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I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

484TH PLENARY SESSION HELD ON 14 AND 15 NOVEMBER 2012

Resolution of the European Economic and Social Committee on “More Europe” — for submission to the European Summit to be held on 22 and 23 November 2012’

(2013/C 11/01)

At its plenary session of 14 and 15 November 2012 (meeting of 15 November), the European Economic and Social Committee (EESC) adopted this resolution by 187 votes to 28 with 28 abstentions.

The EESC notes that, in light of the ongoing crises, the EU must restore **trust in a dynamic growth model** and in the **legitimacy of its decision-making process**. We must build a **strong, sustainable, social and competitive** Europe.

The EESC therefore calls for:

- **“More Europe”**, which is mutually reinforcing and stronger than the sum of its parts. The EU must disengage itself from being perceived as the grim reaper of austerity, social regression and poverty. Currency union must now be followed by political union, with a policy of coherence between economic, financial, employment and social measures, in the people’s interest. The **EU budget** should be designed so as to provide the right incentives for competitiveness, growth and **more employment**. The EU budget must be strengthened and supported by own-resource mechanisms, a single cohesion policy actively involving civil society and a more interventionist role for the European Investment Bank. As a consequence, the EESC calls on the heads of state or government to deliver a result that is equal to these tasks at the European Summit on 22 and 23 November.
- **Civil society involvement** in the process of framing EU policies and decisions. This is a key instrument not only for strengthening the democratic legitimacy of the European institutions and EU action, but also for encouraging the growth of a shared understanding of what Europe is for and where it is going, and restoring confidence in the EU project by ensuring that European citizens play their part fully in building Europe. To achieve this, the provisions of Article 11 of the EU Treaty on the participatory democracy pillar need to be rapidly implemented as a matter of great urgency.
- Sustainable investments in skills, infrastructure, the social economy, services and products to be reflected in the national reform programmes, in the form of a **social investment pact**, together with a **European stimulus package focused on real job creation** and coordinated with national development plans. This is the only way to ensure that the Europe 2020 strategy succeeds. **Investments in climate-smart energy and industrial production**, together with creating a green economy, will help to solve the long-term problems of climate change and to ensure sustainable development.
- Promotion of common actions in the Eurozone to stabilise debt and support recovery throughout the EU. The ECB should be encouraged to implement its bond-buying programme aimed at stabilising Eurozone borrowing costs, as announced by its president. The programme must of course be carried out in keeping with the ECB’s remit. The EIB should also be supported in issuing project bonds in order to foster growth. The EESC welcomes the decision of 11 Member States to introduce a Financial Transaction

Tax. In this context, the EESC asks the EU to step up efforts to promote transparency and tackle the informal economy, tax fraud and evasion and corruption within and outside the EU. Eurozone activity should remain open for those Member States who want to join Monetary Union.

- **Fiscal, banking and financial unions** that are the necessary supporting pillars of **Economic and Monetary Union**. To implement these measures there is a need for **social dialogue** and **dialogue with organised civil society**.
- Support to SMEs in order to get back to growth with the SBA as a guideline. The Single Market's full potential must be released, including opening up **services** and the role of the **social economy**; removing superfluous administrative burdens and promoting access to information and the new digital technologies, finance, credit, the capital, labour and technology markets and EU financial instruments and loan guarantees for SMEs and entrepreneurs.
- **The protection and the rights of consumers to be upheld**, particularly of the most disadvantaged consumers, who are facing growing over-indebtedness, insecurity, extreme poverty and exclusion.
- A genuine labour market to be created at last, giving mobility to expertise so it can be used where it is needed. The **completion of a single labour market** must be part of the Europe 2020 strategy.
- **A chance for our young people**: The EESC will continue to encourage the EU to promote a Europe of research and innovation, to further invest in European education systems and maintain the necessary resources to fund and strengthen youth mobility programmes such as ERASMUS. The EESC

calls on the Commission to withdraw its EU budget proposal if Member States, who are all the time talking about investment and growth, do not support an EU budget and MFF favourable to investment in the future. Measures are required to support SMEs to take on young employees who are unemployed and may be lacking in experience.

- **The competitiveness of the European economy to be enhanced** by innovations and stable funding for research and development, together with a specific training and support policy for SMEs/micro enterprises and their employees, a support policy for investments, access to markets and a lighter administrative burden. This will also facilitate a renewal of European industry as an important sector for growth and jobs.
- A friendly legal environment, which does not create unnecessary administrative and compliance costs. Economic legislation should be clear, fair and proportionate. This is important for each and every enterprise, but for SMEs in particular.
- A special effort so that the EU is seen as an **active and global partner**. The EU **international trade policy** is also important in this sense: it should foster EU values in support of **sustainable development** and civil society participation, not least by setting up **civil society bodies to monitor the implementation of the trade agreements**.
- A **gender balance** to be ensured by implementing gender legislation and equal opportunities. There remains a 17 % pay gap between men and women for the same work, plus women and children have been most affected by the crisis.

Brussels, 15 November 2012.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

484TH PLENARY SESSION HELD ON 14 AND 15 NOVEMBER 2012

Opinion of the European Economic and Social Committee on the 'Involvement of consumer associations in the establishment and functioning of the single market' (own-initiative opinion)

(2013/C 11/02)

Rapporteur: **Mr Hernández BATALLER**

On 19 January 2012, 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:

Involvement of consumer associations in the establishment and functioning of the single market.

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 30 August 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November), the European Economic and Social Committee adopted the following opinion by 141 votes to 2 with 5 abstentions.

1. Conclusions and recommendations

1.1 In current circumstances, in which the return to the levels of growth that have been experienced in the past will be long delayed, it is essential to put the consumer at the centre of the EU's economic and financial policies, in accordance with the Commission's communication on Europe 2020: A strategy for smart, sustainable and inclusive growth. Strong, independent consumer organisations play a key role in the market and must have the necessary human, financial and technical resources to carry out their role of protecting the rights and interests of consumers.

1.2 The right of consumers to organise themselves in order to safeguard their interests is recognised in primary law in the form of Article 169 TFEU, which gives legal recognition at European level to the irreplaceable role that such organisations have to play in ensuring confidence and the development of the European single market.

1.3 Without prejudice to the application of the principle of subsidiarity, the EESC calls on the Commission to take the initiative to provide consumer organisations with certain common minimum rights, in particular the right to be consulted and the right to be heard through their representatives, a legal and/or administrative definition of the rights and interests of consumers in terms of prior consultation on

measures that affect their rights or legally protected interests, whether at national or EU level, and the right to participate in the regulation of services of general economic interest.

1.4 The fact that providers of services of general economic interest share a common consumer base for these services, including many vulnerable consumers, means that it is necessary to monitor the specific features of each market (gas, water, electricity etc.) without losing an integrated vision of all of these services, given the effect that they can have in combination on quality of life and family budgets. These are matters which consumers' organisations are particularly well suited to address. A system similar to the RAPEX system for defective products should be set up for sub-standard services, to allow consumer associations, through their networks, to warn consumers about such services.

1.5 There is a huge disparity in access to information and expert knowledge on the operation of markets for services of general economic interest, on the way that prices, values and elements which constitute access to networks are formed and on the way in which they affect consumers, since the subject matter of regulation is very technical and complex, while also being of unquestionable importance for consumers and the organisations that represent them.

1.6 Consumers usually find it more difficult to compare services than to compare products. The task is particularly complicated in relation to services of general economic interest. Not only are the contractual terms of these services very varied, for example in relation to the system for setting tariffs, but the inclusion of elements besides the service itself needs to be adequately explained by the regulatory bodies, discussed with organisations that represent the interests of consumers, and understood by consumers.

1.7 The Committee considers that the Commission should encourage the Member States and national regulators to promote transparency, information and decision-making, stimulating discussion of the interests at stake – on both the supply- and the demand-side (regulated economic sectors and consumers) – and supporting positive discrimination in favour of organisations that represent the interests of consumers so that they can participate on an equal basis with economic players in regulators' discussion forums and consultative bodies, thus empowering consumer organisations and, through them, consumers themselves.

2. Introduction

2.1 In this own-initiative opinion, the EESC, as the European body that gives a voice to organised civil society, wishes to emphasise the need to take a people-oriented approach to the single market and to stand up for economic democracy⁽¹⁾ with everything that that implies, particularly in relation to consultation, participation and transparency of decision-making processes in relation to the regulation of services of general interest, access to information and the participation, consultation and representation of consumers in the regulation of services of general economic interest, including financial services.

2.2 In accordance with the Commission's communication on Europe 2020: A strategy for smart, sustainable and inclusive growth, which aims to "place the empowered consumer at the heart of the single market", consumers should be able to have confidence that their national and European organisations are capable of protecting them and can have the means, knowledge and tools needed to act on their behalf. The ultimate purpose of the rules that seek to ensure that competition is not distorted in the internal market is to increase the well-being of consumers⁽²⁾.

2.3 The EESC notes that in the present circumstances, it is essential to put consumption at the heart of EU policies and the construction of the single market, and it is therefore essential that consumers' organisations be strong and independent. The Committee has already noted that preservation of a balanced economy requires such organisations to be capable of playing their role as a counterweight in the market to the full and has,

in particular, recommended to the Commission a significant increase in financing to give them the necessary specialised resources⁽³⁾.

2.4 The EESC highlights and acknowledges the fact that differences between Member States are reflected in the way that the role of consumers' organisations is seen, the way they are organised, the resources and the degree of knowledge and specialisation that they have and the representativeness that they have to ensure. Although EU-level organisations such as BEUC and ANEC do exist, the EESC considers that the importance of national organisations for consumers and the single market makes it essential to address their problems from an EU perspective.

The EESC also encourages cooperation between business and consumer organisations, in a special form of dialogue that would help find more balanced ways for the market to develop. The Committee supports the existence of national- and EU-level forums which have this as their goal.

3. European consumers, national representative organisations

3.1 The European institutions have fully recognised the importance of consumer confidence for the implementation of the single market. The right to be represented and to be heard has been explicitly recognised since the first consumer protection policy programme in 1975⁽⁴⁾, in which the Member States confirmed their determination to increase their efforts in favour of consumers. Subsequent programmes confirmed the goals and rights contained in them, until the approval of the "Consumer Policy Strategies", which provide for appropriate involvement of consumers' organisations in Community policies from the point of view of both content and procedure.

3.2 Under these programmes and plans, consumers and their representatives were to have the capacity and the resources needed to be able to take care of their interests under the same conditions as the other parties involved in the market, and the mechanisms for participation of such organisations in the development of EU policies therefore needed to be reviewed.

3.3 However, in the current strategy⁽⁵⁾, the promotion of consumer organisations at European level is no longer a key objective of consumer policy; instead, the focus is on promoting the consumer movement within Member States. So far, unfortunately, the extent to which the consumer participation objectives of those strategies have been achieved has never been assessed at EU level.

⁽¹⁾ OJ C 175, 28.7.2009, p. 20.

⁽²⁾ Judgment of the Court of First Instance (Fifth Chamber) of 7 June 2006, [2006] ECR II-1601.

⁽³⁾ OJ C 181, 21.6.2012, p. 89.

⁽⁴⁾ First Preliminary Community Programme for a Consumer Protection and Information Policy, approved by the Council on 14 April 1975.

⁽⁵⁾ COM(2007) 99 final.

3.4 In recent years, the Commission, the Council and the European Parliament have committed to a strategy of empowering individual consumers, in the hope of imposing the desired confidence in the internal market. To put that strategy into practice, they have on the one hand supported a trend towards maximum harmonisation in key areas of consumer policy in connection with the review of the consumer protection acquis and, on the other, made full use of the concept of the average consumer ⁽⁶⁾, that is to say a person who is "reasonably well informed and reasonably observant and circumspect ⁽⁷⁾", the result of which has been that legality has been based on a fallacy, namely the existence of an ideal well-informed and knowledgeable consumer who, as the statistics show, does not exist.

3.5 The available data show that many consumers are far from playing the strong, active, well-informed role that a competitive and innovative market would require. In reality, most European consumers do not feel confident, knowledgeable and well-protected ⁽⁸⁾.

3.6 Meanwhile, the European approach in relation to consumers from a collective point of view has been very cautious. The EU's concrete actions in relation to consumer organisations have been rather limited, and the EESC therefore encourages the Commission to bring forward a concrete proposal on collective action, an extremely important instrument for the protection of consumers' interests at both national and European level.

3.7 Article 169 of the Treaty recognises the right of consumers to organise themselves in order to safeguard their interests. It is therefore essential to recognise at European level that consumer organisations play an unequalled and irreplaceable role in guaranteeing confidence and the development of the European single market. That justifies enshrining certain basic common rights and principles, without prejudice to Member States' autonomy in setting their national policies.

3.8 In January 2011, the ECCG (European Consumer Consultative Group) gave the following as being among the main reasons why strong consumer organisations are necessary:

- a) the number of European decisions that have an impact on national consumers;
- b) the fact that consumer organisations are increasingly being listened to by the European institutions;
- c) consumers' right to be heard in the shaping of the policies which affect them;

⁽⁶⁾ Which has been much criticised in the EESC's opinions.

⁽⁷⁾ ECJ Case C-220/98 of 13.1.2000, *Estée Lauder Cosmetics v. Lancaster Group*, and Case C-210/96 of 16.7.1998, *Gut Springenheide and Tusky*.

⁽⁸⁾ Consumer Empowerment in the EU, SEC(2011) 469 final.

- d) the imbalance in terms of financial resources between business and consumer representatives in relation to the decision-making process, leading to different degrees of participation, and the influence of consumer organisations themselves ⁽⁹⁾.

The EESC has already made its views known on the requirements that consumer organisations should satisfy, views which it here reiterates ⁽¹⁰⁾.

3.9 Without strong consumer organisations that are independent of political and economic power structures and that make an active contribution in a free, competitive market, insisting on transparency of information and acting to protect the individual and collective interests of consumers, it will be harder to reach a situation where European consumers have confidence.

4. Rights to consultation and participation in bodies of regulators of services of general economic interest

4.1 Consumer organisations are key allies in restoring consumer confidence and building the internal market and, accordingly, the EESC calls on the Commission to take the initiative to provide consumer organisations with certain common minimum rights, in particular the right to be consulted and the right to be heard through their representatives, a legal and/or administrative definition of the rights and interests of consumers in terms of prior consultation on measures that affect their rights or legally protected interests, whether at national or EU level, and the right to participate in the regulation of services of general economic interest.

4.2 While it is not appropriate to discuss in this opinion all the elements that should be guaranteed for the relevant consumer associations, the EESC highlights the following:

- a) **the right to be consulted and the right to be heard**, through their representatives, in relation to the definition of the rights and interests of consumers by legal or administrative means, through prior consultation on measures that affect rights or interests that are legally protected at national or EU level;
- b) **the right to participation** in the field of **sectoral regulation**, particularly of **services of general interest**, which are services that are essential to the life of the community and which consumers do not have a genuine choice to use or not to use.

⁽⁹⁾ ECCG Report on monitoring indicators of the consumer movement.

⁽¹⁰⁾ See point 3.5 of the EESC's opinion (OJ C 221, 8.9.2005, p. 153): legal personality, non-profit-making nature, defence and representation of the interests of consumers as the main statutory objective, democratic internal operation, financial autonomy and independence vis-à-vis political interests.

4.3 The EESC recalls that the Treaty of Lisbon indicated, by way of Protocol No 26 on services of general interest and Article 36 of the Charter of Fundamental Rights, the importance of services of general interest for the EU, which is responsible for establishing the principles which guide the approach to such services. It also notes that services of general economic interest cannot be provided by the market without public intervention (or only under conditions differing in terms of quality, safety, affordability, equal treatment and universal access). A specific public service obligation is imposed on the provider by means of an entrustment, based on a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission ⁽¹⁾.

4.4 Many services of general economic interest, such as electricity, gas, water and communications, have traditionally been provided by the state, which owned the distribution networks. The debate on these services was often approached from the point of view of risk (to health, safety and the environment), of national strategic natural resources policies or of market liberalisation processes, for example in the energy sector.

4.5 From the point of view of the consumer, the key questions relate to guarantees of security of supply and access, with price constituting almost the sole determining factor in consumer choice.

Consumers find it more difficult to compare services than to compare products, and the task becomes particularly hard in relation to contract terms that are not usually sufficiently explained - for example, the system of fixing tariffs and prices, which is very broad and incorporates many elements beyond the service itself. Furthermore, the organisations that represent their interests do not discuss, or even take notice of, this system.

A system similar to the RAPEX system for defective products should be set up for sub-standard services, to allow consumer associations, through their networks, to warn consumers about such services.

4.6 The Market Observatory for Energy breaks down the price of energy into three main parts: first, energy, transport and distribution (networks); second, other taxes, and third, VAT, with various comparisons between Member States. Despite the fact that the specific elements that make up "other taxes" in each Member State are not defined - which they should be - this type of breakdown of prices can be done for other services of general economic interest (such as water and communications) and would therefore also provide useful information if it were used in other sectors.

4.7 The European Commission has carried out detailed studies on the price of certain services of general economic

interest, among which the information provided by the Market Observatory for Energy stands out, concluding, among other things, that:

- a) most Member States regulate prices for all households, and industry practices in terms of the complexity of electricity bills make it difficult for new competitors and consumer switching providers to enter.
- b) tariffs can constitute a significant additional source of revenue, the value of which is increasing and which is reflected in the bills paid by domestic and industrial consumers.

4.8 The truth is that, despite the fact that there are many different regulatory bodies and European incentives for transparency of their decisions, there is a huge disparity among consumer organisations in terms of access to information and specialised knowledge of the operation of these markets for services of general economic interest, particularly in terms of price formation, the values involved and access to networks, as well as the way in which those elements affect consumers.

4.9 The EESC considers that the European Commission should encourage Member States and national regulators not only to promote transparency in relation to information and the decision-making process, but also to encourage a balance between the interests at stake - those of the regulated economic sectors and those of consumers - by supporting consumer organisations and discriminating positively in their favour (through, for example, specific training, guidance and financial support).

4.10 In the EESC's view, the involvement of consumer organisations in discussion forums and consultative bodies, on a basis of equality with economic actors, is the most appropriate mechanism to ensure the empowerment of consumer organisations - and through them, of consumers themselves - in the context of a competitive market ⁽¹²⁾.

4.11 The EESC considers, however, that the importance of ensuring the acquisition of specific knowledge in complex areas with significant effects on the quality of life of consumers, which can only be addressed through effective representation, should take precedence over such risks (principally the risk of "capture" of such organisations).

⁽¹⁾ COM(2011) 900 final.

⁽¹²⁾ One should note the results of Eurobarometer 51.1 of 1999 in which the leading responses among the then 15 Member States to the question: "In your opinion, which one of the following tasks should be a priority for consumer associations?" (one reply from a list of 10 alternatives, including "don't know") were the following: first, distributing information (26,8 %); second, giving practical advice/assistance (25,4 %); third, protecting consumers (19,2 %); and fourth, representing consumers (7,3 %).

4.12 The European institutions can and should encourage the participation of consumer organisations in regulatory bodies and discussion forums – with a particular focus on tariff and price discussion forums ⁽¹³⁾ – not only in order to demonstrate the independence and transparency of the regulatory process, particularly in relation to the tariff structure, but also to contribute to an active public and strong consumer organisations.

4.13 It is true that this issue is becoming somewhat more salient, since the directives on common rules for the internal markets in electricity and gas ⁽¹⁴⁾ state that, without prejudice to their independence and powers and in accordance with the principle of better legislation, regulatory authorities should where appropriate consult transmission system operators and should, where appropriate, establish close cooperation with other competent national authorities to carry out their obligations. However, participation of and debate with consumers' representative organisations are not recommended in all competitive situations.

4.14 In competitive environments, the tariff structure not only determines the access of service providers but can also, by directly influencing price, lead to exclusion of consumers and absence of switching ⁽¹⁵⁾.

4.15 The price element and the need to discuss the tariff structure that gives rise to it with consumers' representatives

have been overlooked in the context of regulation and are absent from the EU acts that deal with this issue (e.g. the directives mentioned above). However, data from the Market Observatory for Energy consistently show that, beyond the price of these services, consumers and businesses bear the burden of taxation and other costs, which harms the competitiveness of the latter and increases the vulnerability of the former within the internal market.

4.16 There are choices in relation to services of general economic interest that have a direct effect on the costs that are ultimately reflected in the price paid by consumers. The EESC considers that healthy competition within the single market and consumer protection require the involvement of the EU institutions to ensure greater transparency in price formation for essential services of general economic interest and to monitor developments in the various price components and tariffs. For this purpose, Member States and national regulators should be encouraged to support the active participation of consumer organisations and SMEs within the decision-making processes leading to the setting of tariffs ⁽¹⁶⁾.

4.17 Finally, the EESC wishes to note that it will be difficult for the representation of consumers to be effective without a guarantee of the availability of collective redress, and accordingly it calls on the Commission to relaunch its work on implementing a European system of collective redress.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹³⁾ In relation to essential public services which do not involve risks to consumer health and safety - of which there are few these days in relation to telephone and electricity services - price is almost the sole determining factor in consumers' choice.

⁽¹⁴⁾ Directives 2009/72/EC and 2009/73/EC (OJ L 211, 14.8.2009, p. 55 and p. 94).

⁽¹⁵⁾ See Article 32(1) of Directive 2009/72/EC.

⁽¹⁶⁾ OJ C 318, 29.10.2011, p. 155.

Opinion of the European Economic and Social Committee on 'Principles, procedures and action for the implementation of Article 11(1) and (2) of the Lisbon Treaty' (own-initiative opinion)

(2013/C 11/03)

Rapporteur: **Mr JAHIER**

On 14 July 2011 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

Principles, procedures and action for the implementation of Articles 11(1) and 11(2) of the Lisbon Treaty.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 September 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 168 votes to 3 with 7 abstentions.

"Nothing can be done without citizens but nothing can last without institutions"

Jean Monnet

1. Conclusions

1.1 The Committee considers it vital to develop practical proposals for action to ensure that the various EU institutions act, within their respective remits, to frame suitable measures for implementing Article 11(1) and (2) TEU. This process should be seen as an opportunity to expand and bolster the structures for dialogue with civil society at European level as well as at national, regional and local levels.

1.2 Representative democracy remains at the heart of democracy. Participatory democracy is a complementary approach and never an alternative to representative democracy, on which all our societies are based. Similarly, civil dialogue is not in competition with social dialogue; rather, each has a very specific, distinctive role, under the provisions of the Treaty.

1.3 It is necessary to put in place an effective participatory democracy as enshrined in the TEU and reflecting the values and identity of the European Union. In view of the current economic, social and political crisis, full implementation of Article 11 is of paramount importance if the Union is to reinforce its democratic legitimacy vis-à-vis its citizens. Ultimately, it is only through greater transparency, ownership and participation by citizens and organised civil society at both national and European level, that Europe will be able to avoid extremism, defend its democratic values and establish a "community of destiny".

1.4 Implementation of Article 11(1) and (2) TEU should be viewed as a crucial opportunity to move beyond the existing processes for consulting and involving civil society which have been developed at European level since the 2001 White Paper

on European Governance. A variety of practices have already been developed for civil society participation, some of which have moved beyond information sharing and could be considered as good examples on which to build a structured framework for European civil dialogue, pursuant to Article 11(1) and (2).

1.5 The EESC therefore puts forward the following recommendations:

- the European Commission should carry out a detailed study of existing processes for civil society participation in policy-making at European level. The study should assess the effectiveness of the current structured-cooperation system and recommend a general framework establishing how all EU institutions and bodies could implement Article 11(1) and (2). The EESC and relevant stakeholders should be asked to contribute to this study, as regards both the design and implementation and in the dissemination of results;
- the Transparency Register, which is operated jointly by the Commission and the European Parliament, should be extended to include the Council. In the future it could become a useful tool for identifying European civil-dialogue stakeholders;
- the European institutions should establish a single database with information on contacts, consultations and dialogue with civil society. An annual report should also be envisaged, as a useful communication tool to demonstrate the scale of participatory democracy within the EU;

- the EESC should conduct an internal evaluation of the effectiveness, relevance and perception of its cooperation with civil society organisations (CSOs), with a view to identifying effective improvements;
- the EESC should develop a database with detailed information on which civil society organisations have been involved in its work and in what capacity;
- the EESC should make full use of the new Protocol of Cooperation signed with the European Commission in February 2012, leading to greater involvement in the definition of European priorities, work programmes and key policies;
- the EESC should undertake to review and revitalise its Liaison Group with European civil society, with a view to extending participation and helping to secure better implementation of Article 11(1);
- the EESC should help to organise, along with all other relevant stakeholders and the EU institutions in particular, a large-scale annual event that would offer shared input to the agenda of EU priorities. The political impact of such an event could be enhanced by holding it in parallel with a joint conference of the 27 national parliaments and the European Parliament. The first one could be held before the 2014 European elections, thereby consolidating the bridge between Europe's citizens, the electorate and the elected.

1.6 A substantial and increasingly strong commitment by the Committee to shaping a European public space could thus seek and promote an increasingly active role by the Commission, the Council and the European Parliament in the implementation of Articles 11(1) and (2). The resulting processes and output should thus be appreciated by all of the institutions and European CSOs.

2. Introduction

2.1 Over the past 12 years the EESC has made significant progress regarding the definition of European civil dialogue, its complementary role in relation to representative democracy, and its differentiation from social dialogue. Civil dialogue has been defined as a democratic and public opinion-forming process that can take various forms depending on the actors involved. The EESC has agreed on a definition of the actors and concepts of civil dialogue, and its connection with participatory governance ⁽¹⁾.

