serious crime and terrorism are not available*'⁽⁶⁾. For this reason, the EESC strongly agrees with the comment made by the European Data Protection Supervisor to the effect that PNR data should not be used systematically and indiscriminately, but rather on a case-by-case basis.

3.6 In keeping with the above, and reflecting the EESC's earlier opinions, the present opinion recalls the following recommendation set out in the opinion on the Communication from the Commission to the European Parliament and the

Council – An area of freedom, security and justice serving the citizen⁽⁷⁾: '*Security policies must not jeopardise the fundamental values (human rights and public freedoms) or democratic principles (the rule of law) that are shared throughout the Union. Personal freedom must not be curtailed under cover of the objective of collective and state security. Some policy proposals repeat the mistake of earlier times: sacrificing freedom to improve security*'.

3.7 In any case, whatever the text that finally emerges from the legislative procedure, it must provide the strongest possible guarantees for the confidentiality and protection of the personal data contained in the PNR, in compliance with the principles enshrined in Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽⁸⁾ and in Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁹⁾. The exceptional nature of the provisions must under no circumstances run counter to the general principles underpinning fundamental personal rights.

3.8 Nevertheless, and given that the proposal for a directive represents unarguably exceptional use of personal data, the EESC considers that the highly exceptional provisions contained in Articles 6 and 7 should be scaled back as far as possible in order to prevent the improper use of their exceptional nature: requests for data not covered by the general rules set out in Articles 4 and 5 of the proposal must always be reasoned.

3.9 With a view to guaranteeing that data are used only for the purposes contained in the draft directive, and that it is always possible to know who has access to the PNR databases or processed data, the text of the proposal should introduce a compulsory traceability system so that the agents or authorities that have had access to the data, and the data processing or handling that they have been engaged in, can be identified.

4. Specific comments

4.1 Article 3

In a globalised world, the content of recital (18) is hard to understand, except in terms of justifying the option taken in Article 3 to adopt a decentralised model. The EESC believes that this model may add to the costs of air carriers, as they will have to transfer data to the units of all the states in which an international flight may make a stop-over. Similarly, it will enable personal data to be processed and transferred by a number of units. This system would not appear to be distinguished by its compatibility with the criteria of effectiveness and efficiency that should be sought by all.

⁽³⁾ OJ C 110, 1.5.2008.

⁽⁴⁾ Opinion 145 of 5.12.2007 and Opinion 10 of 5.4.2011.

⁽⁵⁾ P6_TA (2008) 0561.

⁽⁶⁾ COM(2011) 32 final, p. 6.

⁽⁷⁾ EESC opinion on the *Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen*, OJ C 128, 18.5.2010, p. 80.

⁽⁸⁾ OJ L 350, 30.12.2008 p. 60.

⁽⁹⁾ OJ L 281, 23.11.1995 p. 31.

4.2 Article 4(1)

The EESC proposes that the following sentence be added at the end of paragraph (1) of the article: '*... and shall inform the air carrier accordingly so that it no longer transfers such data*'. In our view, as soon as an anomaly is detected, immediate instructions should be issued for its correction.

4.3 Articles 4(4) and 5(4)

The EESC considers that there is a discrepancy between the wording of the two articles. Article 4(4) states that the Passenger Information Unit of a Member State is to transfer the processed data to the competent authority on a case-by-case basis. Article 5(4), however, provides that PNR data and the result of the processing of PNR data received from the Passenger Information Unit may be further processed by the competent authority. We consider that this obvious contradiction must be resolved or further clarified so that it does not provide room for interpretation.

4.4 Article 6(1)

As argued in point 4.1, the EESC considers that this system of transferring data to different Passenger Information Units adds to air carriers' administrative burden, just at a time when calls are being made for this burden to be lightened, and increases their operating costs, which could have an impact on consumers through the final price of tickets.

4.5 Article 6(2)

With regard to the security and protection of personal data, the EESC considers that transfer '*... by any other appropriate means ...*' in the event of technical failure of electronic means is not entirely suitable. We urge that clearer details be given of what means of transfer can be used.

4.6 Article 6(3)

We believe that the wording at the beginning of the paragraph would be made more effective by removing the word '*may*' so

that application of the article is not left to the Member States' discretion. The sentence would then begin as follows: '*Member States shall permit air carriers ...*'.

4.7 Articles 6(4) and 7

The EESC considers that Article 6(4) and the whole of Article 7 usher in a succession of provisions of a progressively more exceptional nature, moving away from the '*case-by-case*' transfer of data as set out in Article 4(4) and shifting to virtually universal transfer where all parties are entitled to transfer and receive PNR data information. Article 7 is a compendium of exceptions to the rule.

4.8 Article 8

If the most exceptional possible circumstance – represented by transfer of data to third countries that can, in turn, transfer to them to other third countries – is to be avoided, the article should specify that the transfer is to occur once the data have been processed by the Passenger Information Unit or the competent Member State authority, which is then to transfer them to the third country, and exclusively on a case-by-case basis.

4.9 Article 11(3)

For the same reason as set out with respect to Article 4(1), the EESC proposes that the following sentence be added at the end of the paragraph: '*... and the Passenger Information Unit shall inform the air carrier accordingly so that it no longer transfers such data*'.

4.10 Article 11(4)

It would be logical to place the traceability system, as proposed by the EESC in point 3.9 of the present opinion, in this article, so that those accessing the information at any time are recorded.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector'

COM(2010) 728 final — 2010/0362 (COD)

(2011/C 218/21)

Rapporteur: **Ms Dilyana SLAVOVA**

On 22 December 2010 the Council decided to consult the European Economic and Social Committee, under Articles 42 and 43(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 on Contractual relations in the milk and milk products sector

COM(2010) 728 final — 2010/0362 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 150 votes to 3 with 13 abstentions.

1. Conclusions and recommendations

1.1 The EESC notes that the 2007-2009 crisis has put the dairy sector, and in particular producers, under huge strain.

1.2 The EESC notes the imbalances along the supply chain, specially the disequilibrium between retailers on the one hand and farmers and processors on the other, which stands in the way of a fairer distribution of the added value of products to milk producers. The EESC recommends to the Commission that measures be taken to ensure that transparency is applied equally throughout the dairy chain (producers – processors – distributors – retailers).

1.3 The EESC welcomes the fact that the Commission is capitalising on the recommendations issued by the High Level Expert Group on Milk (HLEG) and responding in a timely fashion to the challenges facing the dairy sector.

1.4 The EESC is convinced that optimal efficiency in the dairy supply chain is in the interests of all parties involved and emphasises that distributing the added value fairly along the chain, in particular increasing producers' bargaining power, will help boost its overall efficiency, competitiveness and sustainability.

1.5 The EESC considers that all four elements (contractual relations, bargaining power of producers, inter-professional/inter-branch organisations and transparency) are closely linked and interdependent. Thus these elements should be tackled jointly.

1.6 The EESC acknowledges that the structure of dairy production may differ considerably between Member States and therefore agrees that the use of contracts should remain voluntary. However, Member States should in principle be

allowed to make the use of the contracts compulsory on their territory, in view of the fact that the smooth functioning of the internal market should be safeguarded. It is of paramount importance to underline that the proposal is not applicable to cooperatives and to draw attention to the best practices established in some of the Member States.

1.7 The EESC agrees that such contracts should include at least the following four key aspects which should be freely negotiated between the parties: (1) the price payable/price formula at delivery, (2) the volume, (3) the timing of deliveries during the season, and (4) the duration of the contract.

1.8 The EESC encourages the establishment of producers' organisations and inter-branch organisations, especially in some of the new Member States where the fragmented dairy farming sector has very limited bargaining power. The EESC acknowledges the added value in the fruit and vegetables sector of organisations that strengthen the links between the various stakeholders within branches, given that they can improve knowledge and transparency of production and markets; considers that similar developments might improve the overall functioning of the dairy supply chain.

1.9 The EESC considers that there is need for further clarification and development of the application of EU competition rules in the dairy sector to allow primary producer organisations to benefit from improved bargaining power.

1.10 The EESC stresses that increased transparency can help the dairy chain function more smoothly, to the benefit of all actors, and in this context welcomes the recommendations of the HLEG to the Commission ensuring that transparency does not distort competition in the internal market.

1.11 The EESC welcomes the work of the Commission, whilst also highlighting the fact that the proposal will not solve all the problems in the dairy sector.

2. Introduction

2.1 Milk production is very important in the EU, not only from an economic point of view given its turnover and the number of jobs involved but also because of its role in terms of land use and protection of the environment. In many regions, particularly mountainous and disadvantaged ones, it is also one of the few types of production that there is a real chance of developing and maintaining.

2.2 The dairy sector plays a vital role in the quality of life in Europe because of its contribution to health and, responsible and safe nutrition for consumers and its economic importance for rural development and environmental sustainability.

2.3 The dairy producing and processing sectors vary widely between Member States. Production and processing structures are very different from one Member State to another with, at one extreme, a predominantly cooperative organisation where the cooperative also processes the milk and at the other extreme, large numbers of individual producers and a large number of private processors. In the run-up to 2015, even in the most organised environment producers will need to be able to prepare themselves adequately for the new market situation they will be dealing with once quotas are abolished. It is worth noting that, in as much as the public authorities (at EU and national level) are withdrawing from production management, stakeholders in the sector will be faced with an entirely new set of circumstances, and with new responsibilities. In these circumstances, producers need to be sure they can get a fair price from the market.

3. Background

3.1 In October 2009, in light of the difficult market situation for milk, a High Level Expert Group on Milk (HLG) was set up with the purpose of discussing mid-term and long-term arrangements for the milk and milk products sector, working on a regulatory framework and helping stabilise the market and producers' income.

3.2 The HLG obtained oral and written input from major European stakeholder groups in the dairy supply chain representing farmers, dairy processors, dairy traders, retailers and consumers. Furthermore, the HLG received contributions from invited academic experts, third-country representatives, national competition authorities and the Commission.

3.3 A dairy stakeholder conference was also held on 26 March 2010 allowing a wider range of actors in the supply chain to express their views. The HLG delivered its report on 15 June 2010; this contained an analysis of the current situation in the dairy sector and a number of recommendations.

3.4 The HLG found major imbalances in the supply chain (producers – processors – distributors – retailers), and an

uneven distribution of the added value. This situation is caused by a lack of transparency, rigidities and problems of price transmission in the supply chain.

3.5 The report and recommendations issued by the HLG were examined by the Council and Presidency conclusions were adopted at the meeting of 27 September 2010. Those conclusions urge the Commission to submit its response to the first four recommendations of the HLG (contractual relations, bargaining power of producers, inter-branch organisations and transparency) by the end of the year.

3.6 The present Commission proposal addresses all four elements (contractual relations, bargaining power of producers, inter-branch organisations and transparency) to the extent that the existing provisions relating to them need to be amended.

3.7 As regards relations between milk producers and dairies, the concentration of supply is often much lower than concentration at processing level. This results in an imbalance in bargaining power between these levels. The proposal provides for optional written contracts to be drawn up in advance for deliveries of raw milk by a farmer to a dairy, which would include the key aspects of price, the timing and volume of deliveries, and the duration of the contract. Member States have the option of making the use of contracts compulsory on their territory. Cooperatives, owing to their specific nature, are not required to have contracts if their statutes contain similar provisions.

3.8 In order to rebalance bargaining power in the supply chain, the proposal plans to allow farmers to negotiate contracts collectively through producer organisations. It sets appropriate quantitative limits to the volume of this negotiation which should place farmers on an equal footing with the major dairies while maintaining adequate competition in raw milk supply. The limits are set at 3,5 % of global EU production and 33 % of national production, with specific safeguards also provided to avoid serious prejudice in particular to SMEs. Such producer organisations should therefore also be eligible for recognition under Article 122 of Regulation (EC) No 1234/2007. The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the conditions for approval of associations of producer organisations.

3.9 The proposal also sets out specific EU rules for inter-branch organisations covering all parts of the chain. These organisations can potentially play useful roles in research, improvement of quality, promotion and dissemination of best practice in production and processing methods.

3.10 It is proposed to apply the rules of existing inter-branch organisations in the fruit and vegetables sector, with appropriate adaptations, to the dairy sector.

3.11 The inter-branch organisations would contribute to improving knowledge and transparency of production and the market, including by publishing statistical data on the prices, volume and duration of contracts for the delivery of raw milk which have been concluded, and by providing analyses of potential future market trends at regional or national level.

3.12 The proposal gives the Commission the power to adopt delegated acts in accordance with Article 290 TFUE in order to supplement or amend certain non-essential elements of measures set out in this Regulation. The elements for which that power may be exercised should be defined, as well as the conditions to which that delegation is to be subject.

3.13 In order to guarantee the uniform application of measures set out in this Regulation in all Member States, the Commission should be empowered to adopt implementing acts in accordance with Article 291 TFUE.

4. General comments

4.1 The proposal aims to boost the position of the dairy producer in the dairy supply chain and to prepare the sector for a more market oriented and sustainable future.

4.2 It provides for written contracts between milk producers and processors, the possibility of negotiating contract terms collectively via producer organisations in such a way as to balance the bargaining power of milk producers relative to major processors, specific EU rules for inter-branch organisations and measures to enhance transparency in the market. The measures are proposed to be valid until 2020 with two intermediate reviews. Appropriate size limits for collective negotiations and other specific safeguard measures should ensure the achievement of the objectives of strengthening the bargaining power of milk producers while safeguarding competition and the interests of SMEs.

4.3 Each Member State may decide how it will approach contractual relations. Each Member State has the freedom, within its own contract law system, to decide whether to make the use of contracts between farmers and processors compulsory. Given the diversity of situations across the EU in this context, in the interests of subsidiarity, such a decision should remain within the remit of the Member States.

4.4 The EESC agrees that there is a need to strengthen the bargaining power of producers; but the different situations and national characteristics would also have to be taken into account.

4.5 As regards the duration of delegation for delegated acts, the EESC believes that this must always be for a specific period of time (mandate). Furthermore, delegated acts should be reserved for areas where decisions need to be taken quickly.

4.6 Implementing acts should be used in cases where it would be better for Member States to harmonise their implementation.

4.7 The EESC believes firmly in the consultation of stakeholders during the preparation of EU legislation. Thus, it is important for the Member States' experts to be consulted in the effort to better regulate the volatile dairy market. In this respect it is very important to ensure that such volatility will not have an irreversibly damaging impact on producers in the EU dairy sector. In that context, it is clear that more transparent and equal distribution of the added value between market players will have to be considered as well, in particular, the need for increased bargaining power for producers.

4.8 Inter-branch organisations currently exist in a few Member States and carry out these roles in compliance with EU law. Their efficiency is limited by the imbalances of the dairy chain.

4.9 However, it is clear to the EESC that the Commission's proposals would not solve all of the milk market's problems and do not apply to dairy cooperatives, which make up some 58 % of milk production. EESC regrets that these proposals do not encompass either the dairy industry or major retailers which play a key role in balancing the dairy market and in setting prices.

4.10 The EESC considers that the planned limits may prove to be overly restrictive, given the structure of the dairy sector at national level, particularly in the smaller Member States. The EESC calls for the EC, in certain exceptional cases, to allow all producers supplying a single dairy to group together, making it possible to set up groups of producers in relation to the size of the purchaser.

4.11 Given that the Commission is planning to withdraw from managing milk production and hand the responsibility over to operators on the ground, it is vital for those operators to have the most complete and up-to-date information possible on developments in the market, which must be transparent. The EESC therefore considers it vital for an effective monitoring instrument to be established at European level, as a requisite for allowing a degree of guidance over production.

4.12 Finally, the new circumstances make it essential to retain market management tools (such as intervention, private storage, export refunds), which need to be effective, on the one hand and quick and easy to implement on the other.

5. Specific comments

5.1 The EESC recognises the special effort of the Commission to propose a draft regulation to the Parliament and the Council amending Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector. The EESC considers this act to be both positive and timely as regards meeting the major challenges facing this specific agricultural sector.

5.2 Nonetheless the EESC stresses that the proposal will not be able to solve all the problems the dairy sector is facing. In order to further improve the smooth functioning of the dairy chain, monitoring should ensure transparency throughout the whole dairy chain (producers – processors – distributors – retailers).

5.3 A successful EU dairy sector after 2015 will require very efficient milk production from dairy units of adequate economic size and with a high level of human capital. Restructuring efforts should therefore be continued, both in agricultural holdings and in dairies: it is vital for agricultural producers to have access to effective, competitive and innovative dairies that can make the most of market opportunities. Particular attention should be paid here to disadvantaged areas, where dairies also often have to deal with less advantageous geographical circumstances and are therefore at a comparative disadvantage. In this context, particular attention needs to be given to transparent, efficient, regional production that ensures low environmental impact, information to consumers and quality, by reducing the number of middlemen. The dairy industry as a whole should focus on producing high-quality, high-value-added products for which the domestic market is growing and where export opportunities are good.

5.4 The EESC considers that the Member States concerned may establish regulations in order to improve and stabilise the operation of the market of dairy products marketed under a protected designation of origin or protected geographical indication under regulation (EC) No. 510/2006.

5.5 There is greater disparity among the Member States' dairy sectors than in the other EU agricultural sectors; this requires more flexibility in the implementation of EU policies. The EESC foresees a need for the implementation of specific measures for dairy farmers and processors with a view to restructuring and modernising the dairy sector in the Member States.

5.6 The EESC calls for the Commission to react more rapidly and flexibly to crises. In 2011 the dairy market is extremely volatile, reflecting the climate challenges, and it is possible that there might be a repeat of the 2007-2009 crisis cycle. The EESC therefore proposes that the Commission should continue to monitor the dynamics of the dairy sector in order to do as much as possible to prevent a future devastating dairy crisis.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes'

COM(2010) 733 final — 2010/0353 (COD)

(2011/C 218/22)

Rapporteur: **Mr ESPUNY MOYANO**

On 18 and 27 January 2011 the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 43(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes

COM(2010) 733 final — 2010/0353 (COD)).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 82 votes with three abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the initiative by the European Commission to gather all EU legislation relating to the quality of agricultural products together in the Quality Package. This will provide a more coherent overall policy in this area, as a first step towards building a stronger and more dynamic European agrifood sector. The Committee draws attention to the importance of boosting the quality and added value of European products and providing more information to consumers, by improving Union instruments and provisions in this sphere.

1.2 The Committee appreciates the existing EU quality schemes (Protected Designation of Origin, Protected Geographical Indication and Traditional Speciality Guaranteed), and acknowledges that they represent excellent means of promoting European products. The EESC believes that the certification of certain products in this way lends significant added value to the local area and to the farmers and producers involved, and is also of benefit to the final consumer. It also shares the Commission's view that they contribute to rural development policy. However, the Committee would point to the importance of the quality of European products and the relevant production model being recognised not only on the internal market but also – and above all – on the external market, and of such quality being fostered. The EESC calls for a rigorous approach to be applied at all levels in recognising agrifood products and monitoring their marketing ⁽¹⁾.

1.3 The EESC welcomes the continuation of the differentiated Protected Designation of Origin and Protected

Geographical Indication schemes, although it considers that the proposed definitions are less clear than those set out in Regulation 510/2006. It however regrets that the new text makes no distinction between the three production stages (farm or livestock production – processing – preparation), referring only to the 'production steps'.

1.4 Regarding the requirements for certifying a product as a TSG, the EESC considers that a given product's tradition is associated not only with its duration over time as laid down in the proposal, but also with other parameters such as the specific characteristics of the raw material, the production or processing method, the area's culture and other qualities and factors. Moreover, TSGs are in a constant state of flux and as a result the EESC does not agree that the number of years should be the key parameter for including a product within this category.

1.5 The EESC believes that restricting the TSG scheme to registrations with reservation of name may not only substantially reduce the number of registrations, but could also do away with an instrument that rewards diversity and those who choose to produce a particular foodstuff in accordance with tradition. In this regard, the EESC suggests that at the end of the transitional period, the Commission should propose a scheme allowing TSG registration without reservation of name to continue before the entry into force of the present regulation.

1.6 The EESC calls for new thought to be given to the possibility of recognising and including mountain products as optional quality terms ⁽²⁾.

⁽¹⁾ OJ C 18, 19.1.2011, pp. 1-4, *Strengthening the European agri-food model*, and OJ C 18, 19.1.2011, p. 5, *Agricultural production quality communication*.

⁽²⁾ OJ C 120, 16.5.2008, pp. 47-48, *Agriculture in areas with specific natural handicaps*.

1.7 The concept of quality should be more broadly framed in future, and consumers should be able, as they already can in the case of eggs, to make a clearer distinction between different forms of livestock farming. Also, suggestive advertising on packaging (such as images of grazing cows or descriptions like 'Alpine milk') should match the product content. The EESC expects the Commission to adopt appropriate specific proposals.

1.8 The EESC urges the Commission to put forward appropriate follow-up measures in order to facilitate compliance with the technical requirements involved in belonging to EU quality schemes.

1.9 The EESC agrees that the additional rules being proposed by the Commission to supplement the specification for adopting a PDO or PGI, as well as with regard to optional quality terms, should be adopted by means of delegated acts.

1.10 With regard to farming and/or origin labelling for farming and livestock products in accordance with the marketing standards, the EESC calls for the costs and benefits to be specified in the impact assessments to be made in each case. At the same time, work is proceeding on the obligatory nature of indications of origin for certain agri-food products under the proposal for a consumer information regulation. The most recent documents on this subject refer to the need for case-by-case assessments. The EESC calls for work to continue on defining and ensuring consistency between the two legislative packages, and avoiding any overlap between them.

1.11 Regarding the guidelines on the labelling of products using PDOs and PGIs as ingredients, and on best practice applicable to voluntary certification schemes, the EESC underlines the importance of such initiatives and urges compliance with them.

2. Summary of the communication

2.1 The aim of the Quality Package is to improve EU legislation in the field of agricultural product quality, as well as in the operation of national and private certification schemes, in order to make them simpler, more transparent and easier to understand, adaptable to innovation, and less burdensome for producers and administrations.

2.2 In 2009 the Commission published Communication COM(2009) 234 on agricultural product quality policy, containing the following strategic orientations:

- Improving communication between farmers, buyers and consumers on the quality of agricultural products
- Increasing the coherence of EU agricultural product quality policy instruments

- Reducing complexity to make it easier for farmers, producers and consumers to use and understand the various schemes and labelling requirements.

2.3 The Package includes:

2.3.1 a proposal for a regulation simplifying administration of quality schemes, bringing them into a single legislative instrument. This regulation ensures coherence between the instruments and makes the schemes more readily understandable for stakeholders;

2.3.2 a proposal for a regulation on marketing standards increasing transparency and simplifying the relevant procedures;

2.3.3 guidelines setting out best practice for the development and operation of certification schemes relating to agricultural products and foodstuffs;

2.3.4 guidelines on the labelling of foodstuffs using Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) as ingredients.

2.4 Designation of Origin and Protected Geographical Indication:

the proposal maintains and reinforces the quality scheme for agricultural products and foodstuffs, without prejudice to the geographical indication schemes for wines, for aromatised wines, or for spirits. The current registration process shortens time delays; minimum common rules on official controls are laid down, and the scope of the regulation is maintained (products for human consumption and other products).

2.5 Traditional specialities guaranteed:

this scheme for reservation is maintained, but the option of registering names without reservation is discontinued. The registration process is simplified, the criterion of tradition is extended to 50 years and the scheme is restricted to prepared meals and processed products.

2.6 Optional quality terms:

it is proposed to bring these terms into the present regulation in order to highlight value-adding attributes and support specific marketing standards (free-range poultry, honey of floral origin, olive oil from first cold pressing), with adaptation to the legislative framework of the Treaty on the Functioning of the European Union.

2.7 Marketing standards:

the proposal establishes that the Commission is, as a general rule, to adopt marketing standards by means of delegated acts. A legal basis is introduced for all sectors, with mandatory labelling of place of farming in accordance with each sector's specificity. Each case will be examined individually, starting with the dairy sector.

2.8 Principle of subsidiarity:

this is established with the purpose of ensuring that value-adding names and terms under the schemes receive the same level of protection in all EU Member States, preventing consumers from being misled and intra-EU trade from being impeded. The effective and efficient determination of such rights across the European Union is to be carried out at EU level. The processing and analysis of applications, on the other hand, will be performed at national level, as this is where these tasks can most efficiently and effectively be undertaken.

2.9 Principle of proportionality:

in order to underpin the credibility of the schemes and effectively guarantee compliance, producers must commit themselves to assuming the burdens and quality commitments involved, at the same time as they are entitled to access the scheme if their choice. These participation and control conditions are proportional to the corresponding guarantee of quality.

3. General comments

3.1 For the first time the Quality Package introduces an overall policy for Community schemes and terms describing the value adding characteristics of agricultural products, as well as marketing standards. It also contains two guidelines on voluntary certification schemes and the use of PDOs and PGIs as ingredients. The EESC appreciates the Commission's efforts over the last three years to set up this single, ambitious scheme on the basis of the numerous existing legislative texts that had been prepared in a fragmentary, sector-by-sector way.

3.2 The Commission holds that the strength of Europe's agri-food production lies in its diversity, the know-how of its producers and in the land and territories where production takes place. The EESC agrees with this view. It also argues that EU quality schemes should promote diversification of production, guard against product misuse or imitation, and help consumers to be aware of product properties and attributes. The EESC agrees that the various quality schemes represent excellent means of promoting European products. However, the Committee points to the importance of the qualities of these products being recognised at international level. If Europe's agriculture and its food processing industry are to survive and flourish, internal market awareness of European quality is not enough: this must also be fostered on other markets. In this respect, the EESC emphasises the importance of upholding the European production model, and the need for a level playing field for marketing EU and third country products in terms of quality, health, the environment and animal welfare, as recognised by the Council Presidency in its conclusions on the Commission from the European Commission on *The CAP towards 2020*.