⁽¹⁾ A good summary of these concepts is set out in the document, *Participatory democracy in 5 points*, drawn up by the EESC's Group III in March 2011, <http://www.eesc.europa.eu/?i=portal.en.publications.15525>.

2.2 The EESC has also reaffirmed the principle of subsidiarity at European level; it has proposed a grid setting out 14 specific quantitative and qualitative criteria for gauging the representativeness of civil society organisations selected to take part in the horizontal, vertical and sectoral civil dialogue; and it has defined precisely the differences between consultation (top-down process) and civil dialogue (bottom-up, or more circular process). In this way the EESC has contributed to the institutional achievements now enshrined in Article 11 TEU ⁽²⁾.

2.3 The Treaty on European Union (TEU), which entered into force in December 2009, gives formal recognition to the role of participatory democracy (civil dialogue, consultation, European citizens' initiative). Article 11 ⁽³⁾ builds on and bolsters the central institution of representative democracy (Articles 10 and 12) ⁽⁴⁾, thus giving expression to an innovative European model of democracy.

2.4 The task now is to work for a tangible implementation of Article 11. In particular, we must make a start on paragraphs 1 and 2, since the consultation practices provided for under paragraph 3 are by now widely developed and the European citizens' initiative has been regulated ⁽⁵⁾. The history of the EESC has taught us that effective structures for dialogue require a precise regulatory framework and institutional continuity.

2.5 In March 2010, the Committee called on the Commission "to publish a Green Paper on civil dialogue, which would cover the practical implementation of Articles 11(1) and 11(2), consider existing practice, define procedures and principles more precisely, evaluate them and, together with civil society organisations, make improvements, in particular by creating clearly defined structures" ⁽⁶⁾. One year on, in 2011, an extraordinary meeting hosted by the EESC's Group III entitled *What are the prospects for participatory democracy in Europe?* repeated this request and approved a Roadmap for Participatory Democracy ⁽⁷⁾.

⁽²⁾ More details on this can be found in the Compendium entitled *Participatory democracy: a retrospective overview of the story written by the EESC*. See <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-participatory-democracy-prospects-compend>.

⁽³⁾ Article 11(1). The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. (2). The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. (3). The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. (4). Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission.

⁽⁴⁾ Article 10(1) stipulates that *the functioning of the Union shall be founded on representative democracy*; and according to Article 10(3): *Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.*

⁽⁵⁾ <http://ec.europa.eu/citizens-initiative/public/welcome> At all events, it will be advisable to make a thorough assessment (also involving civil society organisations), within the next year, of the practical operation of the European citizens' initiative.

⁽⁶⁾ OJ C 354, 28.12.2010, p. 59.

⁽⁷⁾ <http://www.eesc.europa.eu/resources/docs/roadmap-final-for-web.pdf>.

2.6 The Committee notes that, apart from the consultation practices and the regulation on the European citizens' initiative, which came into force on 1 April 2012, there has been no progress made within the various institutions on the provisions regarding civil dialogue (Article 11(1) and (2)) and that there has not yet been a positive response to the request for a green paper on this matter.

2.7 Moreover, a structural economic crisis has spread throughout Europe, calling into question the very foundations of EU integration and fuelling a twofold, dangerous phenomenon. On the one hand, a reversion to intergovernmental negotiations for finding solutions to the crisis, with a proliferation of EU summits; on the other hand, a growing distance between the people and their organisations and the EU institutions. This is coupled with a widespread perception that not only is the EU failing to find a way out of the crisis, but that it is imposing austerity policies that affect the lives of all Europeans, and engaging in virtually no dialogue with the various sectors of organised civil society about the choices made. The lack of understanding and distance thus seem to be growing, paving the way for a dangerous scenario in which the EU institutions themselves may lose their legitimacy.

2.8 The Committee believes that the dynamics generated by the TEU, as well as the range of issues and priorities now on the Union's political agenda, require a resolute revival of the Community method. The only way to achieve this is by strengthening and renewing it, while also strengthening parliamentary democracy – the cornerstone of the EU institutions – and ushering in a new era of direct involvement of civil society, designed to enhance the European identity and generate interest among citizens. Closer involvement of the public through civil dialogue, both in its direct forms and by means of representative organisations, as provided for under Article 11, is becoming a pivotal challenge for the whole future of the European project. It comes down to ownership, support, transparency and increasing the democratic legitimacy of the decision-making process.

2.9 Article 11 and its implementation thus provide a valuable tool for putting this participatory democracy into practice, and the Committee undoubtedly has all the experience required to act as a catalyst here for bolstering European democratic life, in close coordination with the various EU institutions and the main European and national networks of organised civil society.

2.10 The Committee is aware that it reflects only partially the diversity inherent in the term organised civil society⁽⁸⁾ and has thus for some time been taking pragmatic steps to place its relations with European organised civil society on an increasingly broad footing. At a time of crisis, the Committee

believes that strengthening such a "bridge" between the institutions and civil society is more crucial than ever, with a view to accompanying the structural policy choices and institutional reforms that are incumbent on the EU if it is to have a future.

2.11 Article 11 as a whole is a clear signal of confidence in the added value of active citizenship, in the value of participatory democracy and the role it can play in bolstering people's sense of ownership of the European project, fostering an increasingly informed and significant European citizenry. Article 11, by placing the well-established tradition of consultation (paragraph 3) in the context of the participatory pillar (paragraphs 1 and 2) thus indicates a significant shift towards a more advanced model of structured dialogue.

2.12 After 15 years of theorising and producing important papers, which can be found in the aforementioned compendium⁽⁹⁾, **specific targeted actions and instruments are now needed for each EU institution**; however, at the same time, **there must be a coordinated and consistent overall strategy** to enable better implementation of the Article's overall objective.

2.13 The Committee warns against the temptation to transform the prescriptive foundation of Article 11 (in particular paragraphs 1 and 2) into something that is merely descriptive, like a photograph of what already exists. This would certainly not reflect the intentions of the legislator, nor correspond to the high expectations of European organised civil society.

3. Building on existing good practice

3.1 The Committee believes that in starting to develop practical measures for implementing Article 11(1) and (2), it would be useful to build on existing best practice.

3.2 Over the last ten years, the EU has seen **steady growth in the various forms of cooperation with civil society organisations**. This mostly involves consultation processes conducted by the European Commission.

3.3 At Commission level, a growing number of directorates-general have developed a range of consultation processes, which vary in terms of objectives, regularity, size and impact. These have evolved largely independently and have often turned into proper "consultative forums". They amount to a variety of situations and results which, in some cases, already constitute quite

⁽⁸⁾ The EESC shall consist of representatives of organisations of employers, of the employed, and of others representative of civil society, notably in socio-economic, civic, professional and cultural areas, Article 300(2) TFEU.

⁽⁹⁾ *Participatory democracy: a retrospective overview of the story written by the EESC* <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-participatory-democracy-prospects-compend>.

structured forms of permanent dialogue with civil society⁽¹⁰⁾. The Committee stresses that the legal structure of such consultations must not be confused with the new construct of civil dialogue, which must become structured and put on a permanent footing.

3.4 Existing structures include the EU health forum organised by DG Health and Consumers, the Fundamental Rights Platform of the EU Agency for Fundamental Rights, DG Development's civil society contact group and the Civil Society Dialogue launched by DG Trade.

3.5 The latter is perhaps the most advanced mechanism for structured sectoral dialogue, both because of the wide range of actors involved (over 800 registered organisations), and because almost half of them are based in a Member State and not in Brussels. It is also the only one for which an external assessment⁽¹¹⁾ has been commissioned, by DG Trade itself.

3.6 A second example is the European Integration Forum⁽¹²⁾, launched in 2009 on a joint initiative of the EESC and the Commission. The forum has a stable membership of about a hundred European and national stakeholders, as well as ongoing participation by the European Parliament, the CoR and representatives of Member State governments. After a slightly rocky start, it has now become a hub for structured dialogue on the practical evolution of the EU agenda for integration policy, especially in the ex ante stage.

3.7 Civil society forums within the complex system of EU external relations provide a third example. Here we would highlight the success of the joint consultative committees set up in the context of EU accession negotiations, the role of the EU-Cariforum consultative committee in monitoring the specific Economic Partnership Agreement between the EU and Cariforum, and the role of civil society enshrined in the EU-Korea free trade agreement.

3.8 The Cotonou Agreement⁽¹³⁾ is perhaps the most complex and substantial case, in terms of both the number of countries and stakeholders involved and the number of actions taken. It formally recognises the "complementary role of and potential for contributions by non-State actors [defined as the private sector, economic and social partners, and civil society] to the development process"⁽¹⁴⁾. The EESC is specifically mandated to organise regular meetings of ACP-EU socio-economic players. A specific programme was also developed

to provide financial support within the various countries, managed by the EU delegations and giving these actors an increasing role, and investing in capacity building⁽¹⁵⁾.

3.9 Lastly, we would highlight the European Parliament's Citizens' Agora. This has held three thematic meetings (albeit at non-regular intervals, and with differing outcomes) since the initiative was launched in 2007, involving a broad range of European civil society organisations⁽¹⁶⁾. The work is currently the subject of a specific evaluation within the European Parliament, acknowledging the need to relaunch it in a more effective form in future years.

3.10 There are also some noteworthy international examples of effective civil society participation in the decision-making process. These include the Aarhus Convention⁽¹⁷⁾ of the United Nations Economic Commission for Europe, and the Code of Good Practice for Civil Participation in the Decision-making Process adopted by the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe⁽¹⁸⁾.

3.11 The Aarhus Convention provides not only for the public and relevant civil society organisations to have the right to "access to environmental information" from public authorities, but also the right to "public participation in environmental decision-making" and potentially the right to challenge public decisions. Moreover, civil society representatives can nominate members to the Convention Compliance Committee and can be represented on the Bureau. Finally, financial support is available to these civil society organisations.

3.12 As regards the Council of Europe, the Code of Good Practice has been recognised by the Committee of Ministers and aims to improve civil society participation in political decision-making at local, regional and national levels. The Code outlines four different levels of participation (information, consultation, dialogue and partnership), which can be used as a matrix by both civil society and public authorities.

3.13 There are also good examples at regional and national levels. Particularly noteworthy is the French "Grenelle Environment" created in 2007 at the initiative of the French president⁽¹⁹⁾. The forum brought together representatives of the

⁽¹⁰⁾ Set out below are only a few brief summaries.

⁽¹¹⁾ <http://trade.ec.europa.eu/civilsoc/index.cfm>.

⁽¹²⁾ <http://ec.europa.eu/ews/en/policy/legalcfm>.

⁽¹³⁾ Chapter 2, Article 4.

⁽¹⁴⁾ Chapter 2, Article 6.

⁽¹⁵⁾ To gain an idea of the monitoring work undertaken by the EESC, see the final declaration adopted at the regional seminar held in Addis Ababa from 7-10 July 2010. www.eesc.europa.eu/?i=portal.en.acp-eu-eleventh-regional-seminar-documents.10876.

⁽¹⁶⁾ <http://www.europarl.europa.eu/aboutparliament/en/00567de5f7/Agora.html>.

⁽¹⁷⁾ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted in 1998. See <http://www.unece.org/env/pp/introduction.html>.

⁽¹⁸⁾ The Code was adopted in October 2009. See www.coe.int/ngo.

⁽¹⁹⁾ "Grenelle Environment" – <http://www.legrenelle-environnement.fr>.

State, local authorities, NGOs and the social partners in a process of dialogue and partnership, and led to two significant packages of environmental laws, in 2008 and 2010 respectively. Moreover, following a proposal from the "Grenelle Environnement", in 2008 the name of the French ESC was changed to Economic, Social and Environmental Council and members representing this sector were appointed to the body ⁽²⁰⁾. Lastly, one should mention other forms of civil dialogue established at national and local level, such as cooperation platforms, compacts, cooperation protocols or agreements, which should be exploited accordingly.

4. Lessons and opportunities to develop

4.1 Today there are hugely interesting examples which have, in practice, gone well beyond the standard forms of mere consultation. In some cases, these have brought more stable and multifaceted processes of active participation, with stronger forms of cooperation, paving the way to possible forms of structured civil dialogue, as prescribed in Article 11 TEU. However, these practices are generally insufficiently known outside the circles concerned: they need to be assessed, more widely promoted, extended and put on a more stable footing.

4.2 Furthermore, how these forums are perceived by the various stakeholders, particularly as regards their effectiveness, depends on a range of factors: the highly varying level of ownership of the process, the perceived level of representativeness of the stakeholders ⁽²¹⁾, the financial conditions that may or may not be conducive to the participation of less structured players not present in Brussels, and the technical capacity to contribute actively to the discussion and ensure follow-up of the process and the continuity of the operational investment made by the EU institutions.

4.3 It is worth highlighting some important aspects of these processes:

- they have given rise to working practices which, over time, have become widely used and accepted standards, providing an asset that should be studied and assessed;
- most of them involve a very extensive set of stakeholders, usually from more than one family or one sector of civil society organisations; rather, they often include the same types of representatives as are found in the Committee: employer bodies, worker organisations, and bodies representing other socio-economic, civic, professional and cultural players;

- in some cases, more than one EU institution/body is involved, albeit with different roles; this sometimes creates the effect of a network among various institutions, which should be further developed;

- in this process of structured dialogue, there is ever greater involvement – in a wide range of forms – of national civil society representatives and organisations, alongside European organisations. However, there is still much to be done here to ensure greater involvement of the local and national levels of civil society in the 27 Member States ⁽²²⁾.

4.4 These findings reveal a potential critical mass which, if harnessed systematically and properly publicised, could constitute an important building block in the construction of participatory democracy at EU level. In any case, it would give visibility to this pillar of European democracy, both in the eyes of the public and within the various institutions. The scale of the contribution of European civil society organisations and the efforts that the EU has been making for some time would then be more widely recognised and appreciated.

4.5 The Committee thus proposes that the European Commission, with the active cooperation of all the other institutions, launch a larger-scale, more detailed study.

4.6 Ten years on from the White Paper on European Governance ⁽²³⁾, such a study should provide a more complete overall assessment of the results achieved, the tangible impact on the legislative process, the intervening unexpected developments, the problems encountered, the shortcomings and incongruities noted, and the costs borne, while identifying, finally, the elements required to ensure more appropriate, wider participation. The study should assess the actual effectiveness and scope of the current system of structured cooperation with civil society, and consider ways of making it more effective. It should also consider good practices that could be put forward, and how to develop them further. It should assess how and to what extent this considerable body of work is known and perceived outside the circles concerned, and how it contributes to broadening democratic participation and increasing support for the European project and thus to the shaping of a European public space. The study should also include pointers for an impact assessment from the point of view of both the institutions and the various stakeholders of organised civil society.

⁽²⁰⁾ For further examples of civil society participation please refer to the hearing conducted during the drafting of this opinion: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-articles-11-1-2-lisbon-treaty>.

⁽²¹⁾ However, the representativeness criteria applied in different situations vary widely. We would thus point again to the qualitative and quantitative criteria set out in the EESC opinion (rapporteur: Mr Olsson), OJ C 88, 11.4.2006, p. 41-47.

⁽²²⁾ In this regard, it is worth pointing out the enormous number of local, national and regional organisations that have been involved in recent years in specific practical European projects and that could, if properly encouraged and networked, be actively involved in a wider dynamic of participation and civil dialogue, that could enhance grassroots public support for the European process at national and local levels across the EU.

⁽²³⁾ OJ C 193, 10.7.2001, p. 117; OJ C 125, 27.5.2002, p. 61 and COM(2001) 428 final.

4.7 Carried out in the light of Article 11 ⁽²⁴⁾, and directly and actively involving civil society organisations, this study could become a good working basis for identifying guidelines and further practical arrangements for developing structured dialogue in line with Article 11 TEU. In this way it could provide the Commission and the other EU institutions with the requisite elements for framing subsequent and more precise practical proposals, in line with the green paper referred to in point 2.5, whose importance the Committee stresses. In particular, the study should seek to identify possible common guidelines and practices for all institutions, with due regard for their individual autonomy, in order to develop an unambiguous, effective, inclusive and transparent process for the structured participation of civil society in the European venture.

4.8 The EESC can certainly contribute here, making available its expertise and networks: it would play an active part in both the design and implementation of the study, and then during dissemination of the results, especially in the 27 Member States.

4.9 On 23 June 2011 **the Commission and the European Parliament launched the joint transparency register**, which replaces the register set up by the Commission in 2008. Several thousand organisations have registered to date, from all corners of European civil society. These organisations have to provide an extensive range of information and undertake to abide by a code of conduct ⁽²⁵⁾. This single register, common to the two institutions, and the fact that the Council has already expressed an interest in coming on board, suggests clear direction here and a willingness on the part of the institutions to proceed in a coordinated manner on a matter of such importance and sensitivity for relations with civil society.

4.10 The Committee believes that this register – so far solely aimed at achieving transparency for those in contact with the EU institutions in order to influence policy – could gradually become a tool for identifying civil-dialogue stakeholders as regards representativeness criteria. The possibilities that the register opens up for developing structured civil dialogue should thus also be explored in the aforementioned study.

4.11 The Lisbon Treaty also opens **new windows of opportunity in relation to the European Council**. This is now a permanent structure, with the president of the European Council appointed for a two-and-a-half year term of office, which can be renewed. This lays the foundation for structuring a more long-term vision and more stable relations with organised civil society. The European Council is also required to meet the Article 11 obligation. The fact that it is now responsible for setting the EU's broad policy guidelines makes it even more strategically important to develop cooperation that evolves gradually towards structured civil dialogue. The Committee thinks that the Council should set

up a special unit dedicated to dialogue with civil society and, as part of its specific functions, the Committee is willing to cooperate closely with the Council to pursue this aim in practice.

5. The EESC's role

5.1 Over the past ten years, the Committee has substantially modified its own working methods and above all has greatly expanded the involvement of stakeholders, experts and European civil society organisations in its work.

5.2 Every facet of the Committee's work has seen changes: the more traditional aspect of its work (opinions), with the increasing involvement of experts and the proliferation of hearings (varying in scale); the establishment of the Liaison Group with CSOs; the various conferences and events organised under the programmes of the sections, groups and presidencies, both in Brussels and in the Member States; the work carried out on the Europe 2020 strategy with the economic and social councils and similar bodies in the Member States; and finally, the same diverse range of activities carried out in the framework of its external relations.

5.3 A picture emerges of substantial and ever growing relations and dialogue with a wider, more diverse range of players from European organised civil society: a multifaceted, very sectoral development, where the various players tend to be relatively unaware of each others' actions. The overall potential of this has not been sufficiently exploited.

5.4 This is why **the Committee should undertake to:**

- promote more **thorough analysis of the evolution of and prospects for its system of relations with organised civil society**, to assess the effectiveness, relevance and perception of its work, and identify possible changes and innovations that may be necessary in order to constantly hone its specific role as an EU advisory body and strengthen the process of implementing Article 11 TEU. Such a study should be carried out with the support of high-level research institutes and should provide for appropriate means of involving and cooperating actively with representative CSOs at EU level, thus also gathering their views and overall assessments;
- develop a **dedicated centralised database of all contacts, competences and organisations** that are involved in various ways every year in the Committee's work, also defining their different types and then evaluating what possible initiatives (joint statements and/or annual dialogue with the whole body of contacts) could be developed in order to place this system of relations on a more robust footing;

⁽²⁴⁾ The institutions shall maintain an open, transparent and regular dialogue ..., par. 2.

⁽²⁵⁾ http://europa.eu/transparency-register/index_en.htm.

— and finally, propose to the various EU institutions to set up **a single database for the whole system of relations and dialogue with civil society organisations pursued by all of the EU institutions and bodies**, also envisaging an appropriate annual report to be made accessible to all national and European stakeholders ⁽²⁶⁾.

5.5 The Committee must tap all useful synergies with the other EU institutions, to ensure that Article 11 is properly implemented. To this end, it reiterates its commitment to opening up new avenues for working with the European Council and to strengthening and expanding all of the opportunities for cooperation already in place with the European Parliament, the Commission and the Committee of the Regions.

5.6 **The new cooperation protocol signed by the EESC with the European Commission** ⁽²⁷⁾, which consolidates and strengthens the role of the Committee as a privileged intermediary between civil society organisations and the Union institutions, opens up many opportunities here, which should be followed through with determination. This protocol consolidates and reinforces the avenues of cooperation developed over the years and establishes new, ambitious and tangible paths for progressively and jointly implementing Article 11 TEU, in order to develop "participative democracy at Union level with the aim of strengthening its democratic legitimacy" ⁽²⁸⁾. Specifically, "the Commission considers this cooperation as a privileged tool to organise an open, transparent and regular dialogue with representative associations and civil society as referred to by Article 11 TEU" ⁽²⁹⁾.

5.7 Indeed, the protocol sets out two pivotal opportunities for developing such cooperation, which could become a stable and structured framework in which to progressively include an ever-broadening network of European civil society representative organisations, thus giving further shape to the practical development of structured civil dialogue under Article 11(2):

— As regards the establishment of the EU's political priorities, the Committee has the opportunity to influence the Commission's political priorities and annual work programme. To this end, the Committee is to inform the Commission of its own proposed priorities for the following year, and at the end of each year the Committee organises a debate on the future of the EU during which the Commission presents its strategic priorities.

— As regards the European Semester and the Europe 2020 strategy, the protocol places on an institutional footing the presentation of an annual report by the EESC, with the close cooperation of the network of national economic and social councils and similar institutions, on civil society involvement in the drafting of National Reform Programmes. The report is debated in advance of the Spring European Council; the relevant Commission member is required to participate in this debate and present the Annual Growth Survey.

5.8 The Committee should also undertake to create the most appropriate synergies with CSOs at national and EU levels, developing structured cooperation at both levels.

5.9 In particular, such structured cooperation could be developed at national level for the contribution that the protocol now asks the Committee to make to "evaluating the implementation of EU legislation in particular in relation to the horizontal clauses, as provided for under Articles 8 to 12 of the Treaty on the Functioning of the European Union (TFEU)" ⁽³⁰⁾. To that end, existing cooperation with national ESCs and similar institutions should be stepped up.

5.10 Lastly, in 2004 the Committee established the **Liaison Group** with European civil society bodies and networks, which is also mentioned in the revised protocol. In the context of the vision outlined, the Committee deems it necessary to review, restructure and revitalise the role of the Liaison Group, and, in particular, to open it to all sectors of organised civil society, including with reference to the more multifaceted composition of the Committee's three Groups. Bolstering it in this way could be a specific step towards decisively advancing implementation of Article 11(1) TEU (as regards horizontal civil dialogue), making the Committee a platform for facilitating this process. Overhauled and bolstered in this way, the Liaison Group could play an increasingly valuable role within the EESC, particularly in monitoring the implementation of Article 11.

6. Building a structured space for European civil dialogue

6.1 The Committee believes that it is incumbent on it to become an increasing centre of excellence for European civil dialogue, developing and fine-tuning existing instruments, and fostering new forms of structured dialogue and open, participatory forums for stakeholders: This should be part of a wider strategy involving ever more appropriate participation of European CSOs, with the aim of multiplying good civil-dialogue practices at all levels. In this way, the Committee can make a key contribution to the implementation of Article 11.

⁽²⁶⁾ See also point 21 of the EP Resolution of 13 January 2009 on the Perspectives for developing civil dialogue under the Treaty of Lisbon (2009/0007 INI).

⁽²⁷⁾ <http://www.eesc.europa.eu/?i=portal.en.eu-cooperation.22469>.

⁽²⁸⁾ Preamble to the Protocol, para. 6.

⁽²⁹⁾ Also preamble to the Protocol, para. 7.

⁽³⁰⁾ Preamble to the Protocol.

6.2 The Committee believes that work should start on shaping a space that will embody this new era of participatory democracy. As well as being an innovation in terms of both substance and method, this would give a boost for the overall process and would provide a communication event in itself. This is a way to give form and substance to the construction of a European public sphere, as proposed by the philosopher Jürgen Habermas as a prerequisite for the whole European project, but still far from being realised. This work is all the more urgent in view of the crisis and the previously highlighted risks of an unravelling of democratic support for European integration.

6.3 Proposals for such a space have already been put forward at the Committee, both during in-house conferences ⁽³¹⁾ and in a recent authoritative opinion on *Renewal of the Community Method* ⁽³²⁾.

6.4 The Committee thinks that this structured space for European civil dialogue could take the **form of an annual event**, with the following structure and aims:

- an event aimed at gathering, conveying and summarising the main contributions of European organised civil society to the Commission's annual programme and to the priorities of the various institutions, in connection with the scenario outlined in point 5.7;
- an event that could come to be structured over several days, along the lines of the "Open Days" organised effectively by the CoR ⁽³³⁾, with workshops and thematic meetings which feed into a comprehensive closing session;
- an event for which the EESC would lay solid groundwork, in the form of a dedicated committee which would include

representatives of European CSOs and establish the thematic priorities as well as the participation arrangements ⁽³⁴⁾;

- an event where participation should be broadened out as much as possible, also in terms of national and sectoral organisations;
- an event which would also involve direct participation by Europeans – in view of Article 11(1), which also requires direct dialogue with citizens across the 27 EU Member States – harnessing the huge potential of the new communications technologies;
- an event which could conclude with a final declaration which would be managed and coordinated by a preparatory committee, as already successfully trialled by the EESC on various occasions both in-house and externally.

6.5 The Committee believes that this event could constructively spur all of the EU institutions to make civil dialogue a horizontal task for all directorates-general in the Commission, all working parties in the Council and all committees in the European Parliament, in a transparent and balanced way, in respect of the various components of European organised civil society, as previously called for by the European Parliament ⁽³⁵⁾.

6.6 In order to give more weight and a stronger foundation to this prospect, the Committee also calls on the Commission to put forward again a specific, definitive proposal for a European Statute for Associations, as strongly called for by European CSOs and as has been previously requested in several EESC opinions.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽³¹⁾ See point 4 of the document adopted by the main CSOs at the conference held at the EESC on 10 February 2010: "The organisation of an annual conference of organised civil society with a view to helping set the European political agenda ...".

⁽³²⁾ OJ C 51, 17.2.2011, p. 29, point 5.6, rapporteurs: Mr Malosse and Mr Dassis.

⁽³³⁾ The CoR Open Days, the tenth anniversary of which is being celebrated in 2012, are a forum for discussion and political debate, as well as a space for exchanging good practices and cooperation. They now involve over 6 000 participants and around a hundred workshops, three general thematic meetings and a concluding session, and are attended by high-profile representatives of all the EU institutions.

⁽³⁴⁾ An example of good practice here was the *Programme for Europe: the proposals of civil society*, published by the EESC in spring 2009.

⁽³⁵⁾ European Parliament resolution of 13 January 2009 on the Perspectives for developing civil dialogue under the Treaty of Lisbon (rapporteur: G. Grabowska).

Opinion of the European Economic and Social Committee on ‘The involvement and participation of older people in society’ (own-initiative opinion)

(2013/C 11/04)

Rapporteur: **Ms O’NEILL**

On 19 January 2012, 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 involvement and participation of older people in society

(Own-initiative opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 23 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 144 votes, with 3 abstentions.

1. Conclusion and recommendation

1.1 Conclusion

1.2 Older people are dynamic, capable and vital members of our society. They pass on knowledge, skills and experience to the next generations. As individuals and collectively they contribute to our economy, to our neighbourhoods and to carrying our history. As family members older people are responsible for encouraging cohesion and solidarity in our society.

— all stakeholders continue to develop an approach that emphasises life-long learning for individual older people, employers and communities;

— governments ensure the digital inclusion and training of older people;

— older people stand for election, vote and take part as board members in companies, public authorities and NGOs;

1.3 Recommendations

1.3.1 The EESC recommends that:

— the focus be put on the capacity and contribution of older people and not on their chronological age, and that governments, NGOs and the media highlight these elements in positive statements;

— the contribution of informal care givers and recipients be recognised and their respective rights and responsibilities properly supported;

— older people be encouraged to volunteer in accordance with good practice guidelines;

— support be given for the active participation of all age groups in society and to greater solidarity and cooperation between and within generations;

— it be made possible for older workers to stay in employment until the statutory retirement age and beyond, if they so wish;

— governments and statutory agencies make a positive commitment to the active participation of older people in decision-making and to their role in communities;

— employers adapt the working environment and find contractual arrangements to meet the needs of older workers; and that

— governments work with appropriate partners to eliminate any barriers that prevent older people from fully participating in society;

— older people be recognised as consumers and that businesses be encouraged to produce goods and services that respond to the needs of an ageing society.

2. Introduction

2.1 The vision of active and healthy ageing set out by the EU Commission Steering Group on Active Ageing states: " 'Active and healthy ageing' is a process of optimising opportunities for health, participation and security in order to enhance the quality of life as people age. It applies to both individuals and population groups. 'Health' refers to physical, mental and social well-being. 'Active' refers to continuing participation in social, economic, cultural, spiritual and civic affairs, not just the ability to be physically active or to participate in the labour force ⁽¹⁾".

2.2 The aim of this opinion is to highlight the current active participation of older people in Europe, consider the barriers to enabling more people to be engaged, and emphasise that such participation continues throughout person's lifetime. Building an age friendly ⁽²⁾ Europe starts at birth and requires the long view. This opinion builds on previous EESC opinions on older people and ageing ⁽³⁾.

2.3 There are currently 85 million people over the age of 65 in Europe and this will rise to 151 million by 2060. It is important not to just focus on chronological age but to recognise and build capacity to participate at all ages and to appreciate that even if older people (defined for the purposes of this opinion as over 65) experience health limitations it does not necessarily prevent them from being engaged.

2.4 "Active social, cultural, economic and political participation of older people relies on a correct image of age ⁽⁴⁾". We must discourage the use of overly dramatic language by the media and governments to describe an ageing society.

2.5 Ageist attitudes must be eliminated as they damage the perception of older people and discourage them from participating. This incurs the loss of vital contributions and increases tensions between generations. We should celebrate living healthier for longer, which has resulted from better education and nutrition, as well as from an emphasis on the social contract between generations.

2.6 The negative attitudes that relate to older people ignore their role as workers, consumers, participants in community projects and carers for others. Negative perceptions of older people are damaging as discrimination undermines self-esteem and acts as a barrier to greater engagement and to their contribution to the economy. Life expectancy has increased

because of new developments in medicine, pharmacology and technology, together with increased health consciousness and education. "Research has shown that the self-reported quality of life of very old people is often much better than is generally recognised. We need to change attitudes to ageing, which much too often are dominated by negative misconception and prejudice" ⁽⁵⁾.

2.7 Demographic change offers opportunities to grow the "silver economy" as older people are consumers in many sectors and contributors through employment.

2.8 Tackling age discrimination through legislation, leadership and building a new dynamic in policy making should therefore be a priority in promoting active ageing and releasing the potential of the older population to play a full role in the development of the social and economic capital of the country.

2.9 We should challenge the view that at 65 we become receivers of services and not contributors. Age barriers should be abolished. Older people do not become a homogenous group because of their age, but retain their different views, energies, experiences, prejudices, needs and desires. We are all ageing and meeting expectations in 2060 will require constant adaptation.

2.10 Statistical data in relation to older people must be used with caution to avoid assuming that health conditions, participation rates etc. are the same for those between 65 and 100, as needs and capacities vary. We should avoid making assumptions based on age and creating silos.

2.11 It is impossible to consider the dignity and well-being of older people in isolation from strategies concerned with income, health and social care and the preservation of local social networks and community initiatives. These issues are highlighted in relation to the barriers to participation which **could** be created. The ability to access services and actively participate significantly depends upon having sufficient income, and this must be integral to pension reform.

3. Civic affairs

3.1 The recent report "Gold Age Pensioners" ⁽⁶⁾ describes older people as "social glue". It emphasises their contribution to family and communities through volunteering and participation in democratic institutions.

⁽¹⁾ "Strategic Implementation Plan for the European Innovation Partnership", European Commission, 7.11.2011.

⁽²⁾ "Stakeholder Manifesto for an Age Friendly European Union by 2020", Age Platform Europe, 2011.

⁽³⁾ OJ C 228, 22.9.2009, p. 24; OJ C 51, 17.2.2011, p. 55; OJ C 181, 21.6.2012, p. 150.

⁽⁴⁾ 6th Report on the situation of older generation in the Federal Republic of Germany.

⁽⁵⁾ Kirkwood, T et al: "New Ways of Looking at Age", Blackstaff Press 2011.

⁽⁶⁾ "Gold Age Pensioners", WRVS 2011.

3.2 Older people have a higher record of voting in all elections. The Eurostat Report ⁽⁷⁾ reported that 50 % of citizens over the age of 55 voted and that there is a stronger interest in politics at an older age. The growing number of older people in our society brings considerable political influence, known as "grey power" in the USA. This influence is exercised.

3.3 The median age of elected members in the European Parliament is 54 and the oldest is 84. This is reflected in other government institutions and in the EESC, which highlights that age should not be a barrier to participation at any level.

3.4 Many older people bring the experience and expertise gained throughout their working lives to the boards of NGOs, public authorities and companies.

4. Participating in decision-making

4.1 Given the extent to which older people contribute to society in different ways, assumptions might be made about the social inclusion of older people and their involvement in decision-making processes. However, older people often feel "left out" in relation to decisions made about their own welfare or about the community in which they live. Individuals need personal encouragement and organisations need to evolve mechanisms that are inclusive of the views of older people.

4.2 The European Older People's Platform published a report in 2010 ⁽⁸⁾ which illustrated the methods that had been developed in different Member States and which included national and local senior councils and public consultations. It is a fundamental condition of the European process of social inclusion that stakeholders participate in the development of solutions for the problems they face. Taking part is crucial, but so too is being actively listened to, so that changes result.

4.3 Those who face social exclusion as a result of ill health, disability or poverty must be assisted and individuals must be empowered. The Scottish Dementia Working Group is a shining example of people with a diagnosis of dementia determined to maintain choice and control over their lives. It has established an impressive national and international reputation for enthusiastic and fearless campaigning to improve understanding of dementia and for lobbying for improved services. People with dementia run the organisation and are key speakers at conferences or in advocating to government ⁽⁹⁾.

4.4 Effective participation requires welcoming structures and a commitment from government bodies and NGOs, employers and other institutions that they are serious in listening to older people as stakeholders; it means that the language is jargon free, meeting spaces are accessible and people can afford to attend and are able to use transport. Older people must be aware of their rights and obligations and have had an opportunity to familiarise themselves with the issues to be discussed, so training, including in ICT, is an essential ingredient ⁽¹⁰⁾.

4.5 There is a growing emphasis on co-production, which is about "individuals, communities and organisations which have the skills, knowledge and ability to work together creating opportunities and solving problems" ⁽¹¹⁾. The principles involved are those which underlie all participatory activities and can be applied at individual level in designing a care package, through to the level of national government, where they can be applied in policy development.

5. Research

5.1 The EESC welcomed the European Commission's support for joint programming initiatives and for the development of road maps for future research activities in the field of ageing and demographic change, which is integral to "Horizon 2020 – Road maps for ageing" ⁽¹²⁾.

5.2 Continued research into all aspects of life for older people is important in order to ensure appropriate policy decisions affecting health, social care, education, income and participation. Older people should be involved in identifying issues and participating in the research. It is particularly important to undertake appropriate clinical drug trials with older people.

6. Caring

6.1 As the population ages, caring responsibilities will fall on an increasing number of older women and could pose financial challenges due to lost salary and reduced pension entitlements. Older people make a significant contribution as informal carers to older, frailer relatives, which constitutes a considerable saving for state welfare budgets. Recognition must be given to the experience and skills of informal carers and to the need to provide training opportunities.

6.2 In addition, many grandparents care for grandchildren out of necessity in families experiencing difficulties, or to enable their children to work and thus be economically active.

⁽⁷⁾ "Active Ageing and solidarity between the generations", Eurostat 2012.

⁽⁸⁾ "Guide for Civil Dialogue on Promoting Older People's Social Inclusion", Age Platform Europe 2010.

⁽⁹⁾ "Perspectives on ageing with dementia", Joseph Rowntree Foundation 2012.

⁽¹⁰⁾ See footnote 8.

⁽¹¹⁾ "A guide to co-production with older people", NDTI.

⁽¹²⁾ Cf. EESC opinion on the "Horizon 2020: Road maps for ageing" adopted on 23 May 2012, OJ C 229, 31.07.2012, p. 13.

6.3 There is room for social innovation in the field of informal care and Member States should make greater efforts to address the increasing challenges and responsibilities that face informal carers in the context of shrinking or inadequate care services.

7. Volunteering

7.1 "There is a remarkable range of voluntary activities by older people which go far beyond the traditional age related topics such as support to frail or sick older people" ⁽¹³⁾. Their voluntary activities embrace welfare and health, leisure, the environment, religious organisations, culture and politics.

7.2 Older people volunteer because this enables them to retain and develop their skills and social contacts and to prevent social isolation and exclusion and serve their community. Volunteering brings mutual benefit. A survey carried out in 2009 found that 78 % of the EU-27 population were of the opinion that older people made a major contribution as volunteers in charitable and community organisations ⁽¹⁴⁾.

7.3 In the absence of, or cuts, in statutory services it should be appreciated that older people volunteer to fill these gaps, but they need to be supported.

7.4 It should be noted that the recognition and range of volunteering activities varies considerably across the Member States, and those people who volunteer in older age tend to have volunteered throughout their lives. There is scope to encourage and enable individuals throughout the course of their lives to be involved in volunteering, which has benefits in older age in the form of preventing isolation and social exclusion, and stimulating contacts and friendships.

8. Economic contribution

8.1 In addition to consumption, the contribution made by older people to the economy can be measured through the payment of taxes on income and purchases; the provision of informal care to relatives, which constitutes a saving to the state; the care of grandchildren, which enables children to return to the labour market; and, the value of volunteering and remaining in the workforce. In addition, there are asset transfers to younger family members to assist them with major financial commitments ⁽¹⁵⁾.

8.2 Growing recognition of an ageing population should increase the potential for companies and other entities to

develop and market goods and services that serve this part of the population in the context of an ageing society and therefore stimulate growth in production and employment ⁽¹⁶⁾.

8.3 There is insufficient recognition of older people as consumers, which sustains negative attitudes to older age. Stereotypical views of older people tend to generate assumptions that older people do not need or want different opportunities or services and that the "youth market" is much more important ⁽¹⁷⁾.

9. Employment

9.1 "Nearly 60 % of workers believe they will be able to carry out their job at the age of 60" ⁽¹⁸⁾.

9.2 Given increased longevity, it is important that older people are able and can choose to remain in the workforce until the statutory retirement age and, if they choose, beyond. This requires recognition of an older person's capacity, adaptation of the working environment and hours (which is also advantageous across the life cycle), the ability to participate in training to keep pace with changing methods, and efforts to combat ageism in the work place. The EESC recently adopted an opinion which proposed a package of specific measures to encompass these requirements and stressed the importance of the social partners playing a key role to ensure appropriate policies and adaptations ⁽¹⁹⁾.

9.3 It must be acknowledged that there is a difference between people who work over their pension age because they **want to**, and those who **have to**, because their retirement income is inadequate.

9.4 Older people bring a wealth of experience and skills to the work place, which is essential at a time of skills shortage and ensures a continuing contribution to the economy. Businesses must be encouraged to develop best practice in age management strategies.

9.5 There is potential for older people to become self-employed and entrepreneurial, giving them increased autonomy and control over their working conditions. The contribution made by older people in this sphere is growing. The Eurostat figures for 2010 showed that 50 % of the workforce aged over 65 were self-employed ⁽²⁰⁾. The stimulus for new projects and services which reflect the changing demography can come through older people themselves being in business, and individuals need to be encouraged to pursue these opportunities ⁽²¹⁾.

⁽¹³⁾ "Volunteering by Older People in the EU", Eurofound 2011.

⁽¹⁴⁾ See footnote 6.

⁽¹⁵⁾ "Gold Age Pensioners", WRVS 2011.

⁽¹⁶⁾ OJ C 44, 11.2.2011, p. 10.

⁽¹⁷⁾ "The Golden Economy", AGE UK 2011.

⁽¹⁸⁾ "Living Longer Working Better", Eurofound 2011.

⁽¹⁹⁾ OJ C 318, 29.10.2011, p. 1.

⁽²⁰⁾ "Active Ageing and Solidarity between the generations", Eurostat 2011.

⁽²¹⁾ "Golden opportunities", UnLtd 2012.

10. Lifelong learning

10.1 The EESC has stressed over a number of years the importance of lifelong learning as a key condition for social inclusion, remaining in the work place, personal development and the ability to participate effectively ⁽²²⁾.

10.2 An increasing number of older people participate in educational opportunities, but this is uneven among Member States ⁽²³⁾. The involvement of older people in community groups and NGOs provides a significant source of informal learning.

11. The role of ICT

11.1 The use of ICT is of growing importance for all citizens. The use of the internet and email can enable older people to keep in touch with affairs outside their home and to retain regular communication with family members who do not live close by. This can be enhanced by the use of Skype or similar media to have visual contact. The use of chat rooms which are supervised can assist older people, who are home-bound, to contact others with like interests, which helps to alleviate isolation.

11.2 There are significant benefits to be achieved through eHealth in relation to monitoring conditions and responding to emergency situations. Such methods should not replace regular contact with people on a "face to face" basis and eHealth systems must embrace the need for real relationships with individuals.

11.3 More controversial ICT applications involve personal monitoring systems in "smart" homes, in personal safety or in

monitoring devices for individuals with dementia. The intention is to safely enable continuing autonomy and choice over activity. The use of such methods must be based on ethical decisions and practice and clearly be to the advantage of the older person, and not used as a control mechanism or a way of reducing staff support.

11.4 The use of the internet to shop on-line clearly has advantages for those with mobility issues, but again has to be tempered by their need to meet people and to move outside their home. Data protection and privacy must be guaranteed.

11.5 The use of ICT requires training and support as well as access to equipment. These issues have been highlighted in the EESC opinion on Enhancing digital literacy, e-skills and e-inclusion ⁽²⁴⁾.

12. Barriers to participation

12.1 Whilst the involvement of older people in a range of activities with an impact on social and economic life has been stressed, there still remain significant barriers for many older people which prevent them from participating.

12.2 Chronological age is only one of the multiple characteristics that define a person. The knowledge, skills and experience held by different age groups is a vital resource in society. An inclusive society for all ages requires the collective responsibility of decision makers, relevant stakeholders and citizens themselves in formulating policies and practices that ensure equity and inclusion irrespective of age.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²²⁾ OJ C 161, 13.7.2007, p. 1; OJ C 204, 9.8.2008, p. 89; OJ C 228, 22.9.2009, p. 24; OJ C 77, 31.3.2009, p. 115; OJ C 51, 17.2.2011, p. 55.

⁽²³⁾ See footnote 20.

⁽²⁴⁾ OJ C 318, 29.10.2011, p. 9.

Opinion of the European Economic and Social Committee on the ‘Societal empowerment and integration of Roma citizens in Europe’ (additional opinion)

(2013/C 11/05)

Rapporteur: **Mr TOPOLÁNSZKY**

On 17 January 2012 the European Economic and Social Committee, acting under Rule 29A of the implementing provisions, decided to draw up an additional opinion on

Societal empowerment and integration of Roma citizens in Europe

(additional opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 October 2012.

At its 484th plenary session, held on 14-15 November 2012 (meeting of 14 November), the European Economic and Social Committee adopted the following opinion by 127 votes to 1 with 12 abstentions.

1. Conclusions and proposals

1.1 The EESC welcomes and is encouraged by the recent steps taken by the European Commission, the European Parliament, the European Council, other EU bodies, and the Member States to achieve inclusion and integration of the European Roma, for example the Commission's strategic framework and the adoption of National Roma Integration Strategies (NRIS) by the Member States.

1.2 At the same time, the EESC points out that "these combined efforts have not helped in any decisive way to remedy the discrimination experienced by many Roma, nor to improve their quality of life or the opportunities open to them".

1.3 Already, in its exploratory opinion of 2011 ⁽¹⁾, the Committee expressed its concerns about support for the NRIS by civil society and Roma organisations, and it put forward many recommendations.

1.4 The findings of the study commissioned by the EESC and carried out in 27 Member States are consistent with those carried out by the European Roma Policy Coalition (ERPC) and other civil society organisations, and show that apart from a lack of information and general dissatisfaction, there is also widespread frustration and distrust among spokespersons for the Roma community, civil society organisations and their representatives. It seems that the NRISs have not met the growing expectations of the Roma or their sincere hope that the strategies could really help improve social integration.

1.5 The instruments and resources available for implementation of the NRISs appear insufficient to compensate for the continuing negative impact of discrimination and exclusion on the lives and prospects of those concerned. The Committee would therefore like to emphasise the importance of coordinated policies and resources appropriate to the goals which have been set.

1.6 The Committee feels that planning and implementation of NRISs should always follow a rights-based approach, in order to ensure human and fundamental rights.

1.7 The Committee feels that combating discrimination should be a priority in all areas of public life.

1.8 The EESC feels that a positive approach to the social situation of the Roma should become more widespread, and that implementing inclusive policies is crucially dependent on people having the energy, tools and power to shape their own destinies.

1.9 The EESC is in favour of the European Commission's planned network of national Roma contact points, if it is endowed with the requisite powers, and emphasises that organised civil society, including Roma organisations and lobbies, must be fully involved throughout the development of NRISs (planning, implementation, monitoring and evaluation).

1.10 NRIS monitoring and evaluation must be stepped up on a sound, scientific basis, with the involvement of independent observers. At the same time, systems must be put in place to ensure financing for this process.

⁽¹⁾ EESC Opinion of 16 June 2011 on *Societal empowerment and integration of Roma citizens in Europe* (OJ C 248, 25.8.2011, p. 16-21)

2. Background

2.1 In April 2011 the European Commission adopted a key strategic document on "An EU Framework for National Roma Integration Strategies up to 2020" ⁽²⁾. For the first time in the history of the EU, the Communication sets out the main strategic objectives, which tie in closely with the priorities of the Europe 2020 strategy, the provisions of the European Union's Charter of Fundamental Rights, and the conclusions of *The 10 Common Basic Principles on Roma Inclusion* ⁽³⁾. The Communication groups political tasks under four headings: access to education, employment, healthcare and housing. It particularly emphasises the importance of cooperation with civil society organisations and Roma organisations. The Communication advocates setting up and implementing a robust monitoring and evaluation mechanism. At the same time, it calls on Member States to draw up and adopt national strategic documents and to submit them to the European Commission by the end of 2012.

2.2 In its conclusions ⁽⁴⁾, the Council supports the Commission Communication ⁽⁵⁾ and states that:

"(The Council welcomes) the Communication of the Commission (...), and encourages the member states **to set achievable national goals** (...) as well as to put in place a monitoring mechanism and make existing EU funds more accessible for Roma inclusion projects". In addition,

- it emphasises the need "to appropriately monitor and evaluate the impact of the [national] Roma inclusion strategies or integrated sets of measures (...)" (Point 23), and
- "encourage(s) the better involvement of civil society and all other stakeholders" (Point 41).

3. **The EESC adopted an exploratory opinion** on "Societal empowerment and integration of Roma citizens in Europe" on 16 June 2011 ⁽⁶⁾. The main messages of the opinion are as follows:

- ⁽²⁾ An EU Framework for National Roma Integration Strategies up to 2020 (COM(2011) 173 final).
- ⁽³⁾ The 10 Common Basic Principles on Roma Inclusion were presented at the first Platform meeting on 24 April 2009. "Explicit, but not exclusive targeting", an "inter-cultural approach", and "aiming for the mainstream" are of particular relevance here.
- ⁽⁴⁾ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lssa/122100.pdf
- ⁽⁵⁾ Council Conclusions on an EU framework for national Roma integration strategies up to 2020.
- ⁽⁶⁾ EESC opinion of 16.6.2011 on *Roma – Societal empowerment and integration* (OJ C 248, 25.8.2011, p. 16-21).

3.1 The EESC welcomes and is greatly encouraged by the steps taken by the European Commission, the European Parliament, the European Council, other EU bodies, and the Member States to achieve inclusion and integration of the European Roma. It is also pleased that these efforts have been stepped up recently.

3.1.1 At the same time, the Committee points out that "these combined efforts have not helped in any decisive way to remedy the discrimination experienced by many Roma, nor to improve their quality of life or the opportunities open to them; in some respects, their situation has deteriorated even further".

3.1.2 The EESC therefore emphasises the need for an integrated, coordinated and coherent pan-European strategy and a determined, systematic national action programme for all policy areas, thus restoring the powers and authority needed by individuals and communities concerned to shape their own destinies (empowerment).

3.1.3 The Committee feels that "the following elements could be suggested to the Member States as the three pillars – to be implemented in coordination – of a ... policy to integrate the Roma that specifically but not exclusively reflects the nature of the problems and the strategic priorities for tackling them:

- a) "a race- and ethnicity-neutral inclusive policy", at the same time as reducing concentrations of extreme poverty and deprivation;
- b) a policy to support empowerment of those regarding themselves as members of any Roma community and acknowledge the social integration they have achieved;
- c) "general policies and publicity to combat racism".

3.2 The Committee stresses "the vital need to actively involve representatives and members of the Roma people and communities in both planning and implementation at every level (EU, national, regional and local)".

3.3 The Committee "would like to participate in monitoring and evaluating these policies on the basis of its mandate from civil society and of the inherent links between it and civil society organisations in the Member States. It aims to be involved in mediating between the EU institutions and organised civil society and to be an active partner in the European Platform for Roma Inclusion and other forms of structured dialogue".

4. Studies and surveys

4.1 With the above in mind, this opinion sets out to compile the recent knowledge, views and experiences relating to the Strategic Framework and the National Roma Integration Strategies (NRIS) of the relevant gatekeeper organisations and European Commission departments, together with civil society organisations, lobby groups and movements defending Roma interests. There can be no doubt that the resulting picture will significantly affect the chances of achieving the objectives set out in the Strategic Framework at Member State level. These analyses include the following:

- various Commission documents on national strategy framing processes and content;
- OSI documents produced as part of its role as a participant and observer and as part of its information dissemination activity, particularly in the new Member States ⁽⁷⁾;
- the European Roma Policy Coalition's questionnaire;
- reports by civil society organisations actively involved in Roma issues such as the ERIO (European Roma Information Centre), and the Center Amalipe on strategy framing processes and content;
- and the results of the online questionnaire commissioned by the EESC and carried out in 27 Member States.

4.2 The European Commission has conducted a brief review of the national strategies submitted to it ⁽⁸⁾; the EESC largely agrees ⁽⁹⁾ with the Commission's conclusions in that review, which are mildly critical. The Committee also agrees that national strategies need to do more in terms of close involvement of local and regional authorities, significantly closer cooperation with civil society, funding consistent with tasks and objectives, policy monitoring and adequate evaluation, and determined efforts to combat discrimination.

4.3 Almost at the same time as the questionnaire commissioned by EESC, a study using similar questions and a similar

approach was launched by the ERPC. The findings of both studies were published with a review of the National Roma Integration Strategies (NRIS) in a joint study ⁽¹⁰⁾.