3.3 Agricultural product quality schemes bring added value to the regions where they are produced, thereby contributing to

the goal of maintaining the diversity and increasing the competitiveness of the farming and processing sectors. In this way, they help to achieve the objectives of rural development policy as set out in the Communication from the Commission on *The CAP towards 2020* (COM(2010) 672). The EESC welcomes the consistency between the two policies, and calls for similar consistency between the Regulation on agricultural product quality schemes and the priorities of other policies such as the Europe 2020 strategy (creating value, driving innovation, enhancing product competitiveness, care for the environment, efficient use of resources, etc.). It also calls for the regulation to be responsive to the challenges of the single market (robust, sustainable and fair growth for businesses and smoother internal market functioning), and to comply with the aims of policies geared to consumer protection and information, competition and the external market.

3.4 Turning to the guidelines for labelling foodstuffs using PDOs or PGIs as ingredients (2010/C 341/03), the EESC underlines the importance of this initiative and urges compliance with them.

3.5 The Committee also welcomes the Commission's proposed best practice guidelines for voluntary certification schemes (2010/C 341/04). Recent years have witnessed increasing sales of agricultural products with non-regulatory labels, prompting consideration of ethical, social and environmental requirements. Similarly, and as pointed out by the Commission, greater reliability, transparency and clarity are needed in supply chain agreements. The Committee previously called on the Commission to draw up these guidelines⁽³⁾ and consequently urges all organisations currently operating certification schemes for agricultural products to review their procedures in order to achieve a high degree of compliance with the best practice guidelines.

4. Specific comments

4.1 Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI)

4.1.1 The EESC is pleased to see that both quality schemes have been retained, but regrets that the reference to the three production steps (farm or livestock production – processing – preparation) no longer appears in the newly-proposed definition.

4.1.2 The EESC recognises the contribution made by these agricultural products to maintaining traditional production methods and safeguarding the environment, with the ensuing benefits not only for producers and processors, but also for consumers. Recognising these quality schemes also contributes to the development of the rural areas concerned, by helping the local population to remain, improving their living conditions and quality of life, consolidating and promoting job and business opportunities, while encouraging the profitable use of natural resources.

⁽³⁾ OJ C 28, 3.2.2006, pp. 72-81, opinion on *Ethical Trade and Consumer Assurance Schemes*.

4.1.3 To be eligible for a PDO or PGI, producers must comply with a specification. Depending on the proposal, and in order to ensure that the specification provides relevant and succinct information, the Commission may, by means of delegated acts, lay down further rules as to the content of a product specification. With regard to Protected Geographical Indications, the EESC considers that whenever the place of production of the agricultural product used is different to the place of origin of the processed foodstuff, this must be indicated on the label.

4.1.4 The EESC strongly agrees that it should be the Member States that take administrative and judicial steps to prevent or avoid the unlawful use of PDOs or PGIs, as well as at the request of a producer group.

4.2 *Traditional Specialities Guaranteed*

4.2.1 The EESC welcomes the continuation of TSGs as one of the quality schemes for certain products, since TSGs represent the only means of recognition for traditional products originating from a Member State.

4.2.2 Regarding the requirements for certifying a product as a TSG, the EESC considers that restricting the TSG scheme to registrations with reservation of name may not only substantially reduce the number of registrations, but could also do away with an instrument that rewards diversity and those who choose to produce a particular foodstuff in accordance with tradition. In this regard, the EESC suggests that at the end of the transitional period, the Commission should propose a scheme allowing TSG registration without reservation of name to continue before the entry into force of the present regulation. Moreover, a given product's tradition is associated not only with its duration over time as laid down in the proposal, but also with other parameters such as the specific characteristics of the raw material, the production or processing method, the area's culture and other qualities and factors. The Committee therefore proposes that a set number of years should not be the only applicable parameter for identifying a product as a TSG.

4.3 *Quality scheme indications and symbols and role of producers*

4.3.1 The proposal for a regulation provides that groups are entitled to contribute to guaranteeing the quality of their products on the market, to carry out information and promotion activities, ensure compliance of products with their specifications and take action to improve the performance of the schemes. The EESC welcomes this improvement to the scheme, which strengthens and clarifies the role of such groups, and supports greater involvement of these groups in

terms of both market supply management and the use of PDOs and PGIs as ingredients. However, it urges that this entitlement should not undermine the specific provisions of Regulation (EC) No 1234/2007 on producer and inter-branch organisations. On the other hand, the EESC notes with satisfaction that operators preparing and storing TSGs, PDOs or PGIs or placing them on the market will be subject to official controls.

4.4 *Additional information for a more comprehensive quality policy*

4.4.1 The EESC considers that in future more specific information should be required to back up claims to 'quality', e.g. regarding the conditions under which animals are kept (free range, straw etc.). It would make sense to differentiate in this way, as consumers would then be able to make a more informed choice between different forms of production. It is also necessary in order to distinguish between industrial and traditional forms of production. The new system of labelling for eggs is a positive example of this and the Commission is asked to make proposals for other areas of livestock farming.

4.4.2 Also, at present packaging may still carry indications which suggest a particular kind of quality to the consumer, although the product does not in fact have these characteristics. For example milk packaging may carry images of grazing cows without any guarantee that the milk actually comes from free-range cows, or it may be marketed as 'Alpine' milk, although it is not produced in the Alps, but rather, for example, in Hungary. The same is true of 'Black Forest ham', where smoking is virtually the only process which takes place in the region, not the production of the meat. The EESC considers this to be misleading; it means laying claim to quality which is not provided and is thus misleading to consumers. The Committee cannot find any clear statement in the Commission proposals which would put an end to this kind of practice.

4.5 *Application and registration processes*

4.5.1 The Commission puts forward a number of proposals with the aim of shortening the registration process, and the EESC agrees that they may bring some improvements. Nevertheless, with regard to the discontinuation of monthly publication of applications, the EESC urges that consideration be given to retaining this publication, in order to facilitate follow-up, also bearing in mind that it is proposed to reduce the deadline for opposition to only two months.

4.5.2 In contrast, the EESC feels that where the guarantee that generic designations cannot be registered as a PDO or PGI is concerned, the proposal should be bolstered by proper evaluation at national and EU level.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards'

COM(2010) 738 final — 2010/0354 (COD)

(2011/C 218/23)

Rapporteur: **Mr POLICA**

On 27 January 2011 and 18 January respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 43(2) and, in respect of Title II, Article 118(1) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards

COM(2010) 738 final — 2010/0354 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 152 votes to five with ten abstentions.

1. Summary of the EESC's comments and recommendations

1.1 The EESC welcomes the Commission's proposal, which is designed to put in place a coherent agricultural product quality policy aimed at assisting farmers to better communicate the qualities, characteristics and attributes of their products, and at ensuring appropriate consumer information. Furthermore, the Committee is convinced that the quality package could help to increase employment and business opportunities in rural areas, thus addressing depopulation and helping to preserve specific cultural characteristics, improve the relationship between people and the environment and achieve better national resource management.

1.2 The EESC welcomes the improvement of specific agri-food schemes – designations of origin, protected geographical indications, guaranteed traditional specialities – in order to simplify and streamline technical requirements and strengthen the model. The EESC calls, moreover, for greater protection of these schemes against unfair trading practices and believes that implementing marketing standards across the board can help achieve this improvement.

1.3 As has also been highlighted in previous opinions ⁽¹⁾, the EESC believes that traceability, namely the means of tracking a product's progress through the production chain from production to sale, is an important tool that can ensure the effective application of all those requirements that will be adopted once specific marketing standards are introduced. It is

not enough merely to provide information on labels, the information provided must be objectively comparable.

1.4 In addition to securing the accuracy of the information displayed by means of effective tracking tools, the effectiveness of this information also needs to be strengthened and guaranteed by ensuring that labels display clear, comprehensive and comprehensible information, striking the right balance between the consumer's right to full information and legibility (of the small print), thereby avoiding excessive complexity, technical information or wordiness that could confuse consumers or put them off reading the label.

1.5 To ensure that checks are appropriate and effective, it is recommended that invoices and all the documents accompanying the products in general carry basic information stipulated in the marketing standards for the particular sector or product. Particular attention must be given to products imported into the EU from third countries, in order to combat and discourage unfair commercial practices ⁽²⁾.

1.6 The network of control bodies needed to verify whether products conform to existing and future provisions and to apply administrative penalties as appropriate where marketing standards have been breached must go hand in hand with efforts and initiatives to make operators in the sector more accountable and foster an increasingly widespread culture of compliance with the rules.

⁽¹⁾ OJ C 18, 19.1.2011, pp. 5-10, *The Community agricultural model: production quality and communication with consumers as factors of competitiveness*.

⁽²⁾ OJ C 100, 30.4.2009, pp. 60-64, *Health security of agricultural and food imports*.

1.7 The EESC acknowledges that provision for the use of delegated acts to regulate the marketing standards sector is in step with the move towards legislative simplification introduced by the Lisbon Treaty and complies with the provisions of Article 290 TFEU. It is also in line with the approach adopted thus far by the Commission and accepted by the Committee in similar instances⁽³⁾. It would, however, recommend that the tool be used carefully, as if it is not used selectively and is applied wholesale it could disrupt the market in sectors already regulated by specific marketing standards, first and foremost the fresh fruit and vegetable sector⁽⁴⁾.

1.8 As regards information that it is compulsory to display on labelling, the introduction of a legal requirement that 'place of farming'⁽⁵⁾ to be indicated for all sectors, thus responding to consumers' expectations in terms of clarity and information and avoiding other references that might be misleading, is certainly positive. However, the provision for case by case determination of 'the appropriate geographical level' appears seems inconsistent. It would be preferable, as the Committee has already suggested in part⁽⁶⁾, to include 'place of farming' on the label, meaning place of cultivation or rearing, namely the country where the agricultural product came from before processing or being used in the preparation of a foodstuff.

1.9 The European Parliament and the Council have clearly stated their intention to regulate and provide legal protection for basic products destined for food consumption by European citizens: the EU has already done a lot of work on this in the past and now has the greater technical and legal competences it needs to go further. In particular, the Committee is opposed to automatic adaptation to relevant marketing standards adopted by international organisations⁽⁷⁾ without prior analysis and assessment to establish their effectiveness and consistency with the new legislative framework.

1.10 The Committee agrees with the proportionality principle referred to in the legal elements of the proposal, but is concerned that implementing it, in the context of optional quality indications, could result in less binding checks, leading to a lower level of compliance with the standards themselves. The aim should be to simplify and cut red tape, while also maintaining an appropriate system of consumer protection controls.

1.11 The measures laid down in the proposal would be more effective if they were widely published, targeting consumers directly and through their trade associations. The mass media are widely used to stimulate sales but are not used enough to keep EU citizens better informed about the

standards protecting them and make them more aware of their options when buying a product.

2. Introduction – the Commission document

2.1 The aim of the Quality Package is to improve EU legislation in the field of agricultural product quality, as well as in the operation of national and private certification schemes, in order to make them simpler, more transparent and easier to understand, adaptable to innovation, and less burdensome for producers and administrations.

2.1.1 The quality package is in harmony with other EU policies. The recent Communication from the Commission on policy in the period post-2013 has identified, *inter alia*, the need to maintain the diversity of agricultural activities in rural areas and enhance competitiveness. The Communication on *Europe 2020: a strategy for smart, sustainable and inclusive growth* also, in setting out the EU's priorities, emphasises the strategic objective of promoting a more competitive economy, given that quality policy is one of the pillars of EU agriculture's competitiveness.

2.2 In 2009 the Commission published Communication COM(2009) 234 on agricultural product quality policy, containing the following strategic orientations:

- to improve communication between farmers, buyers and consumers about agricultural product qualities,
- to increase the coherence of EU agricultural product quality policy instruments, and
- to reduce complexity to make it easier for farmers, producers and consumers to use and understand the various schemes and labelling terms.

2.3 The quality package includes:

2.3.1 a proposal for a regulation simplifying administration of quality schemes, bringing them into a single legislative instrument. This regulation ensures coherence between the instruments and makes the schemes more readily understandable for stakeholders;

2.3.2 a proposal for a regulation on marketing standards increasing transparency and simplifying the relevant procedures;

2.3.3 guidelines setting out best practice for the development and operation of certification schemes relating to agricultural products and foodstuffs;

2.3.4 guidelines on the labelling of foodstuffs using Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) as ingredients.

⁽³⁾ OJ C 107, 6.4.2011, pp. 30-32, *Support for rural development by the EAFRD – Direct support schemes under the CAP*.

⁽⁴⁾ Regulation (EC) No 1580/07 as modified by Commission Regulation (EC) No 1221/08.

⁽⁵⁾ COM(2010) 738 final, Article 112e (3)c.

⁽⁶⁾ OJ C 77, 31.3.2009, p. 81, point 1.3 and OJ C 354, 28.12.2010, p. 35, point 5.5.18.

⁽⁷⁾ COM(2010) 738 final — Article 112b (3) and Annex XIII.

2.4 Designation of origin and geographical indication:

the proposal maintains and reinforces the quality scheme for agricultural products and foodstuffs, without prejudice to the geographical indication schemes for wines, for aromatised wines, or for spirits. The current registration process shortens time delays; minimum common rules on official controls are laid down, and the scope of the regulation is maintained (products for human consumption and other products).

2.5 Traditional specialities guaranteed:

the proposal maintains the scheme for reservation of names but discontinues the option of registering names without reservation. The registration process is simplified, the criterion of tradition is extended to 50 years and the scheme is restricted to prepared meals and processed products.

2.6 Optional quality terms:

it is proposed to bring these terms into the present regulation in order to highlight value-adding attributes and support specific marketing standards (free range poultry meat, honey of floral origin, olive oil from first cold pressing), adapted to the legislative framework of the Treaty on the Functioning of the European Union.

2.7 Marketing standards:

the proposal establishes that the Commission is, as a general rule, to adopt marketing standards by means of delegated acts. A legal basis is introduced for all sectors, with mandatory labelling of place of farming in accordance with each sector's specificity. Each case will be examined individually, starting with the dairy sector.

2.8 The proposal provides for checks on all schemes to be under the responsibility of national competent authorities. Supervision of Member State control activities must be undertaken at the highest possible level – at EU level – in order to maintain credibility in the food law schemes across the European Union, in line with the principles laid down in the above-mentioned regulation.

3. General comments

3.1 The Commission proposal, designed to provide producers with the right tools to inform consumers about product characteristics and farming attributes in order to protect them against unfair trading practices, is a key step in a series of decisions on quality.

3.2 Traceability is an important tool enabling a product to be tracked throughout the production chain and helps, along with the information provided on the label, to provide consumers with clear, full and comprehensible information on

the marketed product. The traceability instrument will therefore comprise all the certifications, registrations and commercial documents providing evidence of processes and transfers kept by all those involved in the production chain, to be shown on request to control bodies.

3.3 The proposal requires Member States to perform checks, based on a risk analysis, in order to verify whether products conform to existing and future provisions and to apply administrative penalties as appropriate. The EESC recommends that an effective network of control bodies be maintained by increasing and enforcing the powers of the respective national control authorities which are currently concerned with respect for marketing standards in the sectors where these exist.

3.4 It is recommended that the system of supervisory checks, based, *inter alia*, on impact analyses, go hand in hand with steps to make operators in the sector more accountable and foster an increasingly widespread culture of compliance with the rules.

3.5 As regards the references to 'place of farming', to be made compulsory on labels, the proposal is excessively vague, providing for an 'appropriate geographical level' to be determined on a case by case basis. Should such a general parameter be kept, the extreme case of a foodstuff bearing a label stating merely that it was 'produced in the EU' would be possible, which would exclude the possibility of the place of origin being a third country, but would certainly not be in line with the laudable effort in favour of clarity for consumers represented by the newly-framed marketing standards.

3.6 The use of delegated acts across the board, as included in the proposal to amend/supplement existing and future marketing standards, does not allow for the moment for a sufficiently in-depth evaluation of regulations in their entirety. It is certainly encouraging that the general content of future marketing standards has been defined with precision, with a framework of dates, information and exhaustive indications for all the handling and other processes and transport undergone by the product on sale. However, despite a doubtless positive evaluation of their applicability, backed up by the impact assessments carried out, it will not yet be possible to assess their actual implementation and, in particular, their effectiveness for each category and product. This assessment can only be undertaken after the standards have been implemented in practice.

3.7 The proposals included within the quality package together form a single integral quality project. This means that the various instruments must be seen as complementary and should work together in full synergy. Care must thus be taken that any change made to one of these instruments does not have adverse or undesirable effects on the others.

4. Specific comments

4.1 The provision made in Article 112b (3), according to which a product shall be considered as conforming to the general marketing standard where the product intended to be marketed is in conformity with an applicable standard adopted by any of the international organisations listed in Annex XIIIb, appears inconsistent. The Committee is therefore against this provision as it does not allow for any proper examination of substantive conformity with general and specific marketing standards, considered essential for the protection of European citizens and of competition.

4.2 The exceptions provided for in Article 112k are not supported by sufficient explanation of why national authorities may provide for exemption or maintain national rules, particularly regarding spreadable fats and oenological practices. However, if the reason is to formalise an existing practice in order to prevent mushrooming of additional systems exempted from new marketing standards, the EESC agrees with the

decision but asks for this to be detailed in the text of the proposal for the sake of clarity and in order to confirm this interpretation.

4.3 A provision included in the proposed Parliament and Council Regulation amending Regulation (EC) No 1234/2007 enables the Commission to adopt specific marketing standards for all products listed in Annex I to the proposal, as well as for agricultural ethyl alcohol, using 'delegated acts' as the legislative instrument. Due care is recommended in using these instruments, as if they are used wholesale rather than in specific cases they could disrupt the market in sectors already regulated by specific marketing standards, first and foremost the fresh fruit and vegetable sector.

4.4 Lastly, given the complexity of the deletions and insertions to be made in the original Regulation (EC) No 1234/2007, these should be indicated particularly clearly, thus making them easier to read for end users, principally producers and consumers, and easier to implement properly and uniformly.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 834/2007 on organic production and labelling of organic products’

COM(2010) 759 final — 2010/0364 (COD)

(2011/C 218/24)

Rapporteur: **Richard ADAMS**

On 27 January 2011, the Council and, on 18 January 2011, the European Parliament decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 834/2007 on organic production and labelling of organic products

COM(2010) 759 final — 2010/0364(COD).

The Section for Agriculture, Rural Development, Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May 2011), the European Economic and Social Committee adopted the following opinion by 156 votes to 6 with 10 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the fact that the Commission is taking advantage of the revision of those regulations affected by the Lisbon Treaty in order to include simplifying measures. Nevertheless, these simplification points mainly concern administration whereas there remains a need to make regulations in general simpler for organic farmers and producers.

1.2 The Committee notes that it has presented detailed comments relating to the implications of aligning Commission delegated and implementing powers in its recent Opinion CESE 357/2011 on *Support for rural development by the EAFRD* and in this proposal endorses the approach to these powers as outlined by the Commission.

1.3 The Committee believes that the role of groups advising the Commission in implementing acts, particularly the input of NGOs and stakeholders, should be maintained.

1.4 The Committee suggests that the new EU organic logo, when indicating organic products of origin outside the EU, should be differentiated through a colour variation.

2. Background to the opinion

2.1 This Opinion considers COM(2010) 759, a proposal for a Regulation amending Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. The purpose of this Regulation is to align the Commission implementing powers in Council Regulation (EC) No 834/2007 on the same subject to the differentiation between delegated and

implementing powers of the Commission introduced by Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

2.2 Articles 290 and 291 of the TFEU provide for amendments to the decision-making procedures between the European Commission, the Council and the European Parliament regarding conditions for implementing EU legislative acts.

2.3 The larger part of the regulation deals with minor amendments to the previous regulation on organic labelling and particularly introduces referencing to seven new Articles (38a-g). These lay down ‘specific definitions related to scope’ under delegated power.

2.4 Specific items covered are production rules such as requirements for the operators and the authorisation of products and substances; the EU organic logo; and issues concerning control systems, e.g. audit of control bodies and authorities.

3. Specific comments

3.1 Although this regulation is of limited scope and largely technical in nature, an understanding of the present position of organic production as a component of the CAP requires a brief explanation. The definition of ‘organic’ farming only developed as modern farming methods began to largely replace traditional systems. It is now regarded as a form of agriculture primarily using crop rotation, green manure, compost and biological pest control to maintain soil productivity and control pests. It either

excludes or strictly limits the use of manufactured fertilisers, pesticides (which include herbicides, insecticides and fungicides), plant growth regulators such as hormones, livestock antibiotics, food additives, and genetically modified organisms.

3.2 Organic production models were rooted in ecological principles, local, regional and national traditions and, to some extent, philosophical values. As a result many different approaches developed across Europe. In the early 1970s, in response to 'Europeanisation' and increasing interest and demand, the numerous national, voluntary, organic control organisations began to seek common ground. In the 1980s, responding to demands from consumers, growers, processors and retailers, the Commission began work on harmonising rules for organic production within the CAP. This led to regulation on plants (1991) ⁽¹⁾ and livestock (1999) ⁽²⁾.

3.3 Nevertheless, the degree of continuing variation in organic philosophy and approach, together with the entrance of global producers, has required constant adjustment, modification and development of the EU regulations ⁽³⁾. The most recent example of such a development was the adoption in 2010 of a new European organic logo and supporting regulation ⁽⁴⁾.

3.4 At present the organic production regulations provide a uniform, baseline standard for all operators. With nearly 5 % of agricultural land in the EU under organic production and sales of EUR 18 billion of products with organic certification ⁽⁵⁾, this is an important part of the market. The established private labels of recognised national control bodies may be displayed

alongside the EU label and these can indicate to consumers that additional criteria have been applied. The Committee notes that the present regulation proposes amendments aiming at the simplification of legislation, which are of limited scope and of a technical nature.

3.5 The Committee has expressed its detailed views on the wider implications of Articles 290 and 291 in its recent Opinion CESE 357/2011 on *Support for rural development by the EAFRD*.

3.6 In this instance, and as part of the continuing process of seeking to consolidate organic regulation, the Committee endorses the approach to delegated and implementing powers as outlined by the Commission in the proposed regulation. Nevertheless, the Committee wishes to make the following observations.

3.7 The role of groups advising the Commission in implementing acts, particularly the input of NGOs and stakeholders, should be maintained. Organic production and marketing continues to be a complex area which will benefit from wide representation of interests.

3.8 The new EU organic logo becomes compulsory to use next year. The proposal to extend its use to products from third countries under controlled conditions should be reviewed and the possibility of differentiating the logo, perhaps by a variation in colour, to indicate that the product comes from a non-EU country, should be considered.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ Regulation (EEC) No. 2092/91.

⁽²⁾ Regulation (EEC) No. 1804/99.

⁽³⁾ The International Federation of Organic Agriculture Movements (IFOAM) lists more than 750 members in 115 countries.

⁽⁴⁾ Commission Regulation (EU) 271/2010.

⁽⁵⁾ Figures for 2009.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation (EU) No .../... of the European Parliament and of the Council of ... amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008’

COM(2010) 745 final — 2010/0365 (COD)

(2011/C 218/25)

Rapporteur: **Seppo KALLIO**

On 18 January 2011, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 42, Article 43(2) and Article 304 of the Treaty on the Functioning of the EU, on the

Proposal for a Regulation (EU) No .../... of the European Parliament and of the Council of ... amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008

COM(2010) 745 final — 2010/0365 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 150 votes to 6, with 9 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) stresses that the European Common Agricultural Policy and its sound management are important for the whole food supply chain and for farmers. Farmers are very often burdened by the CAP's complex and cumbersome administrative procedures. If the proposal to reform and streamline the CAP increases administrative efficiency and improves authorities' scope for action, then it is justified.

1.2 The EESC draws particular attention to the fact that some of the new powers might mean that Member States incur higher administrative costs for the activities of paying agencies and certifying bodies. This problem should be avoided when implementing the proposal.

1.3 The EESC believes that further explanations should be provided on the extent of the powers to be granted to adopt delegated acts. The relevant provisions must be worded more clearly and precisely than they are in the Commission proposal.

1.4 The EESC believes it is important for the basic regulation to include all of the key rules which give concrete shape to the agricultural policy's fundamental principles. Powers can in other respects be transferred to the Commission. The scope of implementing powers in agricultural policy must be quite broad so that it can be managed effectively.

1.5 The EESC believes it is essential for the Commission to provide broad scope for consultation of Member States' experts when it adopts delegated acts. An open and broad consultation process can reduce the uncertainty and confusion which has

arisen while preparing the reform. Member States must have sufficient opportunities to have a say in the drafting of specific provisions.

1.6 The EESC expects the proposed amendments to streamline the financing and management of the EU agricultural policy, which would also entail simplification and cutting red tape. It is regrettable that, without expert help, it is really difficult to understand and interpret the financing regulations concerned. For this reason, the process of simplification must continue and be stepped up.

2. General

2.1 Article 290 of the Treaty on the Functioning of the European Union states that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

2.2 Under Article 291 TFEU, where uniform conditions for implementing legally binding Union acts are needed, a legislative act shall confer implementing powers on the Commission to adopt implementing acts.

2.3 The aim of the Commission proposal is to give the Commission, on the basis of a legislative act, the power to adopt delegated acts (TFEU Article 290) or implementing rules (TFEU Article 291) in certain areas. As regards delegated powers, the Commission's competence in each individual issue is determined in the basic legislative regulation. The Commission consults Member States' experts when adopting delegated acts, but the comitology procedure is not followed in such matters. However, the Commission does follow the

comitology procedure when adopting implementing acts, in which case Member States' experts have the opportunity to comment and to vote formally on proposed legislation.

2.4 The proposal also seeks to simplify procedures by repealing two Council regulations. The regulatory provisions in question would be transferred to the proposed regulation. In addition, the proposal aims to reduce the administrative burden on Member States by simplifying recovery procedures.

3. Specific remarks

3.1 Traditionally, the Commission has enjoyed wide powers in agricultural policy. The Commission is now proposing that rules on supervision and management and specific obligations be adopted as delegated acts. There have already been occasional difficulties in the interpretation and national application of payment, accounting and monitoring systems for existing agricultural support. It is appropriate to ask whether the delegated acts provide better conditions for financial management. There is also a risk that introducing delegated acts may mean higher costs for Member States in the management and monitoring of support.