4.3.1 By using the potential of its own networks, the ERPC received 90 usable responses (including 78 from EU Member States) from a wide range of Roma and pro-Roma organisations. Although there were differences from one country to another, respondents complained about the low level of their involvement in the strategy-framing process and the limited impact of their involvement. According to the ERPC study, low levels of activity and influence correlated with the fact that in most Member States, both the strategy-framing process and the publication of results were limited, with a lack of transparency ⁽¹¹⁾.

4.3.2 In order to achieve broader and more effective involvement of civil society, the ERPC recommends developing a culture of ongoing dialogue at all levels going beyond the usual requirements for consultation, at the same time as developing appropriate mechanisms for participation, bringing a high degree of transparency to government action and ensuring regular feedback on decisions. One of the report's conclusions is that "the NRIS show that there are clear and worrying differences in the political will to address discrimination and anti-Gypsyism and to amend national policies to enable greater participation of Roma in all collective areas of society".

4.4 Results of the online questionnaire commissioned by the EESC ⁽¹²⁾

4.4.1 Researchers sent the on-line questionnaire, which included questions in closed categories, to nearly 2 000 civil society organisations and activists involved in Roma issues ⁽¹³⁾. As in the case of the ERPC study, the response rate was extremely low ⁽¹⁴⁾.

4.4.2 The questionnaire evaluated levels of satisfaction with EU and national strategies on the basis of 14 analytical criteria ⁽¹⁵⁾ on a scale of one to five, with answers averaging less

⁽⁷⁾ Review of EU Framework NRIS, OSI, 2012, <http://www.soros.org/sites/default/files/roma-integration-strategies-20120221.pdf>.

⁽⁸⁾ National Roma Integration Strategies: a first step in the implementation of the EU Framework (COM(2012) 226); and SWD (2012) 133, 21 May 2012.

⁽⁹⁾ "... Member States are making efforts to develop a comprehensive approach towards Roma integration. However, much more needs to be done at national level. Socio-economic inclusion of Roma remains first and foremost the responsibility of the Member States and they will need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system."

⁽¹⁰⁾ Analysis of National Roma Integration Strategies, ERPC, March 2012.

⁽¹¹⁾ "(...) a large majority of respondents across Member States described the drafting process of the NRIS as lacking transparency. In most of the cases, stakeholders' participation, in particular the involvement of Roma, is still unclear with regard to implementation of the NRIS."

⁽¹²⁾ A study on the participation and activities of Roma and/or non-governmental organisations in the development and approval of national Roma integration strategies. Kontra Ltd., Budapest 2012. Manuscript.

⁽¹³⁾ Using the snowball sampling method, questionnaires sent to nearly 800 addresses reached around 2 000 addresses, which received a total of three reminders from researchers.

⁽¹⁴⁾ In both cases, a total of 78 questionnaires were returned. Answers were received from nearly all Member States, but the proportion of answers from each country varied considerably. Generally there were more answers from countries with the largest Roma communities.

⁽¹⁵⁾ Questions evaluated satisfaction with the content of key areas addressed by strategies, as well as the transparency of the strategy framing process and the various options for becoming involved.

than two⁽¹⁶⁾. Thus, for most respondents the NRISs have yet to show signs of success or convincing political will. These strong negative views may well help to explain the very low response rate.

4.4.3 Overall the study shows that apart from a serious lack of information and general dissatisfaction, there is also widespread frustration and distrust among spokespersons for the Roma community, civil society organisations, and their representatives, who feel that NRISs have not met the growing expectations of the Roma or their sincere hope that the strategy could make a real contribution to significantly improved social integration. Low response and satisfaction levels show that, despite the declared intentions, there has been a failure to sufficiently involve the relevant organisations or to develop effective mechanisms ensuring involvement. At the same time, due (in some cases) to centuries of discrimination and segregation, current processes have failed to inspire sufficient trust among representatives of those concerned.

4.4.4 To a large extent, these research findings confirm and support the recommendations set out in the EESC's exploratory opinion in relation to stepping up civil society involvement.

5. General considerations

5.1 EU institutions and bodies have made considerable efforts and sacrifices over the last few years to help improve social integration of the Roma, while combating their exclusion and widespread exposure to extreme poverty, and supporting their inclusion as fully-fledged European and national citizens in political, economic and social life.

5.2 However, so far these efforts have at best achieved very limited results. Analyses of the NRISs consistently show that they are certainly necessary, but far from sufficient, as a result of which those concerned are ill-informed and suspicious; at the same time most of them are unhappy with the objectives and the prospects for achieving them. This is why adoption of strategic programmes should be seen as the beginning of the inclusion process rather than its outcome.

5.3 The main thrust of our proposals is to develop institutional mechanisms at both national (and also internally, at local and regional level) and EU level, based on broad agreement in principle and political consensus. These mechanisms must be taken account of, not least in various policy areas; they must also be transparent, evidence-based, conducive to achieving the desired effects in a rationally comprehensible and predictable manner, and capable of ensuring broad social involvement, particularly of the Roma and the social factors favouring them.

5.4 Although most strategies have set appropriate objectives, we need to take into account the fact that the instruments and resources available for achieving such objectives appear insufficient to compensate for the continuing negative impact of discrimination and exclusion on the lives and prospects of those concerned. This is all the more so during an economic and social crisis. Inevitably, as research has shown, the crisis has especially affected the most vulnerable social groups, excluded to an extent which deprives them of any residual quality of life or social prospects.

5.5 Policy recommendations

5.5.1 There is a serious risk of failure to benefit from the positive political attitudes to the Roma in the EU; instead, we could once again be facing a setback, which would have serious consequences. The Committee therefore attaches particular importance to monitoring and reviewing government policies with regard to the NRISs to ensure that the possible negative or even harmful effects of such strategies do not outweigh their intended benefits. Effective mechanisms must be put in place to coordinate and adjust policies.

5.5.2 An analysis of NRISs shows that there are worrying discrepancies between, on the one hand, the declared political will to overcome discrimination and social exclusion of the Roma, and on the other the effectiveness of the instruments, resources and mechanisms put in place. The Committee would like to see more determined resistance to using the issue for political ends than has hitherto been the case.

5.6 Anti-discrimination policies and communication

5.6.1 The Committee feels it is very important for the NRISs to follow an explicit rights-based approach in order to ensure that citizens of Member States can fully enjoy their fundamental rights enshrined in EU law and international treaties and conventions on human rights.

5.6.2 Combating discrimination should be a priority in all areas of public life. The Committee recommends that the EU and the Member States should focus their anti-discrimination policies more strongly on identifying cases of discrimination and punishing them in line with European legal traditions.

5.6.3 The human rights of Roma migrants must be defended and exercised, not least in terms of rights to education and appropriate healthcare. Instead of expulsion policies, a more balanced approach should be adopted to integrating Roma migrants as EU citizens from EU Member States.

⁽¹⁶⁾ For different questions, averages ranged from 1.6 to 2.7.

5.6.4 Special efforts are needed to ensure that acceptance of the Roma in the media, in education, and other areas of public life becomes common practice. Programmes should be launched to raise awareness of Roma history and culture, at the same time as reminding people of the problems faced by the Roma due to discrimination and exclusion. It is vital for the Roma themselves to be involved in the process of raising social awareness.

5.6.5 All cases of racism and xenophobia must be identified, with legal sanctions where applicable. In this respect, opinion leaders, the political and media elite in particular, have a special responsibility to bear.

5.6.6 We need to avoid perceiving the Roma as a criminal ethnic minority and talking about them in association with negative social phenomena (crime, anti-social behaviour, etc.); such attitudes should be stamped out. In this respect, particular efforts are needed in the areas of criminal justice and the media.

5.6.7 The EESC feels that a positive approach to the social system of the Roma should become more widespread. The Committee recommends that EU institutions and networks, rather than depicting Roma individuals and communities exclusively within a difficult social context and as a cause of problems, should try to publicise successful individuals and communities who are proud to be Roma and set a good example of social integration and aspirations in Europe.

5.6.8 A decisive factor in implementing integration policies is ensuring that individuals have the strength, tools and authority to shape their own destinies. This is why the policy as a whole, together with its individual areas of action, must help enable those concerned to decide on their own destinies, within the constraints of the rule of law, while ensuring that the majority accepts this development on the basis of shared interests.

5.7 Involvement

5.7.1 The Committee emphasises that civil society cannot merely play a passive, decorative role in the NRIS process; rather, it must become an active agent.

5.7.2 The Committee supports the European Commission's planned network of national Roma contact points, but emphasises that the network only makes sense if it has the requisite powers and resources, especially funding. These contact points must operate on the basis of close, institutionalised cooperation with civil society organisations.

5.7.3 The European Roma Platform must be involved in evaluating strategic programmes. In view of this, its activities should be stepped up.

5.7.4 Organised civil society, including Roma organisations and lobbies, must be fully involved throughout NRIS processes (planning, implementation, monitoring and evaluation), not just at national level, but also at regional and local level. This approach must be applied at all decision-making levels, with established operational processes in terms of fora for consultation, transparency, tools and resources.

5.7.5 The Committee emphasises the need for social empowerment of those considering themselves members of any Roma community and for policies promoting their social inclusion. To this end, a support system must be put in place.

5.8 Monitoring and evaluation

5.8.1 Given that monitoring and evaluation are either overlooked or insufficiently integrated into most NRISs, the Committee recommends that all Member States remedy their programmes in this respect, decide on the relevant organisational identities and institutional processes, and identify indicators for particular objectives, together with evaluation methodology, sources of information, etc.

5.8.2 It is vital to review NRISs and constantly monitor them, not least in order to establish whether they set out comprehensive and coherent policies in all five priority areas of the Strategic Framework, whether they address shortcomings in existing frameworks, and whether they put in place appropriate action programmes and adequate funding.

5.8.3 Member States need to ensure that NRISs are in step with national, regional and local development policies, and to enable unplanned negative impacts of these policies on NRIS objectives to be overcome or mitigated.

5.8.4 The Committee recommends that the European Commission establish a network of independent experts in each Member State in order to ensure sound evaluation of the NRISs. Member States must also allocate funding for EU monitoring and (independent) evaluation by civil society organisations, for example under the operational programmes. Monitoring and evaluation activities must certainly be taken account of in programme funding.

5.8.5 The Committee suggests that national statistical offices, under the coordination of Eurostat, develop the indicators required for evidence-based monitoring of Roma strategies, and establish a standardised statistical method for such defining indicators.

5.9 Resources

5.9.1 The Committee emphasises that adequate funding from separate budget headings must be provided, in line with the objectives set out in policy documents.

5.9.2 It is the most vulnerable who are hardest hit by the crisis. In order to meet Europe 2020 strategy objectives, adjustments have to be made, in terms of resource policy and of adapting priorities to the situation. However, these adjustments must be decided on the basis of a transparent process ensuring consensus with representatives of those concerned.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

484TH PLENARY SESSION HELD ON 14 AND 15 NOVEMBER 2012

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers'

COM(2012) 206 final — 2012/0102 (CNS)

(2013/C 11/06)

Rapporteur: **Mr PÁLENÍK**

On 24 May 2012, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 113 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers

COM(2012) 206 final — 2012/0102 (CNS).

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 2 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 116 votes to none, with 18 abstentions.

1. Summary of the EESC's conclusions and recommendations

1.1 On 10 May 2012, the Commission presented its Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers. The aim is to subject vouchers to comprehensive, neutral and transparent taxation.

1.2 The Commission wishes to introduce common rules to prevent double taxation and tax avoidance. It is convinced that maintaining the current state of affairs will increase imbalances in the single market, leading to distortion of competition as a result of conditions not being the same for all participants in that market.

1.3 In recent times, in particular, there has been a substantial rise in the use of vouchers. Their various applications and uses

give rise to ambiguity when it comes to tax liability. The clearest possible rules therefore need to be set out for all Member States in order to avoid imbalances in the single market.

1.4 The EESC welcomes the endeavour to define the various forms of vouchers as precisely as possible. The aim here is to prevent attempts at tax avoidance when they are used. At the same time, the rules will ensure that issuers of vouchers will not be at a disadvantage compared with their competitors.

1.5 The EESC particularly welcomes the Commission's endeavour to do away with excessive administrative burdens in the distribution of multi-purpose vouchers, where only the redeemer should pay tax since only the redeemer knows when and how the voucher was used.

1.6 There will be no added value in defining the rules for tax obligations relating to the treatment of vouchers unless all Member States respect those rules. For this reason, it is essential that they abide by common rules and remove various exemptions that distort competition and dilute the competitive environment.

1.7 The Commission is seeking to change the VAT directive as it applies to vouchers because of the expansion in telecommunications services, with prepaid phone credits accounting for a large part of the total volume of vouchers.

1.8 The EESC would like to draw attention to a number of issues that need to be resolved before the directive comes into force. These mainly involve possible problems with different tax exemption limits in individual Member States when vouchers are given for free, the lack of transitional provisions and the absence of rules to cover the non-redemption of single-purpose vouchers.

2. Main elements and background to the opinion

2.1 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax lays down rules on the time and place of supply of goods and services, the taxable amount, the chargeability of value added tax (VAT) and the entitlement to deduction. However, these rules are not enough to ensure consistency in all aspects of voucher taxation. The result is market imbalances serious enough to impact adversely on the proper functioning of the single market.

2.2 The uncoordinated approach that currently prevails between Member States gives rise to significant market imbalances and these must be removed. For this reason, the Commission proposes introducing common rules to ensure certain and uniform treatment, to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance in relation to vouchers.

2.3 Vouchers have a variety of characteristics, which makes them problematic in terms of taxation. It is therefore necessary to distinguish between their various types and establish clear rules by which this will be done.

2.4 The aim of the directive is to distinguish payment instruments from vouchers and to define the latter, which can have physical or electronic forms depending on their use. Obligations on the issuer of vouchers are also specified.

2.5 A voucher is a right to receive goods or services or to receive a discount. However, these rights are often transferred from person to person without being redeemed. To avoid the risk of double taxation, were the service represented by such a

right to be taxed, it is necessary to establish that the assignment of this right and the redemption of goods or services should be regarded as one single transaction.

2.6 To ensure neutrality, the tax obligation should relate to a single transaction for goods or services supplied in return for the voucher.

2.7 The directive provides for vouchers issued by travel agents to be taxed in the Member State in which the travel agent is established. To counter possible attempts to shift the place of taxation, goods or services supplied using these vouchers are also subject to this provision.

2.8 Where vouchers pass through a distribution network, the Commission proposes that the end value be established on issue, which means that the level of VAT remains unchanged throughout the distribution process of multi-purpose vouchers.

2.9 If vouchers are distributed by a taxable person acting in his own name but on behalf of another person, the taxable person would be deemed to have received and supplied the vouchers himself. Should the distribution involve multi-purpose vouchers where taxation takes place only once the voucher is redeemed, that would result in adjustments to all stages of the distribution chain, generating little or no new tax revenue. In order to avoid excessive administrative burdens, a taxable person distributing such vouchers should not be seen as having received and supplied the voucher himself.

2.10 The Commission defines the taxation of multi-purpose vouchers when distributed. Where the distributor makes a profit by selling to another distributor, the service of distribution should be taxed based on the distributor's margin.

2.11 The proposal for a directive envisages abolishing all exemptions claimed by Member States relating to taxation of the supply of goods or services across borders. This provision would put a stop to the possibility of double taxation or non-taxation.

2.12 The Commission divides vouchers into single-purpose and multi-purpose vouchers depending on use. Single-purpose vouchers represent the right to receive a supply of goods or services where the place of supply and the amount received for the voucher is known. In the case of single-purpose vouchers, VAT is payable on the amount received for the voucher, even if payment was made before the supply of the goods or service. In the case of multi-purpose vouchers, tax liability is incurred only when the voucher is redeemed.

2.13 Where vouchers provide a discount on the supply of goods or services, the Commission determines this to mean that the supplier has provided a service to the issuer of the voucher if it is redeemed.

2.14 Where a reduction in the price of the goods and services is granted in return for a voucher, the reimbursement received by the redeemer from the issuer of the voucher constitutes the taxable amount of the promotional service provided by the redeemer to the issuer.

2.15 In the case of multi-purpose vouchers only the redeemer of the voucher knows what has been supplied, when and where. To ensure that VAT is paid, the redeemer alone should be liable for payment of VAT to the tax authorities on the goods or services supplied.

2.16 The Commission addresses the matter of ensuring the correct application and collection of the VAT due where vouchers are distributed across borders, if this distribution creates a separate service distinct from the goods or services being acquired for the voucher.

2.17 Since the simplification, harmonisation and modernisation of the value added tax rules applying to vouchers cannot be achieved by the Member States alone, the Commission has proposed this directive at Union level in accordance with Article 5 of the Treaty on European Union.

3. General observations

3.1 The EESC welcomes the Commission's attempt at a simplification, harmonisation and modernisation of the value added tax rules in the single market. As things stand, when Member States address taxation in relation to vouchers on their own, double taxation or tax avoidance occurs, distorting the single market.

3.2 The EESC welcomes the Commission's approach in expanding the VAT directive as regards the treatment of vouchers. However, it urges the Commission in the near future to also examine other – by no means negligible – markets in goods and services, such as transport, smartphones, the internet and social networks.

3.3 Changes to the directive do not address the problem of coupons, which are used in a similar way to vouchers. If the rules are changed only for vouchers, a growth can be expected in the use of instruments that are similar in nature but for which there are no clearly defined rules. It would be expedient, therefore, to add the concept of "coupon" to the directive and lay down the rules for dealing with coupons.

3.4 The directive is being amended primarily because of the growth in the use of vouchers in telecommunications, which accounts for most of their market. The EESC recommends that the Commission carefully define the use of telephone vouchers, since modern technologies make their potential uses very broad.

3.5 The EESC agrees with expanding the directive to cover VAT in relation to vouchers. Neither the Sixth VAT Directive ⁽¹⁾ nor the VAT Directive ⁽²⁾ provides for rules on the treatment of transactions involving vouchers. As a result, problems arise with the taxable amount or the time or place of the transaction. In the case of crossborder distribution of vouchers, there has been uncertainty surrounding transactions and difficulties of interpretation for both issuers and distributors of vouchers.

3.6 The common VAT rules were adopted in 1977 and the single market now has to deal with a number of changes that have emerged over time as a result of new ways of doing business. For this reason, it is essential that the VAT rules are updated in line with changes in the way market operators are behaving. Vouchers and how they are taxed is one of the changes that were not foreseen in the past and now have to be covered in the rules.

3.7 Establishing clear rules will resolve several questions facing the Court of Justice of the European Union. The Court has issued a number of partial guidelines on this matter, but these have not addressed the issue in its entirety. The EESC therefore welcomes the laying down of conditions regarding VAT in relation to vouchers that establish clear rules for business and eradicate both double taxation and non-taxation.

3.8 The EESC welcomes the defining of single-purpose, multi-purpose and discount vouchers, which clarifies the rules that market operators must observe in what is a very broad area.

4. Specific comments

4.1 The EESC welcomes the distinction made between payment services and vouchers. It also welcomes the distinction established in Article 30a of the proposal for a directive between single-purpose, multi-purpose and discount vouchers. This amplification means that the various types of voucher are now defined.

4.2 A maximum period should be established for redemption of the voucher by the consumer, since without this problems arise with reimbursing VAT if tax rates change.

⁽¹⁾ Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1) ("Sixth VAT Directive").

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1) ("the VAT Directive"), replacing the Sixth VAT Directive as from 1 January 2007.

4.3 The defining in Article 30b of a single transaction as the provision of a voucher that bears a right to a supply of goods or services and the subsequent supply of these goods or services is to be welcomed and simplifies the fulfilment of tax obligations. This article should also be linked to Article 74c.

4.4 Article 65, which defines both when VAT becomes chargeable and the taxable amount, substantially simplifies the use of single-purpose vouchers.

4.5 The procedure needs to be specified for single-purpose vouchers. Single-purpose vouchers are taxed at the time of their sale. If, however, a single-purpose voucher is not redeemed then, as a decision of the Court of Justice has confirmed, there is no right here to recover tax from the issuer of the voucher. However, the issuer has already paid VAT.

4.6 Greater detail is needed for the procedure to be followed in the case of multi-purpose vouchers where the distributor's margin is non-existent or negative and where some Member States have different taxable bases or zero rating – for pharmaceutical products, for example.

4.7 The Commission lays down that in so far as the goods or services supplied upon redemption of a voucher are taxed, the taxable person is entitled to deduct the VAT incurred on expenditure in relation to the issue of the voucher. It should be clarified that this cost of VAT is deductible even if those goods or services are supplied by someone other than the issuer of the voucher.

4.8 The EESC sees potential problems in paragraphs 1 and 2 of Article 74a, where complications may arise in the case of multi-purpose vouchers used across borders. It could be difficult to quantify the taxable amount and the nominal value of the transaction in relation to different VAT rates in the countries in which vouchers are used.

4.9 The EESC also sees another problem regarding the transition arrangements needed when introducing uniform tax rules for vouchers – especially the duration of such arrangements, since many multi-purpose vouchers have a lengthy redemption period.

4.10 An excessive administrative burden may arise where parts of a transaction are effected in different Member States. One example would be the partial consumption of telecommunication service credits in different Member States.

4.11 A number of questions also arise when vouchers are given away as a means of promoting goods or services. In this case, they are often not redeemed or are redeemed without the knowledge of the issuer, which then makes taxation difficult.

4.12 As matters stand, several Member States have limits up to which various promotional vouchers for goods or services for companies are exempted. These limits vary widely because of differences in the economic strength and size of markets in the Member States. These countries would have to remove these exemptions in order to prevent distortions in the single market. This would put a stop to possible speculation by companies seeking to optimise their tax liability by producing and distributing promotional vouchers in countries that have tax exemption limits for such vouchers. While a limit can be retained, it should be made the same for everyone and should probably be restricted to vouchers, since a general limit for promotional materials would create problems.

4.13 The EESC expects that the introduction of common rules in all Member States and the eradication of opportunities for tax evasion will increase VAT collection from vouchers and hence the tax revenue of the Member States and will reinforce the scope, neutrality and transparency of this form of taxation. The change to the directive will thus have an impact on the European Union budget which – although this is very difficult to quantify – the EESC expects to be positive.

4.14 There has been substantial increase, in recent years in particular, in the use of vouchers – or discount vouchers – for goods or services. The types and uses of these vouchers are constantly expanding and this will undoubtedly continue. It must therefore be assumed that new rules will be needed for new types of vouchers that will not have a clearly defined use.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud’

COM(2012) 428 final — 2012/0205 (CNS)

(2013/C 11/07)

Rapporteur-General: **Mr PÁLENÍK**

On 5 September 2012, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 113 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud

COM(2012) 428 final — 2012/0205 (CNS).

On 17 September 2012, the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed **Mr PÁLENÍK** as rapporteur-general at its 484th plenary session, held on 14 and 15 November 2012 (meeting of 15 November 2012), and adopted the following opinion by 112 votes to none with two abstentions.

1. Conclusions and recommendations

1.1 This opinion of the European Economic and Social Committee (EESC) has been drafted with regard to a proposal for a Council directive that would introduce a Quick Reaction Mechanism (QRM) to enable the Member States to combat value-added tax (VAT) fraud more effectively, above all by reducing the time needed to introduce a derogation relating to determining those required to pay VAT. The measure also eliminates the risk that national measures to combat VAT fraud could be introduced that would have no legal base in European legislation.

1.2 The EESC supports the aim of the proposal – namely to make the fight against tax fraud more effective – and thinks the way put forward is an advance on the current legal situation. On the other hand, the EESC points in this opinion to a number of shortcomings in the proposal and sets out observations and alternative proposals that could help to improve the *status quo* in the future.

1.3 VAT fraud is an extremely damaging practice that diverts substantial amounts of Member State budget revenues and so counters their efforts to consolidate public finances. Forms of VAT fraud evolve relatively rapidly, so legislation to help wipe out these activities needs to be developed as effectively as possible.

1.4 The EESC is pleased that the proposal for a directive enables Member States to react flexibly to fraud in a particular

sector and almost immediately introduce measures to prevent potential loss of tax revenue. Cutting the time needed for granting derogations from the common VAT system contributes to the fight against tax fraud and tax evasion.

1.5 The EESC does have some concerns regarding the introduction of a derogation from the examination procedure enshrined in Article 3(5) of Regulation (EU) No 182/2011, especially since the proposed procedure makes it practically impossible for a Member State’s application for a derogation from the common VAT system to be discussed by experts at a meeting of the committee.

1.6 Regarding the need to effectively combat VAT fraud, whose forms evolve relatively rapidly, the EESC proposes also enlisting the technical know-how of expert practitioners – many of whom can be found in organised civil society – when further effective measures are being conceived and sought. Meetings of expert groups are needed at which the matter can be discussed in the broadest possible terms.

1.7 Since VAT fraud is a sophisticated international criminal activity that is detrimental to public finances, the EESC points to the need for effective collaboration between Member State tax authorities in pursuit of its elimination. It would therefore welcome a greater effort by the European institutions to organise activities that would make a positive contribution to this collaboration.

2. Rationale

2.1 In the present difficult period, in which all European Union (EU) countries are making substantial efforts in an attempt at effective consolidation of public finances, the European Economic and Social Committee welcomes any initiative that can assist with those efforts, on the revenue as well as the expenditure side of public budgets. With this proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, the European Commission aims to improve the effectiveness of the fight against tax fraud and evasion, thus assisting consolidation on the revenue side.

2.2 The economy of the European Union is facing the most difficult period since its creation, and effective taxation is currently a particularly important element of the attempt at accelerated consolidation of the public finances of the Member States.