3.2 The Commission proposal contains over a dozen points granting powers to adopt delegated acts. These powers concern, among other things, the obligations of paying agencies and adopting procedures, as well as the appointment of certifying bodies, sound management of appropriations and publication of information on subsidies. The precise nature of the delegated powers and the scope of the remit given to the Commission raise several questions. The proposed powers appear to be too broad and too general.

3.3 In particular, a more precise wording of the obligations of the certifying bodies is needed, since the proposal must not entail a broadening of their remit.

3.4 The proposal also contains new points concerning powers to adopt implementing acts. These powers concern adherence to fiscal discipline, rules on submitting documents to the Commission and account clearance. The purpose of these powers seems to be better defined than in the case of delegated acts.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund’

COM(2010) 761 final — 2010/0366 (COD)

(2011/C 218/26)

Rapporteur working without a study group: **Nikolaos LIOLIOS**

On 1 February and 18 January 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Articles 42, 43(2) and 304 of the Treaty on the Functioning of the European Union, on the:

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund

COM(2010) 761 final — 2010/0366 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), the European Economic and Social Committee adopted the following opinion by 149 votes to 3 with 13 abstentions.

1. Conclusions and recommendations

1.1 In order to bring into line with the Lisbon treaty Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund, it is proposed that the implementing powers it confers on the Commission be aligned to reflect the distinction between the delegated and implementing powers of the Commission introduced in Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

1.2 The EESC is in favour of using consultation procedures with interested parties and gathering and drawing on expertise during the framing of European Union acts.

1.3 As regards the alignment of Regulation 485/2008 with Article 290 TFEU, the EESC considers that the Commission proposal complies with the material limits on the delegation of power, as provided for by the legislator in the second subparagraph of Article 290(1) TFEU. The Commission's proposed new content for the second sentence of Article 1(2) of the draft regulation clearly defines the objectives, content and scope of the delegation of power.

1.4 However, in the EESC's view the Commission has not respected the temporal limits on the delegation of power, as provided for by the legislator in the second paragraph of Article 290(1) TFEU. The Commission's proposal, as set out in Article 13a of the proposed new regulation, which confers on the Commission powers to adopt delegated acts for an

indeterminate period of time, goes beyond the legislator's intention of explicitly defining the duration of the delegation of power, conflicts with the principle of proportionality, and raises issues in relation to the principle of legitimacy. The EESC believes that the duration of the delegation of power to the Commission should be clearly defined, for a specific time period.

1.5 The EESC endorses the reduction of the time within which the European Parliament or the Council may register objections to the delegated act from three months, as it was under the former system, to two months, provided any extension of this period amounts to two months.

1.6 The EESC has reservations about the decision on the provisions relating to the Commission's implementing powers as set out in the proposed Article 13d. This article refers to Regulation No 1290/2005⁽¹⁾, which is currently being amended⁽²⁾. Amended Regulation No 1290/2005 is particularly relevant to Regulation 485/2008, but its content is still unknown⁽³⁾. Considering, however, that the relevant article of amended Regulation No 1290/2005 refers in its turn to the new comitology procedure as provided for in the recently adopted Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for

⁽¹⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

⁽²⁾ Proposal amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008, COM(2010) 745 final.

⁽³⁾ See point 4.2.

control by Member States of the Commission's exercise of implementing powers⁽⁴⁾ and that this new procedure simplifies the former system, the proposed new Article 13d will not in the EESC's view pose problems in its application.

2. Background

2.1 In the proposal amending the regulation in question, the Commission states that its implementing powers as provided for under Council Regulation No 485/2008 must be aligned to reflect the distinction between delegated and implementing powers of the Commission introduced by Articles 290 and 291 of the Treaty on the Functioning of the European Union.

2.2 Article 291 TFEU is based on former Articles 202(3) and 211(4) of the Treaty Establishing the European Community, conferring upon the Commission or, under certain conditions, the Council, the right to exercise implementing powers. Article 290 TFEU, however, introduces a new power for the Commission, that of adopting non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. Article 291 TFEU governs the exercise of implementing powers by the Commission or, in specific cases, the Council.

2.3 In the Commission proposal, alignment of Regulation No 485/2008 with Article 290 TFEU is addressed specifically in new Articles 1(2), 13a, 13b and 13c of the proposed regulation. Alignment with TFEU Article 291 is addressed specifically in new Article 13d of the proposed regulation.

3. General comments

3.1 The EESC is in favour of using consultation procedures with interested parties and gathering and drawing on expertise during the framing of European Union acts. In the EESC's view, these are particularly important in relation to the current proposal for the alignment of Regulation No 485/2008 with the Lisbon treaty, as it considers that the amendments aimed at simplification are not limited in their scope of application or of a purely technical nature. They concern the agriculture sector, which as an area of shared competence (Article 4(2)d TFEU) governed by the provisions of Article 43 TFEU is particularly sensitive.

3.2 As regards the alignment of the Commission's implementing powers as set out in Regulation No 485/2008 to reflect the distinction between delegated and implementing powers, a clear distinction must be made between the 'quasi-legislative' acts falling under Article 290 TFEU and the implementing acts of Article 291 TFEU. In its communication on the application of Article 290 TFEU⁽⁵⁾, the Commission notes that

it is in the interests of efficiency that the legislator delegates its powers to the Commission to adopt delegated acts, thus allowing it to supplement or amend the work of the legislator. Such a delegation is always discretionary and must comply with the provisions of the Treaty. Article 291 TFEU, on the other hand, allows the Commission to adopt implementing (but not legislative) acts. It is the Member States that are responsible for implementing and applying legally binding Union acts (in accordance with Article 291(1) TFEU together with Article 4(3) of the Treaty on European Union (TEU)) and they therefore exercise their own responsibility and not that of the Union. This power of the Member States can therefore be restricted only when the implementation of legally binding Union acts calls for uniform conditions. Only then must the Commission exercise its implementing powers in accordance with Article 291 TFEU. In this case its responsibility is compulsory⁽⁶⁾.

3.3 When the legislator confers powers on the Commission to adopt delegated acts, it must define the scope of those powers in each act. The second subparagraph of Article 290(1) TFEU requires the legislator to explicitly define the objectives, content, scope and duration of the delegation of power. It thus sets two types of limit on the delegation of power: material and temporal⁽⁷⁾.

3.4 It is necessary here to examine whether in this proposal for a regulation the legislator is in compliance with the material and temporal conditions fixed.

3.5 The material limits on the delegated power are set out in Article 1(2) of the amended regulation and relate to the drawing up by the Commission of a list of measures that are by their nature unsuited for ex-post control by way of scrutiny of commercial documents and to which the regulation does not apply.

3.6 The specific delegation of power is in fact clear and explicit. It does not violate Article 290 TFEU because it refers to non-essential elements of the legislative act and because the objectives, content and scope of the delegation are sufficiently well-defined.

3.7 With regard to the temporal limits on the delegation of power, the Commission proposes in Article 13a of the new regulation that the powers to adopt the delegated acts referred to in the regulation should be conferred on it for an indeterminate period of time. To begin with, this proposal conflicts with the second subparagraph of Article 290(1) TFEU, which states that legislative acts must explicitly define the duration of the delegation of power.

⁽⁴⁾ OJ L 55, 28.2.2011, p. 13. This regulation repeals Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁽⁵⁾ COM(2009) 673 final.

⁽⁶⁾ COM(2009) 673 final, p.3 ff.

⁽⁷⁾ The Commission itself recognises this: see COM(2009), 673 final, p.5 ff.

3.8 The rationale for this proposal is set out in the Commission's communication on the application of TFEU Article 290⁽⁸⁾, where it argues that the requirement that the legislator set a clear time limit on the delegation does not sanction the practice of 'sunset clauses', which 'when inserted into a legislative act automatically set a time limit on the powers conferred on the Commission, thus compelling it in practice to present a new legislative proposal when the time limit imposed by the legislator expires'. The argument continues: 'Article 290 requires above all that a clear and predictable framework be established for the delegated powers; but it does not require the Commission to be subject to strict cut-off dates'. For this reason, in the Commission's view, delegations of power should in principle be of indefinite duration. In further support of this view, the Commission points out that under Article 290(2)(a) TFEU the European Parliament or the Council may decide to revoke the delegation: 'Legally the effects of a revocation are exactly the same as those of a sunset clause; both put an end to the powers conferred on the Commission and the onus is then on the Commission to submit a legislative proposal if this is useful and necessary. In other words, if the legislator feels that in certain fields it is necessary to avoid the delegation of powers becoming a permanent mandate, it can confer on itself the right to revoke it. This may prove to be a more flexible option than an automatic sunset clause'.

3.9 In the Annex to its communication, the Commission sets out models for the application of the new Treaty article. As regards the duration of delegation of powers, the Commission proposes either an indeterminate period of time or a set duration which would be automatically renewed for periods of an identical duration unless revoked by the Council or the European Parliament⁽⁹⁾.

3.10 Conferring on the Commission the power to adopt delegated acts for an indefinite period certainly does not constitute an explicit definition of the duration of the delegation of power. The Treaty clearly states that the duration of the delegation of power must be explicitly defined, so that the legislator can exercise regular and effective control over acts adopted by the Commission. The right given in Article 290(2)(a) to the Council or the European Parliament to revoke the delegation may not obviate the requirement that the legislator explicitly define the duration of the delegation of power. The right of revocation is an additional safeguard to ensure that the rights of the legislator are not prejudiced. The indefinite conferral of powers upon the Commission oversteps the temporal limits provided for in Article 290 TFEU and exceeds the Commission's own remit.

3.11 Under Article 4(2)(d) TFEU, the agriculture sector is an area of shared competence between the Union and Member States. This means that the principle of subsidiarity (Article 5(3) TEU) must be observed when legislative initiatives are taken in this domain. The amended regulation under discussion concerns controls, assistance and cooperation between the Member States and the Commission in relation to the transactions forming part of the system of financing

by the European Agricultural Guarantee Fund. The need for a single, uniform European approach in this area justifies the adoption of a regulation by the Union. Under the principle of proportionality (Article 5(4) TEU), the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. Conferral upon the Commission of the power to adopt delegated acts for an indefinite period is an infringement of the requirement that the duration of the period of delegation be explicitly defined, a requirement that is designed to permit regular and effective control over the Commission's exercise of 'quasi-legislative' power. It therefore breaches the principle of proportionality and by extension of the principle of subsidiarity, and could provide grounds for proceedings before the Court of Justice of the European Union for infringement of the principle of subsidiarity, under Article 8 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality⁽¹⁰⁾.

3.12 Conferral upon the Commission of the power to adopt delegated acts also has implications for the separation of powers. Whereas the competent legislative bodies of the European Union are the European Parliament and the Council, the power to adopt 'quasi-legislative' acts is conferred exceptionally upon the Commission, the executive body of the European Union. Given that matters of fundamental democratic legitimacy are at stake here, it is necessary to respect the provisions made by the legislator regarding explicit definition of the objectives, content, scope and duration of the delegated power. Moreover, since there is no provision in TFEU Article 290 corresponding to that in TFEU Article 291(3) for mechanisms of control over delegated acts of the Commission, the powers of control of the Council and the European Parliament must be fully upheld.

3.13 The alternative Commission proposal whereby its delegated power would be renewed automatically represents no less an infringement of primary European law than the indefinite duration of a delegation of power.

3.14 In conclusion, the indefinite conferral of powers upon the Commission to adopt delegated acts does not constitute an adequate alignment with Article 290 TFEU. The right of the Council or the European Parliament to revoke the delegation of power does not obviate the purpose of an explicitly defined duration for the delegation of power, which is to allow regular and effective control of 'quasi-legislative' acts of the Commission by the legislator. When adopting delegated acts, the Commission is not exercising its own competence but that of the legislator. The right of the competent body, namely the legislator, to conduct regular and effective checks on the Commission must not be restricted. Given that the agriculture sector is an area of shared competence between the EU and Member States and that therefore any legislative act of the Union in this area must comply with the principles of subsidiarity and proportionality, the Commission's proposal that the power to adopt delegated acts should be conferred on it for an indeterminate period is unacceptable.

⁽⁸⁾ COM(2009) 673 final, p.5 ff.

⁽⁹⁾ Article A. COM(2009) 673 final, p.12.

⁽¹⁰⁾ OJ C 83, 30.3.2010, p. 206.

3.15 The period of two months from the date of notification for the submission of objections by the European Parliament or the Council, set out in the new Article 13c of the proposed regulation, is shorter than the former provision of three months. In the interests of the accelerating and streamlining the procedure, the EESC is not opposed to this shortening of the time period, providing any extension is for two months.

3.16 Article 13d of the proposed regulation concerns the application of Article 291 TFEU and is in compliance with that article. Another act that will apply is the recently adopted Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽¹¹⁾, which simplifies the previous comitology procedures by providing for two procedures only, the advisory procedure and the examination procedure.

4. Specific comments

4.1 The EESC points out that it has been consulted on matters that remain unclarified. For instance, recital (4) and

Article 13d of the Commission proposal refer respectively to Article 41d(1) and Article 42d(2) of Council Regulation (EC) 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁽¹²⁾, whereas there are no such articles in that regulation.