2.3 According to the Annual Growth Survey 2012, determined fiscal consolidation is the way to produce results and is of fundamental importance for the restoration of macro-financial stability, which is the basis for growth and for securing the future of the European social model. Improving the effectiveness of tax collection and combating tax evasion will help increase the revenues in the state budgets of several Member States. More effective application of the rules related to all types of tax could also help in this respect.

2.4 According to Annex IV to COM(2011) 815 final, tax coordination, which relates mainly to cross-border operations, can make the EU single market more efficient. That claim is based on the assumption that most of the remaining barriers to the single market arise from the absence of coordination of tax policy. The introduction of the Quick Reaction Mechanism could partially remove such differences, although the EESC points out that the application of the QRM could also lead to considerable harm in relation to the tax receipts of some Member States.

2.5 One of the main tax-related challenges currently facing the EU Member States is the fight against tax fraud and evasion. Effective measures to combat tax fraud and evasion can improve tax collection and can play an important role in increasing tax receipts, with better collection of VAT being one of the possible fiscal consolidation measures.

2.6 Europol estimates that VAT fraud and evasion linked to greenhouse gas emission allowances caused a loss of around EUR 5 billion to the budgets of several EU Member States in 2008 and 2009. According to Rob Wainwright, the director of Europol, "[o]rganised VAT fraud remains a significant criminal activity in Europe. It is responsible for draining huge resources from central government revenues and undermining the objective of transforming Europe into a competitive and greener economy."

2.7 The Green Paper on the future of VAT concluded that in 2006, the VAT collection gap represented 12 % of theoretical VAT receipts, while in some Member States the estimated losses were above 20 %. Part of that gap is attributable to fraud that takes advantage of deficiencies in the current system, particularly the possibility of VAT-free cross-border purchases of goods and services. An effective mechanism allowing for the elimination of tax fraud would provide a way to combat the huge economic damage done by such activities and would help with consolidation of the public finances.

2.8 The special measures adopted under Article 395a will make the fight against value-added tax fraud and evasion more operational and effective, since they will take account of the specificities of the applicant country's VAT system and administration. Such measures will help create an effective system to seek out and detect new forms of tax fraud and evasion. However, there is cause for concern about the possible loss of significant Member State powers in the field of taxation.

2.9 On the basis of information gathered through the process of granting derogations from the directive on the common system of VAT (the directive), the Commission will obtain important practical information and ideas "from below" that will allow it to further improve the directive. Such information will be used to get rid of weaknesses and outdated provisions, and to update obsolete parts of the directive.

3. General comments

3.1 The proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax extends the Commission's powers in relation to granting derogations to prevent VAT fraud. Such fraud causes major budgetary losses and disrupts competition and the operation of the single market. The EESC welcomes any attempt to make the single market work better and to make the fight against tax fraud and evasion more effective.

3.2 The EESC notes that under the second subparagraph of Article 395(1) of Directive 2006/112/EC, measures intended to simplify the procedure for collecting VAT may not, except to a negligible extent, affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption. In the context of the proposal, the EESC is concerned that the impact of applications on the overall amount of tax collected by Member States will not be adequately examined.

3.3 The EESC welcomes the effect that the proposal will have on the duration of the approval process for special measures applied by a Member State to combat tax fraud and evasion, which will increase the likelihood that such activities will be tackled effectively.

3.4 Since VAT fraud primarily occurs in relation to cross-border trade (so-called carousel and missing trader fraud), the possibility of taking effective action by applying derogations in a single Member State will be very limited, and further coordination of procedures by the tax authorities of the Member States will be necessary.

3.5 The EESC also points out that the powers which the Commission would take on under this proposal are highly specialised and complex. It notes that people with professional expertise, particularly from practice, should be at the heart of the group involved in future proposals for measures that would be subject to the procedure set out in the proposed new articles of the directive. Organised civil society offers a good source of such expert practitioners.

4. Specific comments

4.1 In its current form, the proposal only allows accelerated approval (within one month) of special measures derogating from Directive 2006/112/EC in cases where the Member State requests a derogation in respect to the designation of the recipient as the person liable to pay VAT on specific supplies of goods and services by derogation from Article 193 (which currently appears to be an effective tool for combating fraud), whereas in other cases unanimous agreement in the Council is required, which may considerably weaken the effort to combat VAT fraud effectively. The EESC also points out that fraudsters now work effectively together, so it would be expedient for the tax and police authorities of a number of countries to be informed about and involved in the granting of derogations under the proposed new articles of the directive. This applies particularly to countries to which illegal activities might be transferred following the granting of a derogation.

4.2 The EESC also proposes that the approval process in the committee under Article 395b(2) and (3) should not rule out the possibility for a member of the committee to request the

termination of the written procedure without result, mainly to ensure the effective protection of that member's legitimate interests, which may be harmed by another Member State's request for authorisation of special measures. Another way of dealing with that deficiency would be to introduce a mechanism involving further confirmation of the special measure by the Council of Ministers, under which the measure would cease to apply if not approved.

4.3 By introducing the QRM, the proposal for a directive will significantly shorten the time needed for approval of special measures to combat tax fraud and evasion, from the eight months that could previously have been required for a positive proposal from the Commission followed by unanimous approval in the Council down to one month, with the power of approval being transferred to the Commission. The EESC expresses its support for this acceleration as a way of improving the fight against tax fraud. However, Member States must have the opportunity, if necessary, to have a draft application for derogation discussed in advance in the advisory committee and so forestall possible proceedings before the European Court of Justice.

4.4 The EESC considers that "appropriate control measures by the Member States" are not defined sufficiently clearly in Article 395a(1) of the proposal. It therefore proposes that the Council remove that discrepancy, as well as expanding their scope to cover the measures referred to in Article 395a(1)(b) of the proposal.

4.5 Where a derogation granted on the basis of the procedure set out in Article 395 proves, during its period of validity, to be effective in combating tax fraud and evasion, the EESC proposes that a mechanism be introduced by which this measure could be applied – as a way of disseminating best practices – to other Member States through a simplified procedure similar to that in the proposal under discussion.

Brussels, 15 November 2012.

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 (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No .../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions'

COM(2012) 512 final — 2012/0244 (COD)

and the 'Communication from the Commission to the European Parliament and the Council — A Roadmap towards a Banking Union'

COM(2012) 510 final

(2013/C 11/08)

Rapporteur-General: **Mr Trias PINTÓ**

On 12 September 2012 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 — A Roadmap towards a Banking Union

COM(2012) 510 final

On 27 September and 22 October 2012 respectively, the Council and the European Parliament 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 Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No .../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

COM(2012) 512 final — 2012/0244 (COD).

On 17 September 2012 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr TRIAS PINTÓ as rapporteur-general at its 484th plenary session, held on 14 and 15 November 2012 (meeting of 15 November), and adopted the following opinion by 194 votes to 15 with 22 abstentions.

1. Conclusions and recommendations

1.1 The EESC agrees with the Commission's view that, while essential, the broad regulatory programme of financial reforms undertaken prior to the present "Banking Union Package" will not be sufficient to tackle the crisis and stabilise Economic and Monetary Union (EMU) ⁽¹⁾, restore confidence in the euro and in the future of the EU, to improve governance, or to curtail the increasing fragmentation of EU banking markets. Consequently, the EESC considers the package of measures set out in the roadmap COM(2012) 510 and in the two legislative acts COM(2012) 511 and COM(2012) 512, the second of which is also covered by the present opinion, to be appropriate.

1.2 The EESC pays tribute to the painstaking work carried out by the Commission and supports its call for the measures to be adopted before the end of 2012, and that they should be drawn up with careful attention to the effects on banking and national economies. It is crucial that the Member State governments have the breadth of vision to **create more and better Europe**, handing over some powers and ensuring that they can be applied by means of high-quality, supervision and more integration, with a view to achieving effective European governance that is socially useful and economically efficient.

1.3 Both the urgency and the insufficiency of these measures stem from the fact that the costs far outstrip the EUR 4 500 billion of taxpayers' money that has so far gone to rescuing banks in the EU. The financial crisis has triggered the worst

⁽¹⁾ Eight regulations, directives or recommendations already adopted by the EU, fourteen more at the co-decision stage, and another proposed prior to the present Banking Union Package: http://ec.europa.eu/internal_market/finances/policy/map_reform_en.htm.

world recession since the Great Depression, principally in the euro zone, where the absolute need to restore confidence in the euro and the governance of its institutions is consequently all the more pressing. New and stricter rules will offer security to people and markets, although the questioning of the current rules, the vagueness of the new ones and the delay in applying them may give rise to increased uncertainty. For this reason, the time for adjustment given to institutions upholding the euro must also be short and clearly defined.

1.4 More specifically, the EESC urges rapid agreement on the entry into force of the Single Supervisory Mechanism (SSM). This means starting with unification as early as 2013 without at this point setting uncertain goals, as the basic initial objective is to save the euro while minimising the costs for tax payers of possible restructuring measures or closures, by ensuring sufficient funds are in place in advance and that the costs are borne by shareholders and creditors.

1.5 The EESC warmly welcomes the fact that the ECB will from the beginning have a supervisory board to avoid potential conflicts of interest with its monetary functions.

1.6 The EESC supports the ECB taking on responsibility for supervising all banks in the banking union, however small, especially the consolidated accounts of cross-border transactions, and for applying the single rulebook to them. It is also glad to see the ECB being assigned the tasks, powers and resources that are essential for it to ensure the detection of risks threatening banks' viability and to require them to take the necessary remedial action, with national supervisors being actively involved in the SSM. Similarly, it is right that national supervisors should remain in charge of consumer protection, although the Commission's proposal does not address the issue of how to deal with possible conflicts of interest between the European level of prudential supervision and the powers conferred upon the national authorities.

1.7 Regarding macroprudential policies, the EESC advocates a stronger role for the European Systemic Risk Board (ESRB) and the ECB as part of a more integrated financial system, and urges the Commission to provide more practical details on how the national authorities and the ECB are to interact.

1.8 The EESC welcomes the idea of promoting the involvement of non-euro area countries using the "opt-in" clause, with the same rights as euro area countries, via more straightforward and attractive procedures, without infringing the TFEU.

1.9 The EESC considers close connections between the European Banking Authority (EBA) and the ECB to be crucial, realising that some overlap of functions will occur during the

initial phase. Where decision-making is concerned, the review of voting modalities by amending the EBA Regulation and the greater decision-making powers of the independent panel needs further analysis and consideration to balance the internal market banking interests of Member States not belonging to the SSM (in line with the European Council conclusions on completing EMU adopted on 18 October 2012), while avoiding the risk of euro area integration being paralysed by minority blocking votes. It is important to avoid a two-tier market in financial services, which is why the EESC has raised the issue.

1.10 Similarly, the ECB, the ESRB and the new European financial supervisory authorities, including the independent panel, should involve civil society organisations in their work, especially consumer bodies and trade unions ⁽²⁾, retaining their complete independence, transparency and resistance to political pressure.

1.11 The rate at which the supervision of credit institutions is shifted and the relevant changes made at the European Banking Authority (EBA) – whose role must focus on ensuring consistent, harmonised regulatory rules and technical standards, in order to extend them across the EU – are factors just as crucial as stricter prudential requirements for banks ⁽³⁾, measures to strengthen the common system for deposit protection ⁽⁴⁾, and integrated crisis management with bank rescue and resolution tools ⁽⁵⁾ in order to strengthen the sector in Europe and avoid any future spill-over effects, especially those arising from the greater risk taken on by investment bank clients. The EESC strongly urges the Commission to set specific functional and time objectives for this single rulebook.

1.12 The EESC urges the Commission to put forward a calendar and details for the SSR ⁽⁶⁾, as well as for any other relevant stages that need to be accomplished, such as the management of possible crisis situations in shared supervision plans. The **banking union** would thus gain credibility and serve as a common foundation for the entire single market. This would prevent relatively small bank failures causing cross-border systemic damage or loss of confidence that could trigger bank runs across borders and weaken national banking systems. We are convinced that the single resolution mechanism could subsequently take on additional coordination tasks in the management of crisis situations. Supervision and resolution must however go hand-in-hand in order to prevent possible decisions to wind up a bank at European level, and the cost of paying deposits, becoming the responsibility of the Member State.

⁽²⁾ See EESC opinion on *How to involve civil society in financial regulation* – OJ C 143, 22.5.2012, p. 3.

⁽³⁾ http://ec.europa.eu/internal_market/bank/regcapital/new_proposals_en.htm.

⁽⁴⁾ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:068:0003:0007:EN:PDF>.

⁽⁵⁾ http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm.

⁽⁶⁾ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131201.pdf.

1.13 The EESC urges the other European institutions to comply with the basic principles that must underpin all secondary regulation and other *acquis*, relying on the strength of law and not of power. Restoring compliance is increasingly urgent in the euro zone in order to provide assistance to the banking union from the fiscal union by means of a common mechanism for issuing debt and another mechanism for fiscal transfers in order to counter cycles generating asymmetric shocks such as those experienced most strongly by the countries of the euro zone in the last few years. The SSM could be financed by supervision charges levied on banks, reflecting the risk profile of the body to be supervised. The EESC considers that the Commission should draw up a green or white paper on how to finance the banking union in a harmonised manner, so it will be in a position to decide on the taxes or levies on financial and banking transactions, which are necessary but currently generate fragmentation.

1.14 A banking union would represent a step towards the euro zone and the EU as a whole embarking on a virtuous cycle overcoming its design flaws and enabling the single market to regain competitiveness in order to meet the objectives of the Europe 2020 strategy. This would fend off the wave of financial innovation emerging from shadow banking stemming from Basel III, as pointed out in the most recent IMF reports. The EESC calls on the Commission to act more quickly to bring forward the new models for investment and commercial banking, since in many countries shadow banking tends to outstrip conventional, regulated banking.

1.15 The EESC recommends that the Commission and the European co-legislators convert this project into a tool for financial and digital inclusion. SSM executives must act responsibly and be subject to democratic control. They must appear regularly, or whenever asked, before the European Parliament to answer for their management. This would boost the political visibility of these issues and would help stimulate public support for the European institutions.

1.16 Lastly, the scope of the banking union should not be limited to the euro zone and the EU as a whole, but should project its cooperation and competitiveness objectives especially in external areas where the euro exerts influence, and towards the rest of the world.

2. Background and introduction

2.1 The banking authority set up by Regulation No EU No 1093/2010, based on the recommendations set out in the Larosi re report, began operating on 1 January 2011 with the aim of reforming the supervisory structure and creating an integrated European system comprising three authorities (for banks, the stock markets, and insurance and pension funds), together with the ESRB.

2.2 In parallel, consumer protection and confidence in financial services have been strengthened since July 2010 with deposit guarantee schemes for banks (MEMO/10/318), investor compensation schemes (MEMO/10/319) and insurance guarantee schemes (MEMO/10/320). Further, on 6 June 2012 the Commission announced new crisis management measures aimed at avoiding bank rescue operations in the future. The Commission had proposed this supervisory framework in its Communication *Driving European Recovery*, published on 4 March 2009, subsequently fleshing out the details of the new architecture in its Communication on *European Financial Supervision*, of 27 May 2009. Both were confirmed by the European Council of 19 June 2009, according to which the system should be geared to improving the quality and consistency of national supervision, strengthening supervision of cross-border groups, and establishing a single rulebook to be applied to all financial institutions in the internal market. It also stressed that the new European supervisory authorities should have authority over the rating agencies (with Regulations (EC) No 1060/2009 and (EU) 513/2011 being amended accordingly).

2.3 This arduous regulatory process has culminated in the communication *A Roadmap towards a Banking Union*, in which the Commission proposes laying down the foundations of a **common, high level of prudential regulation** for all banks and financial bodies for the EU as a whole, bringing together tools for supervision, resolution and deposit guarantees under the umbrella of a single rulebook.

2.4 To this end, it calls for **five key actions** to be agreed before the end of 2012. Three of these are **legislative proposals on which the EESC has already issued or is preparing opinions**: ensuring that capital requirements for banks are applied (CRD IV) ⁽⁷⁾, the Directive on deposit guarantee schemes, and the Directive on bank recovery and resolution. **A further two, together with the roadmap, are covered by the present opinion**: a new Regulation conferring prudential supervision of banks on the ECB, and an amendment to Regulation (EU) No 1093/2010 establishing the European Banking Authority (EBA). This is needed for better coordination between the Authority and the future single supervisor, and in order to balance decision-making between SSM member and non-member countries so as to safeguard the integrity of the single market. Among these five actions, the Commission advocates a single resolution mechanism (SRM) and coordination of resolution tools.

2.5 This roadmap comes just as the financial integration model based on the euro has run out of steam as a result of the crisis that began in 2007. The achievements in the rapid integration of shares and bonds markets in Europe have been slow to come to the field of banking, more in the wholesale (interbank, securities, etc.) than in the retail markets of bank

⁽⁷⁾ http://ec.europa.eu/internal_market/bank/regcapital/new_proposals_en.htm.

loans and deposits. The crisis has however seen retailer markets affected by recent trends towards fragmentation and the ensuing renationalisation of wholesaler markets, spurred by the continuing national character of supervision, resolution structures and deposit guarantees⁽⁸⁾. Renationalisation of the debt markets has been particularly rapid.

2.6 Adjustments and austerity plans in the wake of the crisis, leading to falling GDP and employment, have been far greater in the euro zone. On 23 October 2011 the President of the Commission told European leaders that the EU had lost billions of euros worth of economic growth between 2007 and 2010 because of the crisis⁽⁹⁾.

2.7 According to the IMF, at the end of the 2010 nearly one-third of the public cost of bank rescues since the beginning of the crisis (1 800 billion out of 5 200 billion dollars) had been recovered in the United States and seven European countries. The rest could be recovered almost in full in coming years through taxes or other initiatives, unless prevented by the impact of a fresh recession triggered by a further debt-related bank crisis.

2.8 The roadmap sets firm dates for euro zone supervision to come into force⁽¹⁰⁾, but does not do so in full for the SSM or the SRM, although the Commission considers the former to be particularly important for stabilising the situation and as a pre-requisite for direct capitalisation of banks by the ESM.

2.9 Lastly, in order to complete the banking union process, it is essential to speed up and strengthen the initiatives the Commission currently has in hand: regulating the shadow banking system (IP/12/253); boosting the credibility of credit ratings (IP/11/1355); tightening up the rules on hedge funds (IP/09/669); short selling (IP/10/1126) and derivatives (IP/10/1125); halting irresponsible banking remuneration practices (IP/09/1120); and reforming the audit (IP/11/1480) and accounting (IP/11/1238) sectors. It is also crucial that the EESC's recommendations on abolishing tax havens⁽¹¹⁾ be taken on board.

⁽⁸⁾ See European Central Bank (ECB), *Financial Integration in Europe*, April 2012, and European Commission (EC), *European Financial Stability and Integration Report 2011*, April 2012, together with EFSIR 2010, May 2011.

⁽⁹⁾ http://ec.europa.eu/europe2020/pdf/barroso_european_council_23_October_2011_en.pdf.

⁽¹⁰⁾ 1 July 2013 for the most significant European systemically important banks, and 1 January 2014 for all others, meaning that on 1 January 2014 all banks in the euro zone will be subject to centralised supervision.

⁽¹¹⁾ See EESC opinion on *Tax and financial havens: a threat to the EU's internal market* (OJ C 229, 31.7.2012, p. 7).

3. General comments

3.1 The rising costs of the crisis in the EU⁽¹²⁾ have exacerbated imbalances and asymmetries between the various parties, leading to a loss of effectiveness on the part of policies that are enshrined in the treaties. This includes such important ones as monetary, trade, cohesion and sustainability policies, combined with the ensuing fragmentation of the financial and banking markets and the widening gap with the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth and better economic governance⁽¹³⁾. While a few countries have reduced their interest burden, the countries facing the worst financial and debt crises have seen their public expenditure on interest rise by a far larger amount and have had to cut public sector pay, pensions, education and health spending and investment in technical and social infrastructure⁽¹⁴⁾.

3.2 The necessary enhancement of democratic procedures must be compatible with the objective of a banking union to facilitate intermediation between savings and investment, the primordial function of banking, that brings with it control over technical efficiency and efficiency in resource allocation, contributing to the principles of EU law and touching upon the freedoms and interests of the general public as a whole.

3.3 Although numerous measures were taken from the onset of the crisis to prevent the loss of confidence in the financial institutions spreading to the public debt of the euro zone countries, this vicious circle has still not been broken. For financial institutions to resume their function of intermediation between savings and investment, economic theory advises the deployment of policies for positive, rather than negative, redistribution such as common mechanism for issuing debt or for fiscal transfers in order to counter cycles generating asymmetric shocks⁽¹⁵⁾.

3.4 According to the latest reports from the IMF and the World Bank, the tasks of promoting transparency and reducing risks affecting the world financial system are highly compatible with the efforts for financial and digital inclusion and to protect consumer rights that the EU has undertaken and has further strengthened with its Europe 2020 strategy.

3.5 Ultimately, a tightening up of democratic control must help to promote not only compliance with the treaties and with principles, but also to **bring the banking union into line with the Europe 2020 strategy**, which is vital for the future of our political project.

⁽¹²⁾ Douglas Elliott, Suzanne Salloy, André Oliveira Santos, *Assessing the Cost of Financial Regulation*, IMF.

⁽¹³⁾ http://ec.europa.eu/europe2020/index_en.htm.

⁽¹⁴⁾ IMF, *Safer Global Financial System Still Under Construction*, Global Financial Stability Report, 2012.

⁽¹⁵⁾ Enderlein et al., *Completing the Euro*, Report of the Tommaso Padoa-Schioppa Group, June 2012.

4. Specific comments

4.1 The EESC sees the **roadmap** proposed by the Commission to be a **proper contribution to European governance**, and agrees on the need for and the **urgency of the two new legislative acts**, as well as the forthcoming actions that have been announced, all of which are crucial to reversing the lack of confidence in the euro and in the future of the EU.

4.2 The primary aim of the SSM must be to bring about centralised supervision of banks that is more efficient than that carried out by the current network of national authorities; it should also ensure that it operates in line with the SRM, avoiding the political aspects arising from the decision to wind up a bank.

4.3 The many reasons which make the ECB the most appropriate body to centralise supervision include its network, its independence and the fact that it is covered by the TFEU, meaning reform of the Treaty is not needed to achieve high-quality supervision.

4.4 The EESC supports national supervisors retaining the powers to combat money laundering and terrorism, in keeping with Directive No 2005/60/EC⁽¹⁶⁾, and to supervise third country credit institutions. However, the Committee calls for the exclusion from the single resolution mechanism of countries that – for various reasons – fail to implement the directive scrupulously. Similarly, to facilitate the centralised supervision function, changes to the statutes of the relevant national central banks should be speeded up, ensuring that information is passed on unfiltered.

4.5 Regarding the newly-created bodies, voting arrangements must be adopted that exclude members who could be subject to a conflict of interests from voting. The independence and responsibility of people in senior positions must be underpinned by sanctions for those who fail to meet their obligations, given the harm that such failure causes to banks and to the proper functioning of the financial system, as well as to the economy, businesses and individuals.

4.6 The financial industry is reacting to the new regulatory framework by configuring new products that circumvent the new rules. In its most recent reports, the IMF warns of a new wave of financial innovation, in some cases similar to those that triggered the current crisis: the costs of centralised supervision must consequently reflect the risk profile of the various operators, so as not to place a burden on bodies that refrain from such practices.

4.7 The EESC therefore warns against the clear danger of an expansion of shadow banking in the EU, which would again run counter to both the functions of the financial sector and the principles, values and rights of EU citizens.

4.8 If it is to maximise its opportunities, the new European banking union should cooperate more closely with other existing or future unions in order to make the most of its financial institutions, especially with the most globalised ones, and particularly those that are closest and are already connected with or dependent on the euro (the euro is already directly or indirectly the currency of more than 50 countries).

Brussels, 15 November 2012.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

⁽¹⁶⁾ See also EESC opinions on money laundering: OJ C 75, 15.3.2000, p. 22, and OJ C 267, 27.10.2005, p. 30.

Opinion of the European Economic and Social Committee on the 'Green Paper — Shadow banking'

COM(2012) 102 final

(2013/C 11/09)

Rapporteur: **Mr MENDOZA CASTRO**

On 19 March 2012 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

Green Paper — Shadow banking

COM(2012) 102 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 25 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 15 November), the European Economic and Social Committee adopted the following opinion by 208 votes to 2 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Green Paper, which it considers to be a step in the right direction.

1.2 Although the financial system's need for liquidity - which, since before the financial crisis, has depended to a large extent on the shadow banking system - is unquestionable, the lesson to be drawn from the crisis is that the regulatory process should give priority to the stability of the financial system, which is indispensable.

1.3 In practice, governments, central banks and deposit guarantee schemes have had to deal with the losses caused by shadow banks, even though the law does not provide for them to do so.

1.4 Avoiding the risk of regulatory arbitrage must be one of the key objectives of the Green Paper.

1.5 The early Basel Accords were the driving force behind the development of shadow banking, because bank balance sheets were rigorously regulated while off balance sheet activities were not controlled. In the view of the EESC, the later Basel Accords, transposed by the EC into the CRD III and CRD IV directives will close these loopholes. In effect, there should be no such thing as "shadow" activities: the shadow banking system should be subject to the same regulatory and prudential requirements as the financial system as a whole.

1.6 The new rules should also have as an objective a high level of protection of European consumers.

1.7 The EESC emphasises the importance of coordinating global supervision and exchanging information.

1.8 The financial system in all its forms must serve the real economy, not speculation.

1.9 The EESC emphasises the vital role of the financial system in investment, job creation and the well-being of society as a whole.