4.2 The Commission has tabled a proposed amendment to the latter regulation⁽¹³⁾, but the adoption process is not yet complete. The Commission's proposal has not yet been adopted by the Council of the European Union and the European Parliament. Even if it is ultimately adopted, Articles 41d and 42d will refer to the new content of Regulation 1290/2005, which will have different numbering. Moreover, Article 1(26) of the Commission proposal states that Article 41 will be deleted and makes no provision for an Article 41d. It is therefore curious that the Commission should be in the process of amending Regulation No 485/2008 when the content of the document on which its proposal is largely based, i.e. Regulation No 1290/2005, is essentially unknown.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹¹⁾ OJ L 55, 28.2.2011, p. 13. This regulation repeals Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁽¹²⁾ OJ L 209, 11.8.2005, p. 1.

⁽¹³⁾ Proposal amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008, COM(2010) 745 fin.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing Council Framework Decision 2005/222/JHA'

COM(2010) 517 final — 2010/0273 (COD)

(2011/C 218/27)

Rapporteur general: **Mr MORGAN**

On 20 January 2011 the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing Council Framework Decision 2005/222/JHA

COM(2010) 517 final — 2010/0273 (COD).

On 15 February 2011, the Bureau of the European Economic and Social Committee instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 of the Rules of Procedure), the European Economic and Social Committee appointed Mr Morgan as rapporteur-general at its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May), and adopted the following opinion by 173 votes to 1 with 7 abstentions.

1. Conclusions and Recommendations

1.1 The Committee welcomes the Communication from the Commission on the Proposal for a Directive of the European Parliament and of the Council on attacks against information systems. The Committee shares the deep concern of the Commission regarding the scale of cybercrime in Europe and the actual and potential damage being done to the economy and the welfare of citizens by this growing menace.

1.2 The Committee also shares the Commission's disappointment that only 17 of the 27 Member States have to-date ratified the Council of Europe Convention on Cybercrime ('Cybercrime Convention')⁽¹⁾. The Committee calls on the remaining Member States⁽²⁾ - Austria, Belgium, Czech Republic, Greece, Ireland, Luxembourg, Malta, Poland, Sweden, and United Kingdom - to ratify the Cybercrime Convention as soon as possible.

1.3 The Committee agrees with the Commission that a Directive is urgently needed to update the definition of offences involved in attacks against information systems, and to increase EU criminal justice coordination and cooperation to deal effectively with this critical problem.

1.4 Because of the urgent need for legislative action to deal specifically with attacks against information systems, the Committee agrees with Commission's decision to use the policy option of a Directive supported by non-legislative measures, targeted at this particular aspect of cybercrime.

1.5 However, as the EESC has called for in a previous opinion⁽³⁾, the Committee would like the Commission to proceed in parallel with work on the drafting of comprehensive EU legislation against cybercrime. The Committee believes that a comprehensive framework is essential to the success of the Digital Agenda and the Europe 2020 Strategy⁽⁴⁾. The framework should deal with prevention, detection and education issues in addition to law enforcement and punishment.

1.6 In due course, the EESC would like to consider proposals from the Commission for a comprehensive framework of action to tackle the general issue of Internet security. Looking forward 10 years, with most of the population using the Internet, with most economic and social activity depending on the Internet, it is inconceivable that we will still be able to rely on the present casual and unstructured approach to Internet usage, especially since the economic value of this activity will be incalculable. There will be manifold issues, involving other challenges such as personal data security and privacy, as well as cybercrime. Airline safety is controlled by a central authority that establishes standards for aircraft, airports and airline operations. It is time to create an analogous authority, establishing standards for foolproof terminal devices (PCs, Pads, 'Phones), Network security, website security and data security. The physical configuration of the Internet is a key element in the defence against cyber crime. The EU is going to need a regulator with power over the Internet.

1.7 The Directive will focus on the definition of crime and the threat of penalties. The EESC asks for a parallel focus on prevention through better security measures. Equipment manufacturers should meet standards for the delivery of foolproof

⁽¹⁾ Council of Europe Convention on Cybercrime, Budapest 23.11.2001, CETS n° 185.

⁽²⁾ See: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG>.

⁽³⁾ EESC opinion on *Secure Information Society*, OJ C 97, 28.4.2007, p. 21.

⁽⁴⁾ COM(2010) 245, COM(2010) 2020.

devices. It is unacceptable that the security of devices and therefore of the network depends on the whim of its owner. The introduction of a Europe-wide electronic ID scheme should be considered, but this would need to be carefully conceived to avoid infringement of personal privacy; the full exploitation of the security capabilities in IPv6 should be set in train, and the teaching of personal cyber security to citizens, including data security, should be a fundamental part of all digital literacy curriculum. The Commission should refer to previous opinions from the Committee that has dealt with these issues ⁽⁵⁾.

1.8 The Committee is satisfied that the proposed Directive adequately covers attacks against information systems using botnets ⁽⁶⁾, including Denial-of-Service (DoS) attacks ⁽⁷⁾. The Committee also believes that the Directive will help authorities prosecute cybercrime which attempts to exploit the international inter-connectivity of networks, as well as prosecute perpetrators who attempt to hide behind the anonymity which sophisticated cybercrime tools can provide.

1.9 The Committee is also pleased with the list of criminal offences covered by the Directive, especially the inclusion of 'Illegal interception' and the clear exposition of 'Tools used for committing offences'.

1.10 However, considering the importance of trust and security to the Digital Economy, and the enormous annual cost of cybercrime ⁽⁸⁾, the Committee proposes that in the Directive the severity of penalties should reflect the seriousness of the crime and also act as a realistic deterrent to criminals. The proposed Directive stipulates minimum penalties of 2 or 5 years imprisonment (5 years for aggravating circumstances). The EESC envisages a scale of penalties related to the seriousness of the crime.

⁽⁵⁾ EESC opinion on *Secure Information Society*, OJ C 97, 28.4.2007, p. 21; EESC opinion on *Advancing the Internet*, OJ C 175, 28.7.2009, p. 92; EESC opinion on *Critical Information Infrastructure Protection*, OJ C 255, 22.9.2010, p. 98; EESC opinion on *A Digital Agenda for Europe*, OJ C 54, 19.2.2011, p. 58; EESC opinion on 'New' ENISA Regulation, not yet published in OJ; EESC opinion on *Enhancing digital literacy, e-skills and e-inclusion*, not yet published in OJ.

⁽⁶⁾ The term 'botnet' indicates a network of computers that have been infected by malicious software (computer virus). Such a network of compromised computers ('zombies') may be activated to perform specific actions, such as attacking information systems (cyber attacks). These 'zombies' can be controlled – often without the knowledge of the users of the compromised computers – by another computer. It is difficult to trace the perpetrators, as the computers that make up the botnet and carry out the attack may be in a different location from the offender himself.

⁽⁷⁾ Denial-of-Service (DoS) attack – a denial of service attack is an act to make a computer resource (for example a website or Internet service) unavailable to its intended users. The contacted server or webpage will show itself as 'unavailable' to its users. The result of such an attack could, for example, render online payment systems non-operational, causing losses for its users.

⁽⁸⁾ According to a 2009 study presented to the World Economic Forum, the global cost of cybercrime is \$1 trillion and growing rapidly. See paragraphs 2.5 and 2.7 below.

1.11 The EESC proposes that the opportunity should now be taken to send out a strong message to criminals and to citizens seeking reassurance, by stipulating more stringent penalties. For example, the UK ⁽⁹⁾ has penalties of up to 10 years for large-scale attacks on information systems, and Estonia has increased its penalties whereby terrorist use of large-scale attacks can be punishable up to 25 years imprisonment ⁽¹⁰⁾.

1.12 The Committee welcomes the Commission's proposal to support the Directive with non-legislative measures to promote further coordinated action at EU level and more effective enforcement. The EESC would also stress the need to extend coordination to include close cooperation with all of the EFTA countries and NATO.

1.13 The Committee strongly supports the training programmes and best practice recommendations proposed to enhance the effectiveness of the existing 24/7 contact points for law enforcement authorities.

1.14 In addition to the non-legislative measures mentioned in the proposal, the Committee calls on the Commission to especially target R&D funds at the development of early detection and response systems to deal with attacks on information systems. The state-of-the-art in cloud computing ⁽¹¹⁾ and grid computing ⁽¹²⁾ technologies have the potential to provide Europe with greater protection from many threats.

1.15 The Committee suggests that ENISA sponsor a targeted skills development programme to strengthen Europe's ICT security industry beyond law enforcement ⁽¹³⁾.

1.16 To strengthen Europe's defences against cyber attacks, the Committee wants to reiterate the importance of developing the European Public Private Partnership for Resilience (EP3R) and integrate it with the work of the European Network and Information Security Agency (ENISA) and the European Governmental Group of CERTs (EGC).

⁽⁹⁾ <http://www.legislation.gov.uk/ukpga/2006/48/contents>.

⁽¹⁰⁾ SEC(2010) 1122 final - Commission Staff Working Document and Impact Assessment, accompanying document to the Proposal for a Directive on attacks against information systems.

⁽¹¹⁾ **Cloud computing** refers to the provision of computational resources on demand, or automatically, over the Internet. Cloud services are presented to users in a simple way that is easy to understand without the users needing to know how the services are provided. State-of-the-art end-user antivirus and Internet security software could be provided through a cloud platform to every connected user in Europe, reducing the need for users to protect themselves.

⁽¹²⁾ **Grids** are a form of distributed computing whereby a 'super virtual computer' is composed of many networked loosely coupled computers acting together to perform very large tasks. Grid computing technologies might provide a platform for real-time cyber-attack analysis and response systems.

⁽¹³⁾ EESC opinion on 'New' ENISA Regulation, (OJ C 107, 6.4.2011, p. 58.).

1.17 A strong information security industry should be fostered in Europe to match the competency of the very well financed industry in the US⁽¹⁴⁾. Investment in cyber security R&D and education should be increased significantly.

1.18 The Committee notes the exemptions under Treaty Protocols granted to the United Kingdom, Ireland and Denmark from enacting the proposed Directive. Notwithstanding the exemptions, the Committee calls on these Member States to cooperate to the greatest extent possible with the provisions of the Directive to prevent criminals from exploiting policy gaps across the Union.

2. Introduction

2.1 Europe today depends heavily on information systems for the creation of wealth and our quality of life. It is important that our growing dependence is matched by an increasing sophistication of security measures and strong laws to protect information systems from attack.

2.2 The Internet is the core platform of the digital society. Tackling threats to the security of information systems is critically important to the development of the digital society and the digital economy. The Internet supports most of Europe's Critical Information Infrastructure: underpinning information and communications platforms for the provision of essential goods and services. Attacks against information systems – government systems, financial systems, social services and critical infrastructure systems vital such as power supply, water, transport, health and emergency services – has become a major problem.

2.3 The architecture of the Internet is based on the interconnection of millions of computers with processing, communications and control distributed globally. This distributed architecture is the key to making the Internet stable and resilient, with fast recovery of traffic flows whenever a problem arises. However, it also means that large-scale cyber attacks can be launched from the edge of the network, using botnets for example, by anyone with the intent and basic knowledge.

2.4 Developments in information technology have exacerbated these problems by making it easier to produce and distribute tools ('malware'⁽¹⁵⁾ and 'botnets'), while offering offenders anonymity and dispersing responsibility across jurisdictions. Given the difficulties of bringing a prosecution, organised crime is able to make considerable profits with little risk.

2.5 According to a 2009 study⁽¹⁶⁾ presented to the World Economic Forum, the global cost of cybercrime is \$1 trillion and growing rapidly. And a recent government report⁽¹⁷⁾ in the UK puts the annual cost in the United Kingdom alone at £27 billion. The high cost of cybercrime warrants tough action, strong enforcement and high penalties for offenders.

2.6 As detailed in the Commission's staff working document which accompanies the proposal for a Directive⁽¹⁸⁾, organised crime and hostile governments exploit the destructive potential of attacks on information systems across the Union. Attacks from such botnets can be very dangerous for the affected country as a whole, and can also be used by terrorists or others as a tool to put political pressure on a state.

2.7 The attack on Estonia in April-May 2007 highlighted the problem. That attack brought down important parts of the critical information infrastructure in government and the private sector for days due to large scale attacks against them – at a cost of EUR 19 million - EUR 28 million and significant political cost. Similar destructive attacks were also launched against Lithuania and Georgia.

2.8 Global communications networks involve a high degree of cross-border interconnectivity. It is vital that there is collective and uniform action by all 27 Member States to combat cybercrime, and specifically attacks against information systems. This international interdependency puts the onus on the EU to have an integrated policy for protecting information systems from attack and punishing perpetrators.

2.9 In its 2007 Opinion on 'A Strategy for a Secure Information Society'⁽¹⁹⁾, the Committee stated that it would like to see comprehensive EU legislation against cybercrime. In addition to attacks against information systems, a comprehensive framework should cover financial cybercrime, illegal Internet content, the collection/storage/transfer of electronic evidence, and more detailed jurisdiction rules.