1.10 The new financial market rules are essential in order to restore the sustainability of the economy.

2. Background

2.1 The shadow banking system can be defined in general terms as "the system of credit intermediation that involves entities and activities outside the regular banking system". (Financial Stability Board - FSB).

2.2 Two factors contributed to the development of the shadow banking system. The first can be found in the deregulation of the financial system which began in the 1980s and which also led to banking activities becoming highly concentrated in large institutions. The second was the effect of the early Basel Accords which, by regulating bank balance sheets, drove speculative activity off balance sheet.

2.3 In the United States, shadow banks proliferated following the relaxation of rules preventing banks from operating on the securities market, and following the major amendments made in 1999 to the 1933 Glass-Steagall Act.

2.4 In some European countries, banks and their offshore branches operated in the context of the Basel I reform and became major investors in securities and AAA-rated CDOs, which have lower capital requirements.

2.5 Size of the shadow banking system

Globally: EUR 46 trillion, or between 25 % and 30 % of the financial system as a whole (FSB). Euro area: EUR 10,9 trillion, or 28 % of the total (ECB, end 2011).

2.6 International political responses to the crisis have come through the G20 which, at its Seoul (November 2010) and Cannes (November 2011) summits, sought the cooperation of the FSB. The Green Paper, which constitutes the European response, focuses its analysis in the first instance on:

— two activities:

- a) securitisation,
- b) securities lending and repurchase transactions (repo); and

— five types of entity:

- a) those which perform liquidity or maturity transformation,
- b) Money Market Funds (MMFs),
- c) investment funds,
- d) finance companies and other bodies performing credit or liquidity transformation without being regulated as banks,
- e) insurance and reinsurance undertakings which issue or guarantee credit products.

2.6.1 In addition, the FSB has proposed five workstreams which will lead to reports in 2012 on:

- the interaction between ordinary banks and shadow banking entities (to be carried out by the Basel Committee on Banking Supervision, BCBS),
- the systemic risks of Money Market Funds (to be carried out by the International Organisation of Securities Commissions, IOSCO),

— securitisation requirements (IOSCO and BCBS),

— other shadow banking entities (FSB), and

— securities lending and repos (FSB).

3. The EESC's view

3.1 The EESC believes that the Green Paper is an important step in the right direction and provides a timely analysis of the problems linked to the shadow banking system.

3.2 Traditionally, banks financed their operations with equity capital and commercial deposits. In order to increase their lending capacity, securitisation of loan books became standard practice. In certain cases, securitisation can be useful but it was abused in the run-up to the crisis because loan books were of low quality (sub-prime) and securities were repeatedly recycled (derivatives) to inflate bank accounts. The volume of business conducted by banks is determined by the amount by which the bank's assets are leveraged. While the Basel Accords regulated balance sheet leverage, off balance sheet leverage was unregulated and of a huge scale. Sub-prime abuse and excessive leverage were implemented via shadow banking. Furthermore, the basic business of banks – maturity transformation – turning shorter term assets into longer term loans, became excessively high risk as banks became excessively reliant on short-term inter-bank funding. This dependency precipitated the liquidity crisis as the markets in derivatives collapsed. Unsurprisingly, the new Basel Accords will regulate derivatives, leverage and liquidity.

3.3 The business of banking has changed profoundly as a result of deregulation. Because of the crisis, traditional commercial banking, which had for decades contributed to prosperity and helped increase people's standards of living, has been more or less crippled. As they eliminate the gross excesses of the shadow banking system, the regulators should now give priority to the stability of the financial system, which is indispensable.

3.4 Shadow banks have transformed maturity and liquidity in a similar way to traditional banks. Although, unlike traditional banks, they **formally** lack access to lenders of last resort (central banks), **in practice**, as recent experience has shown, public bodies have had to deal with the losses caused by shadow banks using various mechanisms. The biggest loser has been the taxpayer.

3.5 The shadow banking system was not subject to the same prudential rules as traditional banks. However, there are many ways in which shadow banks replicate traditional banks, and most shadow banks were controlled by traditional banks. Avoiding the risk of regulatory arbitrage must be one of the key objectives of the Green Paper.

3.6 The FSB report rightly concentrates on the role that macro-prudential supervision can play in spotting the accumulation of systemic risk. Close monitoring of inter-connectedness and of the channels through which risk can be transmitted from the shadow banking system to the regulated sector is important. The EESC considers it appropriate to bear in mind the distinction between:

- the traditional banking system,
- non-bank financial institutions, and
- the shadow banking system.

There should be no such thing as "shadow" activities: the shadow banking system – to the extent that the new regulations leave any place for it – should be subject to the same regulatory and prudential requirements as the financial system as a whole. The reforms that are either already in force or are in preparation – CRD III, CRD IV, Solvency II, Basel III – should contribute to this goal.

3.7 The EESC considers that **protecting European consumers** through transparency of the products offered to them should also be one of the objectives of regulation of the shadow banking system. Customers have the right to fair, impartial advice. The Committee has already advocated establishing a European Agency for Consumer Financial Protection, similar to the Bureau of Consumer Financial Protection set up by the Dodd-Frank Act ⁽¹⁾, to strengthen consumer protection by improving transparency and allowing effective resolution of complaints.

3.8 The EESC has also supported the provision of incentives and protection for whistleblowers, in the form of legal arrangements guaranteeing them immunity when they report the commission of illegal acts to the authorities, to help clean up the financial system.

3.9 What is needed is a global approach to the problems of the shadow banking system and the proposal of political responses. Emphasis should be laid on coordinating global supervision and exchanging information. In any event, absence of agreement in international forums must not prevent the EU introducing appropriate legal measures.

3.10 One lesson that needs to be drawn from the great financial crisis is that the financial system, in all its forms, must serve the real economy. Abandoning the traditional

rules that had governed banking business for decades led to explosive growth of speculative products, which ended up having extremely damaging consequences for the economy,

3.11 Historically, banks and other state-regulated financial institutions have played a vital role in the economy, as depositors and channellers of individual and corporate savings for the financing of investment, job creation and the well-being of society as a whole. In the years leading up to the crisis, this role was not always to the fore.

3.12 The EESC proposes that social responsibility in the financial sector and the objective of "ensur[ing] all financial activities are contributing to economic growth" be among the objectives of the Green Paper. The new financial market rules are an essential instrument for restoring the sustainability of the economy.

3.13 In light of the rules that have either come into force in recent years or are currently being brought in, the EESC recalls the objective of **good lawmaking**, with an approach based on simplicity and clarity. It is important to avoid duplications and distortions that could lead to regulatory uncertainty and arbitrage opportunities.

3.14 The bodies created for the purpose of prudential supervision – chief among them the European Systemic Risk Board (ESRB) – should be responsible for monitoring the development of the financial system, and of the activities of shadow banks in particular, so as to spot the appearance of systemic risks and propose measures to mitigate those risks.

3.15 The EESC emphasises that the European Union must contribute to the FSB's work on shadow banks and must coordinate its initiatives with the FSB to ensure consistency in terms of timing as well as content.

3.16 The EESC insists on the need for prudential regulatory standards and supervision to prevent unfair competition within the financial system.

4. Responses to the questions put by the Green Paper

4.1 What is shadow banking?

- a) Do you agree with the proposed definition of shadow banking?

Yes. The breadth of the terms allows the definition to cover the full set of financial entities and activities that make up the shadow banking system. In any event, the absence of an agreed definition should not prevent the authorities taking regulatory and supervisory action.

⁽¹⁾ OJ C 248, 25.8.2011, p. 108.

- b) Do you agree with the preliminary list of shadow banking entities and activities? Should more entities and/or activities be analysed? If so, which ones?

— Credit rating agencies should be included, due to their role in the securitisation process.

— It should be clarified whether credit default swaps (CDS) and instruments issued by first and second lien lenders are specifically included.

— Attention should also be drawn to the market for insurance policies for investment purposes ("euro funds"), which exist in some EU countries and can often be used by policyholders as demand deposits.

4.2 What are the risks and benefits related to shadow banking?

- a) Do you agree that shadow banking can contribute positively to the financial system? Are there other beneficial aspects from these activities that should be retained and promoted in the future?

The shadow banking system contributed to the financialisation of the economy and to the property bubble which from 2007 affected various developed countries, bringing their economies to the brink of collapse. As a result, it can be considered fundamentally, even if not exclusively, responsible for the major recession which has affected the United States and many EU countries.

The financial system as a whole must serve the real economy.

- b) Do you agree with the description of channels through which shadow banking activities are creating new risks or transferring them to other parts of the financial system?

Agree. The four groups of risks are in line with the experience drawn from the financial crisis.

- c) Should other channels be considered through which shadow banking activities are creating new risks or transferring them to other parts of the financial system?

— Among other things, re-use or re-hypothecation of financial collateral.

4.3 What are the challenges for supervisory and regulatory authorities?

- a) Do you agree with the need for stricter monitoring and regulation of shadow banking entities and activities?

- b) Do you agree with the suggestions regarding identification and monitoring of the relevant entities and their activities? Do you think that the EU needs permanent processes for the collection and exchange of information on identification and supervisory practices between all EU supervisors, the Commission, the ECB and other central banks?

- c) Do you agree with the general principles for the supervision of shadow banking set out above?

- d) Do you agree with the general principles for regulatory responses set out above?

The answer to all four questions is yes. The EESC highlights the need for global supervision covering all areas of the financial system and for supervisory and regulatory bodies at all levels to have sufficient qualified staff and financial means.

- e) What measures could be envisaged to ensure international consistency in the treatment of shadow banking and avoid global regulatory arbitrage?

It is essential that there be coordination and full agreement within the G20. The Legal Entity Identifier (LEI), as proposed by the FSB on 8 June 2012, will help deal with statistical deficiencies, improve risk management by businesses, improve the assessment of macro- and micro-prudential risk, curb market abuse and check financial fraud.

4.4 What regulatory measures apply to shadow banking in the EU?

- a) What are your views on the current measures already taken at the EU level to deal with shadow banking issues?

The EESC has supported the measures adopted by the EU in several opinions, including: the MiFID Directive ⁽²⁾, the AIFM Directive ⁽³⁾, the rules and regulations on Credit Rating Agencies ⁽⁴⁾ etc. The CRD III ⁽⁵⁾, CRD IV ⁽⁶⁾ and Solvency II ⁽⁷⁾ directives are particularly worthy of note.

⁽²⁾ OJ C 220, 16.9.2003, p. 1.

⁽³⁾ OJ C 18, 19.1.2011, p. 90.

⁽⁴⁾ OJ C 277, 17.11.2009, p. 117 and OJ L 145, 31.5.2011, p. 30.

⁽⁵⁾ OJ C 228, 22.9.2009, p. 62.

⁽⁶⁾ OJ C 68, 6.3.2012, p. 39.

⁽⁷⁾ OJ C 224, 30.8.2008, p. 11.

4.5 Outstanding issues

- a) Do you agree with the analysis of the issues currently covered by the five key areas where the Commission is further investigating options?

Yes. It is essential that regulation be made as effective as possible, not only in Europe but also at international level. MMFs, for example, are mainly based in the US.

- b) Are there additional issues that should be covered? If so, which ones?
- c) What modifications to the current EU regulatory framework, if any, would be necessary properly to address the risks and issues outlined above?

Answer to b) and c): ten proposals by Paul Tucker, Deputy Governor at the Bank of England and member of the Financial Stability Board (Brussels Conference, 27.4.2012):

- Shadow banking vehicles or funds that are sponsored or operated by banks should be consolidated on to bank balance sheets.
- The draw-down rate assumed in the Basel 3 Liquidity Coverage Ratio should be higher for committed lines to financial companies than for lines to non-financial companies. That is, banks should hold more liquid assets against such exposures.
- Bank supervisors to limit the extent to which banks could fund themselves short-term from US money funds and from other fragile/flighty sources, including CNAV money funds domiciled elsewhere.
- If they are financed materially by short-term debt, they should be subject to bank-type regulation and supervision of the resilience of their balance sheets.
- Only banks should be able to use client moneys and unencumbered assets to finance their own business to a material extent; and that should be a clear principal relationship. Legal form should come into line with economic substance.

- For non-banks, any client moneys and unencumbered assets should be segregated and should not be used to finance the business to a material extent. It should, however, remain permissible for non-banks to lend to such clients on a collateralised basis to finance their holdings of securities (margin lending).

- There should be greater market transparency, perhaps ideally via a Trade Repository with open access to aggregate data, so that the world can see what is happening in these very important but opaque financing markets. (That would be helpful for market participants themselves).

- Financial firms and funds should not be able to lend against securities that they are not permitted or proficient enough to hold outright.

- Non-bank financial firms should be regulated in how they employ cash collateral.

- The authorities should be able to step in and set minimum haircut or margin levels for the collateralised financing markets (or segments of them). (That would need to be pursued at international level. It might be linked to central bank haircuts).

- d) What other measures, such as increased monitoring or non-binding measures should be considered?

The EESC suggests:

- Protecting consumers of financial products from possible unfair commercial practices concerning this type of products and services, such as misleading promotional sales and pyramid schemes, and ensuring that consumer contracts do not contain unfair terms.
- Considering *An FDA for Financial Innovation: Applying the Insurable Interest Doctrine to Twenty-First-Century Financial Markets*, a proposal made on 23 February 2012 by Eric A. Posner and E. Glen Weyl, professors at the University of Chicago, that before any new product is launched it should have to be government-approved as being at the service of the real economy, with that approval being denied if its aim is purely speculative.

Brussels, 15 November 2012.

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 — A strategy for e-procurement’

COM(2012) 179 final

(2013/C 11/10)

Rapporteur: **Mr IOZIA**

On 20 April 2012 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

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A strategy for e-procurement

COM(2012) 179 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 25 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November), the European Economic and Social Committee adopted the following opinion by 120 votes to none with 3 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the communication from the Commission, attaching great importance to rapid transition to a general e-procurement system, as successfully trialled in a number of Member States. The figures relating to the public procurement market are considerable, accounting for some 20 % of EU GDP.

1.2 At a highly negative stage in the economic cycle such as the present, marked by budget adjustments that are placing an enormous burden on the public, Europe is seen in very negative terms, as are the initiatives it takes. The European institutions need to make greater efforts to open up more and to spell out clearly the reasons for making particular decisions. The Commission, the only European institution empowered to make legislative proposals, bears a specific responsibility not only to inform but also to convince its citizens of the purpose of its proposals. The EESC is working in this direction, and the Commission should cooperate more closely with the other European institutions, including the consultative bodies.

1.3 The EESC emphasises that the straight cuts made in public budgets, leading to the early loss of more senior and qualified personnel involved in public procurement activities, are progressively impoverishing the human capital available to public administrations, and urges the Member States to avoid indiscriminate cuts. They produce only short-lived improvements to the accounts, and external resources must often be brought in since the remaining workforce has not yet acquired the necessary professional expertise.

1.4 The EESC underlines the importance of e-procurement due to the potential benefits stemming from:

- transparency, anti-fraud measures,
- market efficiency,
- the extension of the public procurement market to SMEs,
- overall savings for public administrations,
- integration and development of the internal market,
- modernisation of public administrations and development of the European digital agenda,
- new opportunities for businesses offering technological services,
- career development for public administration and company employees.

1.5 The Commission believes that the objective of completing this transition by mid-2016 is feasible (more probably 2017, given the two years needed for transposition),

representing a massive acceleration in comparison with what has been achieved in the last eight years. The EESC sees this as a proper and ambitious objective, which can only be achieved if certain conditions regarding standardisation, interoperability and accessibility, as called for in the present opinion, are met. If they are not, the market risks further fragmentation.

1.6 The EESC supports the proposed objectives, but must however point out that so far, in spite of the enormous efforts made, the percentage of e-procurement remains very low. The Commission is currently completing a study, to be published before the end of the year, which will show the level reached in each country. Italy, for example, has reached 4 %.

1.7 The EESC is strongly critical of the reluctance of some Member States to cooperate: they are resisting change and do not want to open up the public procurement market to competition, wishing to protect national companies and avoid giving up considerable economic and political power.

1.8 In its communication, the Commission describes this attitude as "inertia"; the EESC considers it rather to be "passive resistance" to change and susceptibility to protectionist national pressures. Publication of all procurement procedures in electronic form would make setting a threshold for European-type procedures pointless and harmful, and is something SMEs in particular are calling for.

1.9 The EESC considers that maintaining thresholds hampers the development of the internal market and jeopardises competition on a level playing field.

1.10 **Communication.** The general public, businesses, and local and national authorities must be convinced of the usefulness of this instrument. For this to occur, resources must be put into integrated information, communication and training activities, avoiding one-off initiatives.

1.11 **Transparency.** One of the immediate effects of e-publishing public procurement procedures is to raise the level of transparency. The EESC suggests that in addition to the publication of tender notices, the state of progress of work against planned timetables and the date of conclusion of work or delivery of goods should also be included. Transparency will help make fraud increasingly difficult, bringing additional savings for public administrations and enhancing market efficiency.

1.12 **Interoperability and standardisation.** The EESC attaches particular importance to issues relating to interoperability between different platforms (often portals) and to the standardisation of procedures and of the e-documents

exchanged at the various stages of the procurement process. The proliferation of individual platforms and of different formats and procedures presents an obstacle to the automation of public procurement and acts as a disincentive to its adoption by suppliers, especially SMEs. The use of a single European (or international) standard for e-procurement procedures should be recommended without further delay by the Commission; this applies in particular to the work carried out by the CEN within the workshop on Business Interoperability Interfaces (BII) for Public Procurement in Europe ⁽¹⁾, and implementation of BII profiles in PEPPOL specifications.

1.13 **Fragmentation.** The lack of a European strategy has led to platforms and identification instruments that do not communicate with each other being adopted at both national and regional level (Germany, Italy and others). According to SME associations, this nearly always leads to a decision not to submit a bid, or sometimes to excessive management costs, especially for SMEs. The EESC believes that the EU must act to counter market fragmentation effectively.

1.14 **Accessibility and straightforwardness.** The EESC stresses that the benefits for the market, public administrations and the general public can only be reaped if systems are accessible, ensuring low costs, systems that are easy to operate and maintain, standardised building blocks, procedures and solutions and a shared glossary as a means of resolving language problems (this too must be accessible and user-friendly), applying the same principles that the Commission has undertaken to observe in the Small Business Act.

1.15 **Social enterprises.** The EESC recommends that, in the shift to e-instruments, great care be taken to ensure that such instruments are accessible to social enterprises. A wide range of social services are currently delivered by these enterprises, who account for a very substantial proportion of all businesses providing care and support services.

1.16 European rules on procurement processes exceeding the threshold should provide support for SMEs in meeting the requirements regarding capital and experience; this could include temporary consortiums or associations of companies. Portugal is a case in point. SMEs have won 87 % of bids, but account for only 19 % in value.

2. Summary of the document

2.1 The communication presents the strategic importance of electronic procurement (e-procurement) and sets out the main actions through which the Commission intends to support the transition towards full e-procurement in the EU.

⁽¹⁾ <http://www.cen.eu/cwa/bii/specs/Profiles/IndexWG1.html>.

2.2 The savings made by administrations that have already switched to e-procurement are in the region of 5 to 20 %. If the lower percentage were to be applied to all EU procurement, savings would amount to more than EUR 100 billion given the overall scale of public procurement.

2.3 As foreseen in the 2011 Single Market Act⁽²⁾, the Commission has put forward a number of proposals relating to public procurement⁽³⁾ with the aim of completing the transition to e-procurement in the EU by halfway through 2016⁽⁴⁾. The ultimate goal is "straight through e-procurement" with all phases of the procedure from notification (e-notification) to payment (e-payment) being conducted electronically⁽⁵⁾.

2.4 E-procurement can help improve access to, and the transparency of, procurement opportunities, especially for SMEs, thus stimulating cross-border competition, innovation and growth in the Single Market.

2.5 The Commission highlights two main obstacles to the take-up of e-procurement:

- the "inertia" exhibited by certain stakeholders. The challenge is to persuade hesitant purchasers and suppliers to change their ingrained habits;
- *market fragmentation* that can emerge from the existence of the wide variety of systems, sometimes technically complex, deployed across the EU.

2.6 The Commission sets out a plan of 15 key actions to achieve the proposed objectives.

3. General comments

3.1 The European Economic and Social Committee (EESC) acknowledges the importance of revising the legal framework for procurement and of a gradual shift to complete automation, making the use of electronic means of communication mandatory in some phases of the supply process.

3.2 The Commission's suggested roadmap to the gradual introduction of e-procurement is highly ambitious; if properly adopted, it will be of major benefit to all involved in the public

supply market. In view of differences in the development of e-procurement between countries, where fragmentation of solutions and platforms is already occurring, the lack of strategic and operational indications – if certain minimum, basic conditions are not met – could serve to increase market fragmentation.

3.3 The development of e-procurement, however, must not be to the detriment of the best bids principle as set out in the proposal for a public procurement directive⁽⁶⁾.

3.4 The EESC attaches particular importance to issues relating to interoperability between different platforms (often portals) and to the accessibility of processes and the e-documents exchanged at the various stages of the procurement process. An open European (or international) standard should be drawn up for the software used for e-supply in the public sector. The proliferation of individual platforms and of different formats and procedures presents an obstacle to the automation of public procurement and acts as a disincentive to its adoption by suppliers, especially SMEs. The work of the European Committee for Standardisation (CEN) within the workshop on Business Interoperability Interfaces for Electronic Procurement in Europe has produced "standard interoperable profiles" for implementing standardised software.

3.5 In order to overcome existing barriers, the EESC agrees with the Commission's use of specific actions to bring about the mandatory use of open international or European standards for the use of technically interoperable solutions. Guidelines should be drawn up for the proper application of open standards, building on the work carried out by the CEN BII workshop and its implementation within the PEPPOL project. The Digital Agenda for Europe makes explicit reference to an action⁽⁷⁾ to support the standardisation of e-procurement via the use of specific technologies that can be implemented by all ICT solution and service providers.

3.6 The EESC highlights the key contribution that e-procurement can make to transparency in public sector supply processes and to combating fraud. With electronic tools, the entire process can be monitored and assessed, as can suppliers' performance in it. This information is important in ensuring maximum e-transparency in the public sector, and can provide a powerful incentive for the adoption of e-procurement tools, especially for SMEs. Portugal provides an example of best practice in this field⁽⁸⁾, along with Lithuania, where the use of e-notification, e-access and e-submission is now mandatory, with tangible benefits in terms of: a reduction in the price of goods and services purchased (of 14-55 %); a 20-90 % increase in the number of suppliers participating in tenders; and a reduction in the duration of supply processes, from 46 to 11 days.

⁽²⁾ The Single Market Act identifies a series of measures to boost the European economy and create jobs.

⁽³⁾ Proposals of 20 December 2011: COM(2011) 895 final; COM(2011) 896 final and COM(2011) 897 final.

⁽⁴⁾ The proposals stipulate mandatory use of e-procurement at the latest two years after the transposition deadline, which under the current timetable for adoption should allow implementation by mid-2016.

⁽⁵⁾ Procurement processes cover two main phases: the pre-award phase and the post-award phase. Pre-award comprises all the sub-phases of procurement up to the award of the contract (publication of notices, access to tender documents, submission of bids, evaluation of the proposals and award of the contract). Post-award comprises all the sub-phases of procurement after the award of the contract (ordering, invoicing and payment).

⁽⁶⁾ EESC opinion: OJ C 191, 29.6.2012, p. 84.

⁽⁷⁾ http://ec.europa.eu/information_society/newsroom/cf/fiche-dae.cfm?action_id=181.

⁽⁸⁾ www.base.gov.pt/.

3.7 It is also important that e-procurement initiatives provide support for training SMEs in the use of technologies and in recognising the benefits. Investment in training for public and private sector employees will be crucial. The EESC believes that support for this would be invaluable. SMEs could turn to their category associations.

3.8 The language barrier is a reality that is not given proper consideration in the present communication. The information available from e-procurement platforms should be offered in at least one European language other than the national language. This could however entail excessive additional costs. One solution might be for the European Commission to develop a dedicated online e-procurement translation tool.

3.9 The Commission fails to mention the visibility issue of procurement procedures below the threshold across the single market, which is of significance to SMEs and micro-businesses in particular. The EESC considers that the moment has come to think about whether thresholds should be retained, given that with e-publication all tenders will be accessible to all.

4. Specific comments on the planned actions

4.1 The EESC agrees that there is a need to shift towards the automation of public procurement. While the Commission emphasises the initial phases of the supply process (publication of notices, access to tender documents, submission of bids, evaluation of proposals and award of contract) it is also important to integrate the various phases subsequent to award of the contract (ordering, invoicing and payment) and to publish the progress of tenders, the problems encountered, implementation times and costs.

4.2 Harmonisation of technical requirements is crucial to developing IT solutions and services that can be taken up and used at local, national and cross-border level. In this regard, the EESC strongly urges the Commission to press ahead with Key Action 2. The implications are particularly significant not only for public administrations, but first and foremost for suppliers who will be able to apply solutions that are standardised and interoperable at European level.

4.3 Using e-signatures is a complex matter where cross-border transactions are concerned. Actions to facilitate the interoperability of such solutions are therefore desirable. It should however be noted that some countries, such as Portugal for example, have pointed out that difficulties in using e-procurement include the excessive constraints involved in e-signatures and the cost of time-stamping services, as well as interoperability issues between the various e-procurement platforms⁽⁹⁾.

4.4 Promoting straightforward solutions and best practice clearly provides useful support for public procurement automation projects. The requirements of SMEs, especially at the e-submission stage, must be taken into account when devising the relevant solutions. The results of the work of the Commission's e-Tendering Expert Group are therefore crucial and could be submitted for stakeholder evaluation.