2.10 The Committee recognises that formulating a comprehensive framework is a very difficult task, made even more difficult by the lack of political consensus⁽²⁰⁾ and by problems with significant differences between Member States on the admissibility of electronic evidence in courts. However, such a comprehensive framework would maximise the benefits

⁽¹⁴⁾ The official figures from the Whitehouse show that the US government spent \$407m on cyber security research and development and education in 2010 and is proposing to spend \$548 million in FY 2012. <http://www.whitehouse.gov/sites/default/files/microsites/ostp/FY12-slides.pdf>.

⁽¹⁵⁾ 'Malware', short for *malicious software*, is software designed to secretly access a computer system without the owner's informed consent.

⁽¹⁶⁾ 'Unsecured Economies: Protecting Vital Information', carried-out by researchers from Purdue University's Centre for Education and Research in Information Assurance and Security for McAfee (2009), http://www.cerias.purdue.edu/assets/pdf/mfe_unsec_econ_pr_rpt_fnl_online_012109.pdf.

⁽¹⁷⁾ <http://www.cabinetoffice.gov.uk/resource-library/cost-of-cyber-crime>.

⁽¹⁸⁾ SEC(2010)1122.

⁽¹⁹⁾ EESC opinion on *Secure Information Society*, OJ C 97, 28.4.2007, p. 21 (TEN/254).

⁽²⁰⁾ SEC(2010) 1122, Impact Assessment of COM(2010) 517.

of both the legislative and non-legislative instruments to tackle the broad spectrum of cybercrime problems. It also would deal with the criminal law framework and at the same time improve law enforcement cooperation within the Union. The Committee would urge the Commission to continue working towards the goal of a comprehensive legal framework for cybercrime.

2.11 Fighting cybercrime requires special skills. The Committee's opinion on the proposed Regulation concerning ENISA ⁽²¹⁾ highlighted the importance of training of law enforcement personnel. The Committee is pleased that the Commission is progressing with the establishment of the cybercrime training platform involving law enforcement and the private sector, as proposed in COM(2007) 267 ⁽²²⁾.

2.12 Stakeholders in EU cyber security include every citizen whose life, might depend on vital services. The same citizens have a responsibility to protect their connection to the Internet from attack to the best of their ability. Even more responsible are the technology and services providers of the ICTs that deliver information systems.

2.13 It is critical that all stakeholders are appropriately informed about cyber security. It is also important for Europe to have a large number of skilled experts in the field of cyber security.

2.14 A strong information security industry should be fostered in Europe to match the competency of the very well financed industry in the US ⁽²³⁾. Investment in cyber security R&D and education should be increased significantly.

3. Gist of the draft Directive

3.1 The purpose of the proposal is to replace Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems ⁽²⁴⁾. The Framework Decision responded, as stated in its recitals, to the objective of improving cooperation between judicial and other competent authorities, including the police and other specialised law enforcement services of the Member States, by approximating the rules of the criminal law in the Member States in relation to attacks against information systems. It introduced EU legislation to deal with offences such as illegal access to information systems, illegal system interference and illegal data interference, as well as specific rules on the liability of

legal persons, jurisdiction and exchange of information. Member States were required to take the necessary measures to comply with the provisions of the Framework Decision by 16 March 2007.

3.2 On 14 July 2008, the Commission published a report on the implementation of the Framework Decision ⁽²⁵⁾. In the conclusions it was stated that several 'emerging threats have been highlighted by recent attacks across Europe since adoption of the Framework Decision, in particular the emergence of large-scale simultaneous attacks against information systems and increased criminal use of so-called "botnets". These attacks were not the centre of attention when the Framework Decision was adopted.

3.3 This proposal takes into account the new methods of committing cybercrimes, especially the use of botnets ⁽²⁶⁾. It is very difficult to trace the perpetrators, as the computers that make up the botnet and carry out the attack may be in a different location from the offender himself.

3.4 Attacks carried out by a botnet are often executed on a large scale. Large-scale attacks are those attacks that can either be carried out with the use of tools affecting significant numbers of information systems (computers), or attacks that cause considerable damage, e.g. in terms of disrupted system services, financial cost, loss of personal data, etc. The damage caused by large-scale attacks has a major impact on the functioning of the target itself, and/or affects its working environment. In this context, a 'big botnet' is understood to have the capacity to cause serious damage. It is difficult to define botnets in terms of size, but the biggest botnets witnessed have been estimated to have between 40 000 and 100 000 connections (i.e. infected computers) per period of 24 hours ⁽²⁷⁾.

3.5 The Framework Decision has a number of shortcomings due to the trend in the size and number of the offences (cyber attacks). It approximates legislation only on a limited number of offences, but does not fully address the potential threat posed to society by large scale attacks. Nor does it take sufficient account of the gravity of the crimes and sanctions against them.

3.6 The objective of this Directive is to approximate rules on criminal law in the Member States in the area of attacks against information systems, and improve cooperation between judicial and other competent authorities, including the police and other specialised law enforcement services of the Member States.

⁽²¹⁾ EESC opinion on 'New' ENISA Regulation, OJ C 107, 6.4.2011, p. 58.

⁽²²⁾ COM(2007) 267 *Towards a general policy on the fight against cybercrime*.

⁽²³⁾ The official figures from the Whitehouse show that the US government spent \$407m on cyber security research and development and education in 2010 and is proposing to spend \$548 million in FY 2012.
<http://www.whitehouse.gov/sites/default/files/microsites/ostp/FY12-slides.pdf>.

⁽²⁴⁾ OJ L 69, 16.3.2005, p. 68.

⁽²⁵⁾ Report from the Commission to the Council based on Article 12 of the Council Framework Decision of 24 February 2005 on attacks against information systems - COM(2008) 448.

⁽²⁶⁾ See footnote 6 above.

⁽²⁷⁾ Number of connections per 24 hours is the commonly used measuring unit to estimate the size of botnets.

3.7 Attacks against information systems, in particular as a result of the threat from organised crime, are a growing menace, and there is increasing concern about the potential for terrorist or politically motivated attacks against information systems which form part of the critical infrastructure of Member States and the Union. This constitutes a threat to the achievement of a safer information society and an area of freedom, security and justice, and therefore requires a response at the level of the European Union.

3.8 There is evidence of a tendency towards increasingly dangerous and recurrent large scale attacks conducted against information systems which are critical to states or to particular functions in the public or private sector. This tendency is accompanied by the development of increasingly sophisticated tools that can be used by criminals to launch cyber-attacks of various types.

3.9 Common definitions in this area, particularly of information systems and computer data, are important in order to ensure a consistent approach in the Member States to the application of this Directive.

3.10 There is a need to achieve a common approach to the constituent elements of criminal offences by introducing common offences of illegal access to an information system, illegal system interference, illegal data interference, and illegal interception.

3.11 Member States should provide for penalties in respect of attacks against information systems. The penalties provided for should be effective, proportionate and dissuasive.

3.12 The Directive, while repealing Framework Decision 2005/222/JHA, will retain its current provisions and include the following new elements:

- (a) It penalises the production, sale, procurement for use, import, distribution or otherwise making available of devices/tools used for committing the offences.
- (b) It includes aggravating circumstances:
 - the large-scale aspect of the attacks - botnets or similar tools would be addressed by introducing a new aggravating circumstance, in the sense that the act of putting in place a botnet or a similar tool would be an aggravating factor when crimes listed in the existing Framework Decision are committed;
 - when such attacks are committed by concealing the real identity of the perpetrator and causing prejudice to the rightful identity owner.
- (c) It introduces 'illegal interception' as a criminal offence.
- (d) It introduces measures to improve European criminal justice cooperation by strengthening the existing structure of 24/7 contact points ⁽²⁸⁾.
- (e) It addresses the need to provide statistical data on cyber-crimes including the offences referred to in the existing Framework Decision and the newly added 'illegal interception'.
- (f) It contains in the definitions of criminal offences listed in articles 3, 4, 5 (illegal access to information systems, illegal systems interference and illegal interference) a provision allowing to criminalise only 'cases which are not minor' in the process of transposition of the directive into national law.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²⁸⁾ Introduced by the Convention, and FD 2005/222/JHA on Attacks against Information Systems.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive on the management of spent fuel and radioactive waste'

COM(2010) 618 final

(2011/C 218/28)

Rapporteur: **Mr ADAMS**

On 1 February 2011 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Directive on the management of spent fuel and radioactive waste

COM(2010) 618 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 March 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 4 May 2011), the European Economic and Social Committee adopted the following opinion by 146 votes to 7 with 8 abstentions.

1. Conclusions and Recommendations

1.1 Conclusions

1.2 This Directive has been in process for more than ten years and is welcomed by the Committee as a clear step forward in requiring the planned management of the existing large volume of radioactive waste across the EU to minimum standards.

1.3 There is an encouraging emphasis on transparency and public engagement and the requirement to forecast both the cost and funding of proposals will provide a key analytical tool. For the first time, internationally agreed safety standards will become legally binding and enforceable in the European Union. The EU should cooperate with neighbouring countries and encourage them to adopt similar safety standards.

1.4 But the development path of this Directive has not been straightforward. The limits to scientific certainty remain in dispute and the difficulty of anticipating political and social scenarios far into the future are apparent to all.

1.4.1 Although there is broad scientific consensus on the general technical feasibility of deep geological disposal there is a continuing debate about the degree of scientific certainty or appropriateness in several areas. This is unlikely to be fully resolved to the satisfaction of all stakeholders particularly because of the intrinsic nature of high level radioactive waste, its interaction with its immediate environment and the geological time periods under consideration. The present 'holding' arrangements are clearly unsustainable in the medium term, reinforcing the need for action.

1.4.2 Lively and unresolved discussions continue about what is an appropriate level of safety and risk. What does giving the highest priority to human and environmental safety actually involve? In practice the demonstration of safety will be a combination of qualitative and quantitative arguments, seeking to minimise uncertainties, in the context of national decision making.

1.4.3 Confidence in the projection of political and institutional coherence and the competence of any management system must logically decrease as the time scale extends. Therefore 'passive' safety becomes a strong element, with a requirement to be effective even when oversight and knowledge about a waste repository have been lost over time.

1.4.4 The continuing contribution and development of fission-based nuclear energy as part of the energy mix of member states is to some degree dependent on public acceptance as well as on financial sustainability. The debate on the use or development of nuclear power is a significant distraction to resolving the immediate and urgent need to deal with the accumulating problem of radioactive waste, especially as the current and ongoing decommissioning programmes for nuclear power stations will contribute to the scale of the problem. Public attitudes vary considerably across the EU but a large majority of Europeans do believe it would be useful to have a community instrument on radioactive waste management (Attitudes towards radioactive waste. Eurobarometer June 2008).

1.5 The Committee, therefore, seeks to approach constructively the ambivalence in public attitudes and presents a number of relevant recommendations to reinforce the Commission's determination to find a solution.

1.6 Recommendations

1.6.1 The Committee has put forward a series of specific comments, suggestions and recommendations in sections 4 and 5 of this Opinion and asks the Commission, Parliament and Council to take full account of these. In addition it recommends more generally that:

— Member States recognise the prioritisation of safety in the provisions of the Directive and urgently and consistently transpose the Directive into national law in response to the pressing problem of accumulating radioactive waste;

— greater efforts are made by governments, the nuclear industry and the relevant scientific communities to provide further detailed, transparent, risk-assessed information on radioactive waste management options to the public as a whole.

2. Introduction

2.1 The issue of nuclear safety is currently attracting considerable attention and concern as a result of the impact of the earthquake and tsunami on four reactors at Fukushima in northern Japan. Safe operating conditions and precautionary measures for European nuclear plants are the subject of the Nuclear Safety Directive (see para. 5.6) and of national authorities of Member States. On 21 March Member States agreed to improve cooperation between their respective nuclear regulators and to request the European Nuclear Safety Regulators Group (ENSREG) to define modalities for the proposed stress tests (comprehensive risk and safety assessments) for all the EU's nuclear power plants. Given the deep concern expressed by the public as a result of the serious accident at the Fukushima Daiichi power plant the Committee, as a matter of urgency and transparency, will seek to be fully engaged in dialogue with civil society on this and related issues, particularly through an active reorientation of the ENEF (European Nuclear Energy Forum) Working Group on Transparency which the EESC currently chairs and involvement in the Working Groups on Opportunities and Risks.

2.2 From a technical perspective the consequences of the Fukushima accident have yet to be fully analysed as has any direct bearing on the radioactive waste Directive contained in this Opinion. However, it has understandably amplified public concern and awareness of nuclear safety issues and the Committee believes it can play a role in the ongoing debate.

2.3 As of November 2010 there were 143 nuclear power plants (reactors) operating in the EU in 14 Member States. In addition there are a number of plants which have been closed down and other nuclear facilities, such as spent fuel reprocessing plants, which generate radioactive waste. Each year the EU typically produces 280 cubic metres of high level waste, 3 600 tonnes Heavy Metal of spent fuel and 5 100 cubic metres of long lived radioactive waste for which no disposal routes exist (Sixth situation report on radioactive waste and spent fuel management in the European Union SEC(2008)2416); there are further occurrences of lower activity wastes much of which is routinely disposed. High-level waste (HLW) is highly radioactive, contains long-lived radionuclides and generates a considerable amount of heat. It accounts for 10 % of the volume of radioactive waste generated and contains about 99 % of the total radioactivity and includes fission products and spent fuel.