4.5 The most important action on which the Commission should focus is how to implement the various solutions for e-procurement in the internal market. The PEPPOL (Pan-European Public Procurement Online) project in particular has involved 11 countries that have developed dedicated technologies to build standardised solutions for the key phases in the supply process and an open platform for exchanging standardised documents, bringing about full interoperability between the various European platforms.

4.5.1 The PEPPOL components include: tools for validation of e-signatures based on electronic certificates issued by European authorities; a Virtual Company Dossier to submit standardised company information (evidence, certificates and attestations); an e-catalogue to submit offers about goods and services in a standardised format; and e-ordering and e-invoicing providing the buyer and suppliers with defined procedures to share common business information. Lastly, it offers a transport infrastructure for electronic documents (network) based on common, national IT compatible standards and interconnecting individual e-procurement communities/systems.

4.5.2 The European Virtual Company Dossier System (EVS) works in a similar way to eCertis (an information system that helps to identify the various certificates and attestations that are often required in procurement procedures in the 27 Member States, Croatia (accession country), Turkey (candidate country) and the three EEA countries (Iceland, Liechtenstein and Norway) to provide information on the criteria and proof/attestations needed to take part in tenders in the Member States. However, while the eCertis database is currently designed as an information database, EVS supplies further interfaces linking to more services. eCertis should be equipped with features similar to those of the EVS concept. The Commission should guarantee compliance and update the relevant legal information system, providing both the service and technical support.

4.5.3 The EESC hopes that the Commission and the Member States will lend strong support to a stronger role for the Open-PEPPOL association, and highlights the importance of ensuring that the technical specifications devised are maintained, developed and adopted by the European public sector when carrying out public procurement operations. This will guarantee that the various stages in the supply process – both pre- and post-award – are standardised and interoperable, in order to prevent market fragmentation.

⁽⁹⁾ <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-e-procurement-interventions.24416>.

4.6 The EESC agrees that the development of public e-procurement infrastructure should be supported and funded via the Connecting Europe Facility, building on what has already been achieved by the PEPPOL consortium member countries with the current transport infrastructure (network) linking the various systems in Europe. The EESC underlines the importance of maintaining an open, accessible and secure infrastructure based on shared standards. The Structural Funds should be used in order to facilitate public procurement take-up.

4.7 The EESC recommends adopting an integrated communication strategy, building on existing communities, OpenPEPPOL in particular, in cooperation with the Enterprise Europe Network and using networking programmes for regions and municipalities. This communication strategy could be shared between the Commission, OpenPEPPOL and the new project "Pilot A (CIP ICT PSP) Basic Cross Sector Services", for the part that is relevant to public procurement.

4.8 The EESC supports the Commission's decision to automate the entire supply process within its own internal services and to make available the open source solutions developed.

4.9 The EESC agrees on the need to monitor the take-up of e-tools for public procurement and to define the ensuing benefits. Once the directive is adopted, the Commission should publish a progress report every quarter on the qualitative and quantitative advances made with procurement in each Member State.

4.10 At the same time, an international-level dialogue on the use of e-tools for public procurement is crucial to achieving greater transparency and competition. The use of international standards has again been confirmed as a necessary tool for this purpose, and developments in this area should therefore be monitored. There is a particular need to recommend and monitor the use by the European public sector of CEN BII and PEPPOL specifications in the conduct of e-procurement procedures.

Brussels, 14 November 2012.

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: EU State Aid Modernisation (SAM)’

COM(2012) 209 final

(2013/C 11/11)

Rapporteur: **Ms BUTAUD-STUBBS**

On 8 May 2012, 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

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation (SAM)

COM(2012) 209 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 25 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 128 votes to none with five abstentions.

1. Conclusion and recommendations

1.1 European state aid policy is of strategic importance for the EU in a highly competitive globalised economy.

1.2 The EESC considers that the reform proposed in the Commission's communication should be supported in view of the objectives of that reform, which are:

- to make European state aid policy contribute to the 2020 strategy;
- to establish a new, more efficient division of responsibilities between the Commission and the Member States; and
- to make a number of procedural improvements.

1.3 The EESC shares the Commission's vision of strengthening the positive connection between effective state aid and the objective of sustainable and inclusive growth. A targeted state aid policy will make it possible to stimulate innovation (including social innovation), the use of green technologies and the development of human capital while avoiding environmental damage. A dynamic, well-targeted state aid policy can make an active contribution to achieving high levels of employment and social cohesion.

1.4 However, this reform, with its ambitious goals, methods and timetable, needs clarification in certain respects.

1.5 The EESC calls on the Commission to clarify certain concepts used in the communication:

1.5.1 It also seems to be worth giving a more precise definition of the key concept of "market failures" as applied by the Commission, since its meaning varies depending on the context – access to credit, financing of broadband networks, commercial property development, access to innovation, training, development of female entrepreneurship etc. Market failures can also be linked to various causes, such as negative externalities, imperfect information, coordination problems, market power etc.

1.6 The EESC has certain queries to raise in relation to the planned reforms:

1.6.1 The Commission's proposed reform would give the Member States greater responsibility in relation to the granting and control of state aid. What legal and practical means does the Commission have in mind to convince Member States to cooperate fully in enforcing state aid law?

1.6.2 Giving more responsibility for state aid control to Member States risks leading to subjective application of the rules by Member States, unfair behaviour by states and the return of a certain economic nationalism that would end up increasing legal uncertainty for firms.

1.6.3 On the basis of a WTO report, the Commission concludes that our main global competitors provide comparable amounts of state aid. However, European state aid policy provides a more transparent framework than the existing systems in the United States, India, Korea or Brazil. These data are obsolete, and should be updated to give the Commission a complete and precise picture of the current situation.

1.6.4 The Commission considers how the features of the EU state aid control system compare with the other existing systems, but does not draw any particular conclusion. Why does the Commission not take this opportunity to reiterate the need for an economic approach aimed at a level playing field globally, so as to allow aid to be granted in a balanced way? The EESC emphasises that the specific consequences of illegal foreign subsidies which threaten the competitiveness of European firms in relation to their global competitors must be corrected effectively.

1.7 Finally, the EESC proposes certain changes which it considers necessary due to the need, recognised by the Commission and the Council, to support SMEs, particularly at a time when they are facing competitive pressures from third country firms that benefit from direct and indirect state aid that is both greater in amount and allocated in a less transparent way.

1.7.1 The EESC proposes that the ceiling for *de minimis* aid (which is applied to each firm on the basis of a rolling period of three consecutive years) should, in view of its small amount, its benefits for SMEs and very small enterprises and its limited impact on the internal market, be permanently increased from EUR 200 000 to EUR 500 000, as was recently decided in relation to services of general economic interest.

1.7.2 Considering the need to help European SMEs develop international markets, the EESC proposes an amendment to Article 27(3) of the General Block Exemption Regulation providing for the compatibility with the common market of aid to SMEs for participation in fairs and exhibitions for a period not exceeding three consecutive years.

1.8 The EESC has three practical recommendations for the Commission based on its own experience:

1.8.1 A practical layman's guide should be produced, setting out definitions, prohibitions and procedures and available in all the official languages of the EU, so as to improve understanding and proper use of state aid by firms, courts and public authorities.

1.8.2 Additional training seminars should be organised for the responsible authorities in the Member States, to ensure that EU state aid law is applied as uniformly as possible in all Member States.

1.8.3 Given the scale of the changes that are envisaged, the EESC requests that it be consulted on the review of the *de minimis* regulation, the enabling regulation and the General Block Exemption Regulation.

2. Content of the communication

2.1 The Commission intends to reform European state aid policy along three main lines:

- a) fostering smart, sustainable and inclusive growth in a competitive internal market, in line with the Europe 2020 strategy;
- b) focusing the Commission's *ex ante* scrutiny on the most significant cases with a major impact on the internal market; and
- c) simplifying the procedural rules and speeding up the decision-making process.

2.2 The reform is based on a mixed assessment of the current policy:

- the current rules are difficult to understand, apply and monitor. As Commissioner Almunia himself told the EESC on 23 February 2012, there are 37 different acts (regulations, communications and guidelines) in place;
- the current results of monitoring of the implementation of block exempted measures reveal a certain lack of compliance with state aid rules;
- the Commission does not have rules that would allow it to set clear priorities for complaints handling;
- contacts between the Member States and the Commission could work better as regards exchange of information and cooperation during the notification procedure.

2.3 To address this situation, in a context in which full advantage must be taken of the potential of the single market (for example in energy, transport and digital technologies), the Commission is proposing a reform with ambitious goals, methods and timetable.

2.4 The proposed reform has ambitious goals in that it involves, on the one hand, making one of the oldest and best integrated EU policies support growth in Europe, and on the other hand achieving rather radical procedural improvements, although those improvements are neither set out in detail nor quantified in the communication.

2.5 The proposed reform is ambitious as to its methods in that the Commission proposes to make a coherent set of changes all at once, within the framework of an "integrated strategy", involving:

- revision of the *de minimis* regulation;
- changes to the Council enabling regulation concerning the definition of certain categories of aid that are deemed to be compatible with the internal market and are therefore exempt from notification;
- revision of the General Block Exemption Regulation in relation to the categories of aid covered by the enabling regulation in force;
- legal clarification of the notion of state aid; and
- modernisation of the state aid procedural regulation.

2.6 The timetable of the proposed reform is ambitious in that the Commission aims to adopt the proposals for revision of the procedural regulation and the enabling regulation in Autumn 2012, and the other elements of the "package" by the end of 2013 – in other words, before the financial perspectives for the 2014-2020 period come into force.

3. General comments

3.1 State aid control in the broader context of European competition law

3.1.1 The EESC supports the goals announced in the Commission's communication, which aims to "facilitate the treatment of aid which is well-designed, targeted at identified market failures and objectives of common interest", by focusing enforcement on cases with the biggest impact on the internal market, by streamlining the rules and taking faster decisions.

This approach is part of a more general development in competition law, concerning both antitrust law (i.e. restrictive agreements and abuse of dominant position) and merger control.

3.1.2 In relation to antitrust law, the "modernisation of competition law" put in place by Regulation 1/2003⁽¹⁾ and its accompanying texts began the decentralisation of competition law enforcement by ending the prior notification system. That has allowed the Commission to focus its activity on tackling the most serious restrictions and abuses, particularly cartels. This modernisation was accompanied by strengthened cooperation between the network of national competition authorities on one side and the Commission on the other.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

3.1.3 In relation to merger control, Commissioner Almunia recently announced a possible forthcoming reform of the European merger control system with the aim, in particular, of allowing the Commission to focus on those mergers that are most likely to affect the market⁽²⁾. In the short term, that would involve streamlining the handling of the least problematic cases by improving the "simplified procedure" and reviewing the pre-notification procedure. In the longer term, the merger control regime could be revised, by scrutinising acquisitions of non-controlling minority stakes and through better interaction between the national and European systems in relation to thresholds and referrals.

3.2 Guiding principles for a general state aid framework

3.2.1 The EESC reiterates its support for a general state aid framework based on the following principles⁽³⁾:

- targeting and selectivity of aid;
- consistency with the strategies for completion of the single market;
- simplification, transparency and legal certainty of procedures and rules;
- improved dialogue with Member States in the decision-making and implementation processes, and at the stage of evaluation and monitoring of effectiveness;
- better information for firms on state aid rules and procedures;
- sharing of responsibility, through the creation of national coordination bodies; and
- adapting European state aid rules to the aid strategies pursued by our main trading partners, to ensure a level playing field *vis-à-vis* the rest of the world⁽⁴⁾.

3.3 Increasing the responsibilities of the Member States in enforcing the state aid rules

3.3.1 The EESC's understanding is that focusing enforcement by the Commission on the most problematic cases would in particular depend on broadening the range of aid measures

⁽²⁾ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/453&format=HTML&aged=0&language=EN>.

⁽³⁾ OJ C 65, 17.3.2006, p. 1, point 3.1.

⁽⁴⁾ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/132797.pdf.

which are exempt from the notification obligation. That would necessarily be linked to greater responsibility for the Member States. The EESC notes, however, that the specific features of state aid law would need to be taken into account. The state and, more broadly, all state and public entities that may grant aid would, in a sense, be judge in their own cause.

3.3.2 Giving more responsibility for state aid control to Member States risks leading to subjective application of the rules by Member States, unfair behaviour by states and the return of a certain economic nationalism that would end up increasing legal uncertainty for firms.

3.3.3 Several approaches could be considered in order to limit this type of risk to the minimum:

- strengthening transparency by way of reporting obligations on the Member States. An annual summary report on the application of the *de minimis* regulation and the General Block Exemption Regulation could be published and made available on the Commission website;
- the financial risk of illegality or incompatibility is borne by the aid beneficiary alone, which is obliged to repay the amount concerned together with interest. The financial liability of the Member States could therefore be increased, for example by imposing a fine on the "public authority" that granted the aid in question;
- the creation of independent national agencies responsible for state aid policy could be considered. Those agencies would act as a contact point both for the Commission and for firms;
- the Commission should conduct more effective ex post monitoring and should actively promote best practices.

3.4 Simplification and transparency of procedures

3.4.1 The Commission and the Member States showed their ability to respond to the economic and financial crisis by adopting a series of specific texts between 2008 and 2011 ⁽⁵⁾. Due in particular to greater cooperation on the part of the Member States and a major mobilisation by the Commission services, decisions were taken in very short timescales, to the satisfaction of Member States and firms.

3.4.2 Generally speaking, however, stakeholders still find that the procedures are too long and complex. The EESC therefore supports the Commission's intention to tackle the long timescales for handling cases by improving administrative practices and by calling on the Member States to take responsibility in order to ensure transparency and efficiency. The timescales must, to the extent possible, match the rhythm of economic activities.

3.4.3 In this respect, the "simplified procedure" for dealing with certain types of aid ⁽⁶⁾ could be extended, while remaining circumscribed. Under this procedure, the Commission simply checks whether the aid measure complies with the existing rules and practices.

3.5 Better enforcement

3.5.1 Effective implementation of state aid law is essential. However, the EESC notes that national courts are often not in a position to ensure that state aid law is enforced efficiently, particularly in relation to protecting the rights of firms that suffer as a result of the grant of illegal aid measures to their competitors. Several reasons for this could be mentioned, including the fact that judges lack expertise in European competition law and the procedural restrictions which are an inherent part of litigation.

3.5.2 Solutions should be developed to allow better enforcement of state aid law in practice. Both firms and national courts should have more effective tools and procedures at their disposal.

4. Specific comments

4.1 Clarifying the concept of "market failure"

4.1.1 The EESC supports the aim of approving only those aid measures that (i) contribute to supporting growth by seeking to remedy a market failure (a grant of state aid should complement, not replace, private expenditure) and (ii) have an incentive effect, that is to say that they induce the beneficiary to undertake activities that it would not have carried out in the absence of aid.

4.1.2 In this context, it is essential for the concept of "market failure" to be clarified and illustrated with examples from different fields, based in particular on the existing European case law, to help firms as well as public authorities to understand the concept in a consistent way and apply it to state aid measures at the design stage.

⁽⁵⁾ See State aid temporary rules established in response to the economic and financial crisis.

⁽⁶⁾ OJ C 136, 16.6.2009, p. 3.

4.2 *Developing and updating international comparisons in the state aid field*

4.2.1 Paragraphs 16 and 17 of the communication refer to third countries' competition policies. The Commission concludes that, while the EU has a more transparent framework, it allows comparable levels of aid. That statement is based on a comparative analysis carried out by the WTO in 2006. The EESC calls on the Commission to have the WTO undertake a more up-to-date study, since many non-EU WTO member countries have provided massive subsidies in the context of the crisis, particularly for manufacturing industry. The competition policy that will come into effect from 2013 should be based on a detailed, recent picture of the situation in, for example, the United States, China, India and Brazil (including aid granted by the federal states) in a context where economic competition has been sharpened by the global crisis.

4.2.2 The state aid rules should be implemented in such a way as to allow the strengthening of firms' competitiveness, both in the internal market and internationally. However, European firms face competition from companies based in third countries, whose legislation sometimes contains no restrictions on state aid. That can lead to serious competition distortions, to the detriment of European firms, as the Commission notes in the communication ⁽⁷⁾.

4.2.3 Within the scope of its powers, the Commission undertakes initiatives aimed at establishing a global level playing field, based around the concept of fair competition. Any reform of state aid law must therefore be coordinated with the action that the Commission is taking elsewhere, using trade policy instruments such as WTO rules and bilateral free-trade agreements.

4.3 *Reviewing the approach to export aid*

4.3.1 In its proposal for a regulation establishing a programme for the competitiveness of enterprises and small and medium-sized enterprises 2014–2020 (COM(2011) 834 final), the Commission recognises the need to find a springboard for growth by helping SMEs export within the

EU and globally. Assistance and support services to SMEs with growth prospects are to be provided through the Enterprise Europe Network.

4.3.2 At the same time, however, the Commission's approach seems too restrictive, since, for example, there are several cumulative conditions set out in Article 27 of Regulation 800/2008 of 6 August 2008 in relation to the participation of SMEs in trade fairs and exhibitions: the aid must not exceed 50 % of the eligible costs, can only be granted to firms which fall within the EU definition of SMEs, and may only be granted for their first participation at a fair or exhibition.

4.3.3 We consider this "first participation" requirement to be inappropriate in relation to an international development strategy, which requires a presence of at least three years on a given market before the development strategy (agency, establishment or distribution) can be chosen. The EESC therefore proposes replacing the "first participation" requirement in Article 27(3) with a requirement of "participation in a fair or exhibition for not more than three consecutive years", while leaving the other two requirements unchanged.

4.4 *Ensuring that state aid contributes to sustainable and inclusive growth*

4.4.1 The EU should ensure that state aid stimulates innovation – including innovation in the social field, where the Innovation Union has already recognised the need for aid for social innovation – the use of green technologies and the development of human capital as part of a sustainable development model. The EESC welcomes the growing recognition of aid for social innovation as being compatible with the internal market ⁽⁸⁾ and hopes that this trend will strengthen in future in the context of the state aid modernisation process.

4.4.2 The EESC also supports a notion of state aid for research and development that covers the design, production and marketing of products, programmes and services that are accessible to vulnerable groups in society, particularly disabled people ⁽⁹⁾.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁷⁾ See paragraph 17 of the communication.

⁽⁸⁾ COM(2010) 546 final; COM(2011) 609 final; OJ L 7, 11.1.2012, p. 3.

⁽⁹⁾ OJ C 24, 28.1.2012, p. 1.

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 — A European Consumer Agenda — Boosting confidence and growth’

COM(2012) 225 final

(2013/C 11/12)

Rapporteur: **Reine-Claude MADER**

On 22 May 2012, 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

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Consumer Agenda – Boosting confidence and growth

COM(2012) 225 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 25 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 143 votes to 1 with 2 abstentions.

1. Conclusions and recommendations

1.1 The European Commission adopted the European Consumer Agenda on 22 May 2012. This document sets the strategic framework for consumer policy through four key objectives: improving consumer safety; enhancing knowledge; improving measures for enforcing consumer rights and providing redress; and adapting rights and key policies to economic and societal change. The agenda forms part of the Europe 2020 Strategy.

1.2 The EESC shares the Commission’s views about the vital role that consumers play as drivers of growth and about the need to consider the context in which they are evolving.

1.3 The EESC supports the agenda’s set objectives but has concerns about its coordination with the "Consumer Programme" and the adequacy of the funding allocated to it, which appears to fall distinctly short of the stated intention.

1.4 The EESC reiterates that consumers’ interests have to be taken into account in the preparation and implementation of all EU policies. It welcomes the Commission’s intention to use the consumer agenda to group most EU consumer policy initiatives (which were previously dispersed) into a single document. This agenda is an important step, which emphasises the importance attached to the needs and expectations of consumers when developing EU policies.

1.5 The EESC welcomes the acknowledgment of the important role of consumer associations, which must be given

the resources they need to carry out their tasks. It is particularly gratified that in the agenda the European Commission states its intention to cooperate with the national governments to ensure better recognition for the role these associations play.

1.6 The EESC attaches particular importance to paying attention to vulnerable categories, especially in the current economic and social context. It is therefore in favour of the agenda’s proposed initiatives concerning financial inclusion and access to essential services.

1.7 The EESC stresses the importance it attaches to all measures concerning sustainable development. It therefore shares the Commission’s concerns about energy management and the inclusion of eco-design. Furthermore, the EESC emphasises the need to use effective measures to raise ethical and environmental standards in the production and distribution of goods, especially if imported from third countries.

1.8 The EESC believes that improving food safety is essential to ensuring product safety from the farm or the factory to the front door and to allowing healthy and fair competition. The measures that need to be taken will also help restore consumer confidence, which has been eroded by various health crises.

1.9 The EESC welcomes all initiatives that enable consumers to obtain the information they need. It nevertheless reiterates that consumer education does not relieve traders of their obligations.

1.10 The EESC supports the initiatives designed to enforce and develop consumer law and establish efficient means of redress. In this context, it reiterates the need to ensure the independence of alternative dispute resolution systems vis-à-vis the litigants. Finally, as the EESC has frequently emphasised in various opinions, it is in favour of collective action and believes that the introduction of an EU-wide measure can no longer be delayed.

2. Gist of the Commission proposal

2.1 The European Commission adopted the European Consumer Agenda on 22 May 2012. This document establishes the strategic framework for consumer policy for the coming years. It forms part of the Europe 2020 Strategy and complements other initiatives, including the initiative relating to the 2014-2020 consumer programme.

2.2 The Commission intends to put the EU's 500 million consumers, whose spending accounts for 56 % of EU GDP, at the heart of the Single Market as they are key to growth, arguing that "stimulating this demand can play a major role in bringing the EU out of the crisis".

2.3 In order to meet this objective and boost consumer confidence, the agenda centres around four objectives:

2.3.1 Improving consumer safety

In answer to the challenges involved in marketing products and services irrespective of where they have been produced, the Commission intends to improve the regulatory framework on product and service safety and enhance the market surveillance framework through at source controls in the area of product safety and compliance.

It stresses the need to reinforce safety throughout the food chain.

To achieve these objectives, it will encourage Member States to step up cooperation.

2.3.2 Enhancing knowledge

The Commission believes that consumers must be provided with clear, reliable and comparable information, and the tools to understand their rights. It therefore considers it necessary to improve consumers' knowledge and awareness of their rights and interests. It believes that traders should also be responsible for raising awareness and plans to take the necessary steps to include this in their social responsibility. It recognises the important role that consumer associations have to play in disseminating this type of information and defending consumers.

2.3.3 Improving measures for enforcing rights and providing redress

The Commission intends to effectively enforce consumer law and give consumers efficient means to solve disputes. It intends to improve the rules on resolving cross-border disputes, irrespective of the marketing method, and to strengthen cooperation with third countries and the major international organisations.

2.3.4 Aligning rights and key policies to economic and societal change

The Commission believes that its proposals should reflect changes in consumption patterns, especially in the digital age. It emphasises the importance of taking the needs of vulnerable consumers into account and considers it necessary to facilitate their choices in the interests of a sustainable economy.

2.4 The agenda's set objectives mainly concern five sectors: the digital sector, financial services, food, energy, and travel and transport.

3. General comments

3.1 The EESC shares the Commission's views about the vital role that consumers play as drivers of growth, the challenges of the coming years and the overarching need to consider the context in which we live. The crisis has had a negative impact on consumers' purchasing power. Furthermore, consumption patterns are changing. They require greater technological knowledge and are sometimes expensive.

3.2 Despite a solid EU regulatory basis, difficulties in implementing the rules persist. Consumers are not adequately empowered to enforce their rights, while complaints continue to increase and reliable consumer information is lacking despite information overload in various forms.

3.3 Beyond the agenda's stated principles, which cannot be faulted, the EESC has concerns about how the agenda will be coordinated with the consumer programme and how this policy will be implemented.

3.4 On this point, in its opinion of 28 March 2012 ⁽¹⁾, the EESC stressed the lack of resources for "consumer" policy and expressed concerns regarding the ability to implement a far-reaching programme with funding that fell distinctly short of the stated intention.

⁽¹⁾ OJ C 181, 21.6.2012, p. 89.

3.5 The Commission has presented a substantial list of initiatives designed to achieve the agenda's objectives. Nevertheless, what really matters is their quality and applicability, in order to ensure their ability to provide the necessary efficiency to guarantee a genuinely high level of consumer protection. It is only once the agenda's measures have been adopted and implemented by the Member States and other stakeholders, that they will deliver results for consumers.

3.6 In this context, the EESC notes the absence of a transparent and efficient process for evaluating this agenda's implementation and outcomes. The EESC asks the Commission to add assessment criteria and quality indicators to gauge annual progress, and to publish a report every eighteen months on the agenda's implementation.

3.7 The agenda illustrates the vast area covered by "consumer" policy, which corroborates the need (already emphasised by EESC) to take account of consumer interests when developing and implementing consumer policies of all types. Nevertheless, the EESC is surprised that the agenda does not cover consumer protection in the medical sector, namely pharmaceutical products and medical devices, despite the fact that these products have been at the heart of debate in several Member States due to harm caused to consumers and patients. The EESC believes that a holistic consumer protection policy should also cover the medical and pharmaceutical sector in terms of safety, information and the enforcement of consumer rights.

3.8 The EESC notes with satisfaction that the Commission intends to seek the support of traders for consumer protection policies. This is why there is an urgent need to introduce consumer rights training for businesses. Business organisation networks affected by such a measure are urged to provide training modules specifically for SMEs as soon as possible, with support from the European Commission.

3.9 The EESC calls on the Commission to include relevant parties and stakeholders in the agenda's implementation and to step up consultation, especially with consumer organisations, to ensure adequate participation in the development of the policies that concern them.