2.4 These wastes arise from the reprocessing of spent nuclear fuel, spent fuel destined for direct disposal, routine nuclear plant

operations and decommissioning. Many more nuclear power plants are planned, some in Member States without previous experience of nuclear power generation. Unless the resultant waste, which in some cases, remains a threat for tens of millennia, is managed and overseen there are very significant risks to health, safety and security. By its nature, radioactive waste contains isotopes of elements that undergo radioactive decay, emitting ionizing radiation which can be harmful to humans and the environment.

2.5 Decisions taken this century will have implications a hundred centuries into the future. Dealing with the wastes arising from the nuclear fuel cycle is the main focus of the Directive but radioactive waste generated in research, medicine and industry will also be covered. Due to the increased generation of electricity from nuclear power stations high level waste grew on average by 1,5 % each year between 2000-2005 and the decommissioning of older power stations is now adding to the quantity. At the end of 2004, an estimated 220 000 cubic metres of long-lived low- and intermediate level waste, 7 000 cubic metres of high-level radioactive waste and 38 000 tonnes of Heavy Metal of spent fuel were stored in Europe (These figures are uncertain because in reprocessing countries such as the UK and France, spent nuclear fuel and reprocessed plutonium and uranium are not currently classified as nuclear waste, on the grounds that spent fuel is a recyclable material and that reprocessed uranium and plutonium might be used to make fresh fuel.)

2.6 It is 54 years since the first commercial nuclear power station became operational. There has been ongoing debate for all of that time about waste management. One area of general agreement is that temporary long-term storage is appropriate for the first phase of any solution. At present there are still no final repositories for higher activity nuclear waste in the EU, though Sweden, Finland and France all plan to have such repositories operational by 2025. The objective is to design and construct facilities which ensure long term safety through passively safe protection systems provided by engineered and stable geological barriers, with no reliance placed on monitoring, human intervention or institutional controls after the facility is closed. In the majority of states a definitive spent fuel policy does not exist or remains unimplemented, other than arrangements to ensure a safe extended period of storage of up to 100 years (Sixth situation report on radioactive waste and spent fuel management in the European Union SEC(2008)2416).

2.7 93 % of European citizens see an urgent need to find a solution to the problem of radioactive waste management, rather than leaving it for future generations. The great majority of EU citizens across all countries agree that the EU should harmonise standards and be able to monitor national practices (Attitudes towards radioactive waste. Eurobarometer June 2008).

2.8 Existing EU legislation was deemed inadequate. Directive 2009/71/Euratom has already established a Community framework for the nuclear safety of nuclear installations, supported by all 27 EU Member States and this Directive on radioactive waste management (COM(2010) 618) is the logical next step.

2.9 The energy mix of each member state and its choice about the use of nuclear power is a national competence and is not the subject of this Directive. However, nuclear waste is inseparable from the use of nuclear power, it exists in significant volume and it potentially poses a serious, long-term, transnational threat. Even if the operation of nuclear power stations were halted today we have to deal with the waste that already exists. It is in the interests of all EU citizens that radioactive waste is disposed of in as safe a way as possible. This is the context in which the Commission has proposed a Directive establishing a framework for ensuring responsible management of spent fuel and radioactive waste.

2.10 The Committee last considered this issue in 2003⁽¹⁾ emphasising the need for urgency in the light of enlargement and the importance of the 'polluter pays' principle. The proposed Directive, which was the subject of the 2003 Opinion, was not approved as Member States considered some aspects too prescriptive and required further time for consideration.

3. Summary of the proposed Directive

3.1 Member States are required, within four years of adoption of the Directive, to draw up and present national programmes, indicating the current location of the wastes and plans for their management and disposal.

3.2 There will be a legally binding and enforceable framework to ensure that all Member States will apply the common standards developed by of the International Atomic Energy Agency (IAEA) for all stages of spent fuel and radioactive waste management up to final disposal.

3.3 National programmes shall include radioactive waste inventories, management plans from generation to disposal, post-closure plans for a disposal facility, R&D activities, implementation timeframes and milestones and the description of all the activities that are needed to implement the disposal solutions, costs assessments and the financing schemes chosen. The Directive does not stipulate a preference for one particular form of disposal.

3.4 The proposed Directive contains a transparency Article to ensure the availability of information to the public and their effective participation in the process of decision making on certain aspects of radioactive waste management.

3.5 Member States would report to the Commission on the implementation of these requirements, and subsequently the Commission will submit a report to the Council and the European Parliament on progress made. Member States will also invite an international peer review of their national programme which will also be reported to the Member States and the Commission.

4. General Comments

4.1 In this Opinion the Committee is primarily addressing the practical and urgent problem of the existence, and continued production, of radioactive waste. The greater proportion of this waste (over 90 %) results from activities associated with nuclear energy generation. The option to choose or expand nuclear power as part of the energy mix is at the discretion of each Member State but the long term implications of resulting waste management can have trans-border (and trans-generational) implications.

4.2 Public opinion towards nuclear power in countries with nuclear power stations would be significantly affected (in favour of nuclear power generation) if they could be assured that there was a safe and permanent solution for managing radioactive waste (Attitudes towards radioactive waste. Eurobarometer June 2008). The main obstacles to such reassurance are the long-term danger from high level waste, doubts about the safety of deep geological disposal, whether the risk attached to such sites will be preserved in the public memory for future generations and uncertainty about the feasibility of other disposal methods.

4.3 Given the slow progress in some Member States on proposals for the long term management of radioactive waste the proposed Directive, which itself has been some years in development, should serve to stimulate the comprehensive formulation of national management programmes. Examples now exist of good methodology which can be used for reference. The proposed Directive is seeking to make key aspects of the standards concluded under the auspices of the International Atomic Energy Agency (IAEA) legally binding and enforceable through EU law and the Committee welcomes this approach.

4.4 The EU already has a significant body of legislation on waste, including hazardous waste⁽²⁾. Although the Directive makes it clear that it is not building on this legislation but has a different legal basis, chapter 3 of the Euratom treaty, opportunity should be taken in the recitals to the proposed directive to endorse the principles embodied in the existing corpus of law relating to hazardous waste.

4.5 The 'polluter pays' approach, has been qualified with the requirement to ensure that waste management proposals are adequately and securely funded, 'taking due account of the responsibility of radioactive waste producers'. Questions concerning state cross-subsidy and consequently issues of competition in the energy market may therefore arise. The Committee therefore recommends that the Directive unequivocally affirms that financing waste management should be according to the 'polluter pays' principle (in this case the company generating the radioactive waste through the operation of nuclear reactors) other than in situations of force majeure, when the state may need to intervene.

⁽¹⁾ OJ C 133, 6.6.2003, p. 70.

⁽²⁾ OJ L 377, 31.12.1991, p. 20.

4.6 The Committee notes that only civilian radioactive waste is covered under the provisions of this Directive. In some countries significant resources have been made available for the management of military radioactive waste. There are clearly additional security implications of joint military/civilian programmes but as the management of non-civilian radioactive waste may consume substantial technological and financial resources, as well as disposal capacity in some Member States, more specific links with this Directive should be considered.

5. Specific Comments

5.1 Radioactive waste has been specifically excluded from the EU Waste Directives ⁽³⁾ but these contain many valuable principles which should be taken into account. The Committee therefore suggests that the recitals to present Directive should make specific reference to the Directive on Hazardous Waste (91/689/EEC) and state that it is complementary to it.

5.2 The Committee suggests that the clause in Article 2 which excludes 'authorised releases' should, in fact, cover such releases. There is presently no EU-wide consistency on the regulation of such releases, and due to variation of interpretation they remain contentious between Member States (for example, between the UK and Ireland concerning releases into the Irish Sea).

5.3 The Committee has always supported the prevention of waste as advocated by the EU and as prioritised under the Directive on Waste (2006/12/EC). As with a number of industries nuclear power generation gives rise to significant hazardous waste. Member states are, at present, divided over whether economically, socially and environmentally there will be sustainable alternatives to nuclear power and therefore as to whether radioactive waste must inevitably continue to be produced. To resolve this dilemma, and as the majority of the Committee shares the view that nuclear will need to play a part in Europe's transition to a low carbon economy, we suggest that the Directive expresses a preference to seek the elimination of the bulk of radioactive waste at source as improved and sustainable alternatives are developed.

5.4 Article 3.3 defines 'disposal' as the emplacement of spent fuel or radioactive waste in an authorised facility with no intention of retrieval. The Committee recognises there are

divergent views on the issue of reversibility and retrievability of the waste. The Committee believes that in developing disposal concepts, reversibility and retrievability should not be excluded, concomitant with the provisions of the associated safety case.

5.5 Article 4.3 requires radioactive waste to be disposed of in the Member State in which it was generated, unless agreements are concluded between Member States to use disposal facilities jointly in one of them. The Committee recommends that this option be vigorously espoused in order to make optimal use of particularly appropriate sites. The Committee welcomes this unequivocal approach to both manage radioactive waste generated by member states exclusively within the EU and the opportunity to develop shared facilities. It was noted that this does not exclude the repatriation of reprocessed waste arising from the reprocessing of spent fuel to countries of origin outside the EU. However, for the avoidance of doubt, it is suggested this point is made explicit in either the Explanatory Memorandum or the Recitals.

5.6 The Committee queries whether a 10 year self assessment by Member States of their programme, accompanied by an international peer review (Article 16) offers the opportunity to fully consolidate knowledge and best practice. There is also the question as to whether a sufficient degree of objectivity, rigour and independent analysis will consistently be applied. Considerable reporting and associated costs will be incurred by Member States and the Committee considers that, in due course, a Review Board should be established with a remit to oversee the management of radioactive waste in the EU. This would not only enhance reporting standards and good practice but serve as an efficient cost-sharing mechanism and help underpin the Nuclear Safety Directive ⁽⁴⁾.

5.7 The Committee explicitly welcomes the fact that the Commission also intends to continue providing support for research on geological disposal of radioactive waste and coordinating research across the EU. The Committee stresses that these programmes should be promoted adequately and on a broad basis and calls on the Member States to address this issue in their national research programmes and through collaborative research through the Commission's R&D Framework programmes.

Brussels, 4 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽³⁾ OJ L 312, 22.11.2008, p. 3.

⁽⁴⁾ OJ L 172, 2.7.2009, p. 18.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following Section Opinion text was modified in favour of an amendment adopted by the assembly but obtained at least one-quarter of the votes cast:

Point 5.5

'Article 4.3 requires radioactive waste to be disposed of in the Member State in which it was generated, unless agreements are concluded between Member States to use disposal facilities in one of them. The Committee welcomes this unequivocal approach to both manage radioactive waste generated by member states exclusively within the EU and the opportunity to develop shared facilities. It was noted that this does not exclude the repatriation of reprocessed waste arising from the reprocessing of spent fuel to countries of origin outside the EU. However, for the avoidance of doubt, it is suggested this point is made explicit in either the Explanatory Memorandum or the Recitals.'

Outcome of the vote on the amendment:

67 votes in favour, 57 votes against and 26 abstentions.

<u>Notice No</u>	Contents (continued)	Page
2011/C 218/15	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority' COM(2011) 8 <i>final</i> — 2011/0006 (COD)	82
2011/C 218/16	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the response to the report of the Expert Group on the Interim Evaluation of the Seventh Framework Programme for research, technological development and demonstration activities and to the Report of the Expert Group on the Interim Evaluation of the Risk-Sharing Finance Facility' COM(2011) 52 <i>final</i>	87
2011/C 218/17	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council — the EU Counter-Terrorism Policy: main achievements and future challenges' COM(2010) 386 <i>final</i>	91
2011/C 218/18	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment' COM(2010) 379 <i>final</i> — 2010/0210 (COD) ...	97
2011/C 218/19	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer' COM(2010) 378 <i>final</i> — 2010/0209 (COD)	101
2011/C 218/20	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime' COM(2011) 32 <i>final</i> — 2011/0023 (COD)	107
2011/C 218/21	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector' COM(2010) 728 <i>final</i> — 2010/0362 (COD)	110
2011/C 218/22	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes' COM(2010) 733 <i>final</i> — 2010/0353 (COD)	114
2011/C 218/23	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards' COM(2010) 738 <i>final</i> — 2010/0354 (COD)	118
2011/C 218/24	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 834/2007 on organic production and labelling of organic products' COM(2010) 759 <i>final</i> — 2010/0364 (COD)	122



<u>Notice No</u>	Contents (continued)	Page
2011/C 218/25	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation (EU) No .../... of the European Parliament and of the Council of ... amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008' COM(2010) 745 <i>final</i> — 2010/0365 (COD)	124
2011/C 218/26	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund' COM(2010) 761 <i>final</i> — 2010/0366 (COD)	126
2011/C 218/27	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing Council Framework Decision 2005/222/JHA' COM(2010) 517 <i>final</i> — 2010/0273 (COD)	130
2011/C 218/28	Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive on the management of spent fuel and radioactive waste' COM(2010) 618 <i>final</i>	135



2011 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>