4. Specific comments

4.1 On safety

4.1.1 The EESC firmly supports the revision of the legislative framework on product safety in order to ensure safe products and services for consumers.

4.1.2 It believes that control measures, modern and unified practices, and cooperation methods, including with the relevant

authorities at the place of production, will improve market surveillance with a view to establishing fair competition to the benefit of all businesses and consumers. Furthermore, the EESC wonders what space and resources have been provided for standardisation.

4.1.3 The EESC believes that improving safety is essential to restoring consumer confidence, which has been eroded by various health crises. It is therefore vital to improve the law's implementing measures and coordination between Member States.

4.2 On information

4.2.1 The EESC agrees with the Commission about the mismatch between the abundance of information available and consumers' needs. It supports the need for reliable, clear and comparable consumer information, which should also be available via other media and not only online.

4.2.2 The EESC welcomes acknowledgment for the role of consumer organisations and reiterates that EU and national authorities must act on this by granting them resources that match the objectives to be achieved, especially the testing of consumer products and services.

4.2.3 The Committee approves the measures to disseminate consumer information, provided that they are relevant and have a real impact.

4.2.4 The Committee supports all initiatives concerning consumer education and underlines the need not only to inform consumers but also to broaden their knowledge. This is a process that must begin at school, e.g. where numerical and financial skills are concerned. These skills need to be developed over time, but cannot replace consumer education and information provided by traders.

4.3 On implementation and redress

4.3.1 The EESC takes note of the Commission's decision to ensure the enforcement of consumer law, which answers a key expectation, since constantly accumulating new regulations is not a solution that will result in a high level of consumer protection.

4.3.2 The Committee supports the existence of EU-wide networks, the first of which, the European Judicial Network, was set up in 2001. In order to ensure their efficiency, it calls for these networks to be evaluated regularly so that lessons can be drawn from the findings.

4.3.3 The EESC supports all initiatives aimed at improving knowledge of existing legislation in the EU.

4.3.4 The EESC supports the self- and co-regulation initiatives, including the publication of guidelines, provided that these initiatives meet the public policy objectives efficiently. Furthermore, they should be monitored and evaluated regularly to ensure that if these objectives are not met, they can be replaced with binding measures.

4.3.5 The EESC supports the Commission's measures to facilitate alternative dispute resolution systems provided that, as stressed in its opinion ⁽²⁾, their independence and impartiality vis-à-vis the litigant parties are ensured and that they do not rule out judicial proceedings.

4.3.6 The EESC urges the Commission to promote effective measures to promote e-commerce transactions combined with online dispute resolution (ODR) systems. Furthermore, it welcomes the plans to set up a stakeholder platform to discuss a European trustmark for websites.

4.3.7 With regard to collective action, the EESC is disappointed that the agenda only makes an extremely cautious reference to the possibility of introducing such an implementing measure for consumer law. It believes that, given the situation in certain countries and in cross-border disputes, and following all the consultations undertaken, the time has come to stop procrastinating and to expedite its introduction.

4.4 *On aligning rights and key policies with economic and societal change*

4.4.1 The EESC notes that despite opposition from almost all consumer organisations and some businesses, the Commission intends to take action on the proposed regulation on a European sales law establishing an optional set of rules. The EESC reiterates its position ⁽³⁾ regarding the fact that this proposal is unsuited to some of the intended objectives, including a higher level of consumer protection. It stresses the need to develop European consumer law.

4.4.2 The digital sector

The Committee supports the various proposals concerning the digital sector in light of technological developments. It notes that the Commission will work to ensure the same level of consumer protection in this sector, an initiative which must go hand in hand with its development.

4.4.3 Financial services

4.4.3.1 The EESC notes that the Commission has decided to enhance the surveillance of financial services for consumers,

especially for the most vulnerable amongst them. The EESC supports this course of action, which should enhance transparency and facilitate product and price comparison.

4.4.3.2 The Committee would like to recall that it pays particular attention to all aspects of financial inclusion.

4.4.4 Food

4.4.4.1 The Committee unreservedly endorses the adoption of rules on food information and nutrition claims for public health reasons, which are of great concern to consumers.

4.4.4.2 Recent problems in some Member States regarding the illegal marketing of alcoholic beverages are a further example of the importance of market surveillance and monitoring.

4.4.4.3 The EESC welcomes the idea of preventing food waste through action targeting the different links in the food chain.

4.4.5 Energy

4.4.5.1 The Committee is very alert to the fundamental importance of energy for all consumers, especially the most vulnerable, who must be able to receive this service under acceptable conditions.

4.4.5.2 The EESC encourages all initiatives to promote the management of energy consumption since energy is a scarce resource and has an impact on household expenditure. It draws attention to the need to evaluate the techniques made available to consumers to ensure that they are truly innovative and productive.

4.4.6 Travel and transport

4.4.6.1 The EESC believes that it is important for the agenda to cover air travel as well as public transport. It shares the Commission's concerns regarding the improvement of passenger rights, which must be suited to the products marketed by companies and tour operators. The EESC emphasises that the proposed review of EU law and related measures set out in the Single Market Act ⁽⁴⁾ must strengthen passenger rights and aim to reduce unfair contractual and commercial practices, especially in the case of air transport.

4.4.6.2 The EESC stresses the urgency of adopting measures aimed at protecting passengers stranded by airline bankruptcies, a problem which the consumer agenda does not address.

⁽²⁾ OJ C 286, 17.11.2005, p. 1.

⁽³⁾ OJ C 181, 21.6.2012, p. 75.

⁽⁴⁾ COM(2010) 608 final.

4.4.6.3 The Committee supports the development of a strategy to promote "clean cars" to reduce CO₂ emissions.

4.4.7 Sustainable products

4.4.7.1 The EESC has frequently stressed the fundamental importance of sustainable development for Europe's future. It therefore supports the Commission's proposals for increasing product longevity and encouraging eco-design for all products.

4.4.7.2 The EESC welcomes the Commission's ongoing efforts to promote corporate social responsibility (CSR) policies, but more stringent measures are needed to ensure transparency and responsibility for higher ethical and ecological standards in the production and distribution of goods, particularly those from third countries. Binding measures need to be introduced vis-à-vis third countries to ensure that their products meet European standards, e.g. the requirement to provide written proof of a product's compliance with international labour standards.

Brussels, 14 November 2012.

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 key information documents for investment products'

COM(2012) 352 final — 2012/0169 (COD)

(2013/C 11/13)

Rapporteur: **Mr IOZIA**

On 10 September 2012 the European Parliament and on 11 September 2012 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 Regulation of the European Parliament and of the Council on key information documents for investment products

COM(2012) 352 final — 2012/0169 (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 25 October 2012.

At its 484th plenary session, held on 14 and 15 November (meeting of 14 November), the European Economic and Social Committee adopted the following opinion by 138 votes to none with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the proposal for a regulation put forward by the Commission, and considers that it is consistent with the undertakings made to fill the European legislative gap in the area of retail investor protection.

1.2 The EESC draws attention to the importance of this legislation, which for the first time regulates all types of complex financial product and ensures they are comparable, regardless of the type of manufacturer – bank, insurer or investment company – and appreciates the Commission's efforts to seek balanced solutions that can be applied simultaneously by all.

1.3 In recent opinions, the EESC had called for uniform requirements that were clear, simple and comparable and therefore welcomes the regulation. It hopes that the comments set out in the present opinion will be taken on board in order to make the regulation clearer, more immediately enforceable and applicable.

1.4 In spite of the very considerable volume of regulations issued over the last three years, the EESC notes that two key objectives have still not been reached: that of restoring full integrity to the market, and that of achieving an effectively integrated market that is open to all players. The most recent financial scandals have unfortunately revealed a continuing lack of determined, decisive action by national supervisory authorities to ensure that further acts inflicting huge losses on savers, as in the case of Libor manipulation, are in practice impossible. Obstacles continue to be put in the path of full completion of the internal market, with the aim of protecting

the advantageous position of national companies. No significant progress is being made with regard to mortgages; the comparability and transparency of the cost of current accounts and principal services; the content of basic products; access to banking services for specific disadvantaged groups; collective actions; recognition of the capacity of users' and consumers' associations to take action; protection of cross-border contracts; or harmonised dispute resolution procedures; although it should be emphasised that the Commission is striving to fill the legislative gaps.

1.5 The EESC would point out that no provision has been made concerning the possibility of imposing sanctions on third country manufacturers, against whom it is difficult to bring action should they breach the European rules. It suggests that in such cases, intermediaries should bear the cost and assume liability for any breaches of the regulation. In addition, the third countries that host the main financial centres should be urged to adopt similar rules and to ensure they tie in with the guidelines produced by the Financial Stability Board (FSB).

1.6 While the EESC understands the reasons put forward by the Commission for the simultaneous existence of the key information document (KID), as proposed in the present regulation, and the key investor information document (KIID), for which provision was made by Directive 2009/65/EC and which was included in Council Regulation No 583/2010 of 1 July 2010, it considers that assessment of the advisability of retaining two separate documents for financial investments should be brought forward, and suggests that "within two years" of the entry into force of the regulation for investment products, the Commission should be empowered to propose the merger of the two distinct models, bringing the UCITS requirements into line with those for the KID.

1.7 The EESC disagrees with the Commission's choice of delegated acts for essential components of the regulation: such components should be enforceable as soon as the regulation is enacted. The content of Article 8(2) in particular is assigned to delegated acts. This includes the details of the presentation and content of each of the items of key information, of possible additional content and of a common model; in practice 90 % of the rules. The delegation under Article 10(2) concerns content and arrangements for reviewing and possibly revising information. Lastly, the delegation under the terms of Article 12(4) concerns the conditions for fulfilling the requirement to provide the key information document and the method and the time limit for provision of the document.

1.8 The EESC strongly recommends that these proposals, and any wording that could cause confusion or imprecision, such as "in good time" and "seriously jeopardise", be reviewed and urges the Commission to specify more clearly the procedures to follow in cases of breaches of obligations occurring in more than one Member State and to define which authorities are authorised to impose sanctions, which in other cases are determined by the European supervisory authorities.

1.9 The EESC believes there is a need to bring the proposal set out in Article 15 concerning alternative instruments for managing disputes into harmony with the solutions put forward as part of the revision of the proposal for a directive on Alternative Dispute Resolution (ADR) [COM(2011) 793 final] and the introduction, by means of a regulation, of an online consumer dispute resolution system [COM(2011) 794 final], on which the EESC has issued opinions⁽¹⁾. The Commission should make explicit mention of the possibility of taking collective or group actions in the event of improper behaviour, to be inserted into Article 11.

1.10 The EESC suggests that a reference to the right of withdrawal for distance buyers of financial products, as provided under the MiFID directive and existing legislation, be inserted into the text of the regulation.

1.11 The EESC advises considering the possibility of including financial product KIDs on a single portal. This would facilitate comparison between different products and increase market transparency.

1.12 The EESC disagrees with the proposed derogations concerning provision of KIDs; on the contrary, it believes that the derogation for distance selling should certainly be removed, and very careful consideration should be given to the other derogations. Bank or insurance clients should receive the KID in good time before completing a sale by telephone.

1.13 The EESC considers that the real cost for the end user needs to be included on the list of KID contents.

2. Summary of the proposal

2.1 The proposal for a regulation under examination is about improving transparency in the investment market for retail investors. There are at present no clear rules defining disclosure requirements, and investors are not able to gain a thorough understanding of the risks to which their investments are exposed.

2.2 In the absence of appropriate, straightforward and comprehensible information, retail investors may pay inflated prices which do not match their risk profiles, or may miss other investment opportunities.

2.3 A uniform, simplified and standardised information system would ensure that such information is comparable and comprehensible, increasing market transparency and efficiency.

2.4 In order to fill this gap, and building on the previous experience of the KIIDs for UCITS, the European Commission proposes the adoption of a document containing short, comparable and standardised disclosures, to be drawn up by the product manufacturer.

2.5 The regulation is to apply to all complex products regardless of their form or construction that are manufactured by the financial services industry to provide investment opportunities to retail investors, where the return offered to the investor is exposed to the performance of one or more assets or reference values other than an interest rate.

2.6 The KIDs must be drawn up in accordance with the indications set out in the regulation, and the Commission is entitled to establish further specifications and information to be included by means of delegated acts. In the event of infringement of the legislation or non-compliance with the requirements laid down, manufacturers will be liable to compensate the loss caused to retail investors.

2.7 The regulation lays down procedures for submitting complaints and seeking redress and for timely and active cooperation between the competent authorities. It is up to the Member States to lay down administrative sanctions and measures that are effective, proportionate and dissuasive.

⁽¹⁾ OJ C 181, 21.6.2012, p. 93 and OJ C 181, 21.6.2012, p. 99.

2.8 The transitional and final provisions stipulate, among other things, that the rules governing KIIDs for UCITS are to remain unchanged for a period of five years following the entry into force of the regulation. The proposed regulation will be reviewed four years after its entry into force, at which point a decision will be made on whether to continue with the provisions of Directive 2009/65/EC ⁽²⁾ which deals specifically with the disclosure requirements for UCITS.

3. General comments

3.1 Since its January 2008 opinion on the Green Paper on retail financial services in the Single Market ⁽³⁾, the EESC has been calling for measures to ensure that the mandatory information for retail investors is clear, exhaustive, essential and transparent, especially where packaged and structured products are concerned.

3.2 Adopting measures that can significantly redress the information imbalance between financial product manufacturers and retail investors is a pre-condition for creating a single financial market in which clear, accurate, straightforward and comparable information flows. The Commission's proposal is a step in the right direction.

3.3 The possibility of regulatory arbitrage between less strict and costly rules and other, more prescriptive ones, would distort the market, creating obstacles to the achievement of a genuine, transparent and efficient single financial market.

3.3.1 Adopting a standardised EU information model is crucial to facilitating the development of an integrated cross-border market. The current legislative differences between countries generate an unfair competitive advantage for companies operating in countries that impose no obligations, as they can offer, without hindrance, products that may entail serious hidden risks.

3.4 On these general grounds, the EESC agrees with both the reference to Article 114 TFEU and the choice of a regulation. The EESC has on a number of occasions spoken out in support of this instrument as the best option for regulating finance with a view to preventing the gold-plating and cherry-picking that typically takes place when directives on financial transactions are transposed. The application of Article 5 TEU on the principles of subsidiarity and proportionality appears fully grounded.

3.5 Information on possible profits, including any levies and commissions linked to the product, should be provided. If the financial product is based on different currencies, the exchange

risk should be taken into account and the historic performance of the product and the official currency in which it is labelled should be calculated. Product information should include prices in the original denomination and in the currency of the country where the product is marketed. This would go a long way to helping retail investors understand and compare products.

3.6 In the EESC's view, it is essential that the supervisory activity of the relevant authorities, at both national and European level, be stepped up. It is seriously concerned at the Commission's view that the role of the European authorities under the current regulation does not require reinforcement. The increasing responsibilities they bear have not been accompanied by a proper assessment of the resources available. As at 9 October 2012, for example, the EBA had a total staff of 84 with which to carry out a very significant number of duties. Adding further tasks while ignoring the permanent state of crisis in which these authorities have to work could be seen as sending the opposite message to that intended by the proposed legislation.

3.7 The EESC underlines the major impact that the rules on information leaflets for UCITS investors have had. The market in Europe has received a major boost, and the transparency of the information tools (KIIDs) has enabled the market to function more effectively. The requirements set out in the KIDs are more advanced, and the Committee urges rapid movement towards a single model.

3.8 The EESC regrets that no mention is made of the implications regarding third country products, and urges the Commission to think about the need to explicitly include such a provision in the regulation. For such products, intermediaries rather than manufacturers should bear liability.

3.8.1 The 2007-2009 financial crisis was marked by the toxic products devised by major American finance houses. Sub-primes were revealed to be no more than very high-risk junk bonds, and the three main rating agencies were all mistaken in having considered them as reliable. For products manufactured in third countries to be sold, the liability of the product manufacturers, who cannot be directly bound by the European rules on KIDs, must be transferred to the sellers.

3.9 Financial market fragmentation is another problem that the present regulation can help resolve. The variety of rules has so far blocked real integration of national markets, and the cross-border market reflects the patchwork nature of regulation, pushing up costs and making it easier to sidestep stricter rules that are geared to protecting consumers.

⁽²⁾ OJ L 302, 17.11.2009, p. 32.

⁽³⁾ OJ C 151, 17.6 2008, p. 1.

3.9.1 Support for consumer financial education programmes is crucial. In an own-initiative opinion ⁽⁴⁾, the EESC argued that "financial education is clearly key to maintaining confidence in the financial system and ensuring the responsible consumption of financial products".

3.10 The EESC recommends that the impact assessments take account of the full range of rules being framed and their respective costs: unjustified over-regulation would cause incalculable loss not only to the financial industry, but to the entire economy. If finance grinds to a halt an unprecedented crisis could ensue, as demonstrated by recent events with a price tag in the hundreds of billions of euros and by the severe economic crisis affecting several countries.

3.11 In the Commission's proposal, sellers are mentioned only in terms of their liability and sanctions. There is nothing on the training requirements of the staff of companies selling financial products, or the need to severely curtail the link between the sale of specific products and the bonuses awarded to the best-performing employees. Since this aspect, of crucial importance, is addressed in the new MiFID directive, the EESC suggests that an explicit reference to the directive be inserted into the regulation.

3.11.1 The EESC has repeatedly pointed out that one of the main causes of the indiscriminating sale of toxic, unsuitable or high-risk products without proper information about them – causing enormous losses for savers – has been the irrational policy pursued by financial businesses and banks of awarding astronomical bonuses to managers on the basis of very short-term results.

3.11.2 Improper practices have been employed to obtain these results; these practices are now being penalised by the courts in the form of the enormous repayments that certain banks and financial companies are being forced to make to their clients. These include companies whose pay schemes are based on the sale, at all costs, of high-yield products for vendors, with targets being set for each sales point. Such commercial schemes may be appropriate for sausage-sellers, but not for banks using people's life savings!

3.11.3 In spite of the initiatives launched, it must unfortunately be acknowledged that certain improper practices continue unabated, even going so far as to manipulate reference rates, as in the recent Libor scandal, in order to generate exceptional profits. Such behaviour, concerning a very small minority of the European financial industry, besmirches the reputation of the entire system and the legacy of trust built up over years of work. The financial community as a whole must maintain extremely high and unwavering

standards of business ethics. Banking associations must punish businesses and individuals severely if they violate the general principles governing behaviour, even excluding them from their meetings and banning them from carrying out banking activities in the event of serious infringements. All too often have they remained silent in the face of clearly illegitimate, and frequently also illegal, behaviour.

3.12 The EESC strongly urges the Commission to monitor the effectiveness of the sanctions that the Member States are to determine. There are numerous differences between national bodies of legislation concerning how seriously financial infringements or offences are viewed, stemming from the different economic and legal cultures of the individual countries. Since it is not possible to issue European laws, with accompanying penalties, in the administrative or criminal fields, the Commission must strive to make not only the rules, but also the sanctions, as uniform as possible. There is a real danger of shifting from regulatory to sanctions dumping, with the same laws but very different sanctions, leading operators to choose to work from the place where the risk is least. Work to coordinate common efforts is key to making regulation effective and efficient. Consideration should also be given to the various types of penalty, which are in some countries administrative and in others judicial.

4. Specific comments

4.1 Overall, the EESC considers the proposal to be balanced, but it requires improvement with regard to the missing aspects indicated in the general comments.

4.2 The EESC supports the option to focus attention on products with higher risk profiles so as not to burden the industry with unnecessary requirements to provide information documents that would not in practice serve any purpose.

4.3 The EESC welcomes the fact that the regulation clearly highlights the chain of responsibilities and shows who is tasked with drafting the KIDs. In the past, uncertainty over identifying such responsibilities has given rise to problems in seeking redress from those providing inaccurate or misleading information, leading to huge losses for retail investors.

4.4 The EESC endorses the choice by the Commission, for which it had long called, based on the solution adopted for UCITS of a short information document, written in a concise manner, in non-technical language that avoids jargon and drawn up in a common format comparable with other products. Article 8 provides a clear and exhaustive list of the information that the KIDs must contain, adding the real costs to be borne by retail investors.

⁽⁴⁾ OJ C 318, 29.10.2011, p. 24.

4.5 This option, however, does not dispense with the need to press ahead with developing financial education ⁽⁵⁾ as part of the school curriculum, in informal education, among elderly people and for housewives. Particularly vulnerable savers do not always possess the necessary fundamental knowledge to fully understand even simplified KIDs. The EESC recommends that the Commission emphasise – possibly in new recitals to be added to the proposed regulation – the need to expedite efforts to introduce basic financial education for all.

4.6 The EESC appreciates this first attempt to bring greater transparency to the costs, risk profile and information on past returns of the products question or products that may be considered similar.

4.7 The obligation of timely provision of a KID so that retail investors are fully informed and aware of the ensuing risks is vital if the proposed regulation is to be effective. The EESC would point out that specific time limits for providing the document are not indicated. The form of wording "in good time before the conclusion of a transaction relating to the investment product" is not sufficient to ensure that retail investors have all the relevant information. The EESC is against allowing derogations for the provision of KIDs, especially those derogations concerning distance selling.

4.8 The EESC considers that it would be useful for the text of the regulation to refer to the withdrawal option in distance transactions, as is the case in financial transactions.

4.9 The EESC strongly recommends that a reasonable deadline be adopted and inserted directly into the text of the regulation, rather than leaving it to the discretion of subsequent delegated acts, which in turn generate uncertainty for the financial industry regarding application. Moreover, under the terms of Article 5 the document must be drawn up before the product is marketed and published in advance on the internet. There is no reason not to define a mandatory time limit at this stage, failure to comply with which would mean effective non-compliance with the regulation's aims and obligations. A period of at least one week before the transaction can be concluded would seem reasonable. This would allow all the necessary information to be found, and for advice and explanations to be sought. Investors would be adequately protected, and would have time to compare competing sales offers. The EESC does not agree with the use of delegated acts in this area; such acts should be kept to a minimum and should fit in with the form and substance of Article 290 TFEU, being used for non-essential matters where other instruments are not possible.

4.10 The EESC agrees with the provision of Article 9 on the need to keep marketing communications separate from

documents containing key information and that such documents must not contradict the content of the KIDs. All too often, toxic products have been publicised as being safe – with the ever-reliable credit rating agencies playing a supporting role by handing out triple As all round. And these products have, for some reason, ended up in the hands of European savers.

4.11 The Commission has placed provisions concerning complaints, redress and cooperation between authorities in Chapter III, and administrative sanctions and measures in Chapter IV. Notwithstanding its general comments above, the EESC warmly welcomes the decision to provide a detailed definition of procedures, methods and conditions for adopting solutions other than law-based ones for disputes regarding retail investment in financial products.

4.11.1 Cooperation between the competent authorities is absolutely vital in the EESC's view. Several previous opinions have called not only for recommendations, but for mandatory rules obliging national authorities to offer the greatest possible cooperation allowed under national legislation and procedures. In the event of clear contradiction between laws, in keeping with the subsidiarity principle the conflicting national rule should be declared null and void.

4.12 Article 22 also contains a sentence that the EESC believes could lead to disputes in the future. The additional sanction of publication of the type of breach and identification of those responsible, which the EESC fully supports, is accompanied by the words "*unless such disclosure would seriously jeopardise the financial markets*". It is not made clear who is to assess the serious jeopardy. Is it the Commission, the national authorities or the European supervisory authorities? Neither is anything said about cases of breaches of obligations under the regulation that occur simultaneously in more than one Member State. Who is to decide? What happens if for one authority, publication does not jeopardise the financial market while for another it does? What procedure should be adopted? All these questions need to be resolved before issuing a regulation which, by its nature, must be straightforward, clear and immediately applicable, and the wording of which must remove the risk of unnecessary disputes that would be harmful to Europe's interests.

4.13 The Commission continues to issue proposals containing numerous delegated acts. The EESC has repeatedly questioned the legitimacy of these practices, the real need for them, and their consistency with the provisions of Article 290 TFEU for delegated acts and Article 291 TFEU for implementing acts. In this case too, the EESC considers that the Commission is putting forward solutions that touch upon essential regulatory matters. Article 8(2) for example details the presentation and content of each of the items of key information to be included

⁽⁵⁾ OJ C 318, 29.10.2011, p. 24.

in the document, possible additional content and a common model: in practice 90 % of the rules. The delegation under the terms of Article 10(2) concerns content and arrangements for reviewing and possibly revising information. Lastly, the delegation under the terms of Article 12(4) concerns the conditions for fulfilling the requirement to provide the key information document and the method and the time limit for the provision of the document, which has been criticised earlier in the present opinion.

4.14 The EESC questions whether these are really necessary and match the logic of the regulation under examination. It is understood that delegated acts are much easier to manage, but they must keep strictly to the provisions of the Treaty. The relevant Commission communication ⁽⁶⁾ states that "Article 290 of the Treaty on the Functioning of the European Union, as laid down in the Treaty of Lisbon signed on 13 December 2007

(hereinafter 'the new Treaty'), allows the legislator to delegate to the Commission the power to adopt non-legislative acts of general application **to supplement or amend certain non-essential elements of a legislative act**".

4.15 In the EESC's view, the Commission's proposals for delegated acts, on the contrary, represent essential elements of a legislative act.

4.16 Lastly, the EESC does not support the decision to retain the rules governing the disclosure obligations for UCITS unchanged for the next five years, and suggests that the Commission plan for a review within two years of the present regulation being adopted, with the aim of harmonising all the key documents for investors concerning financial products of all types as soon as possible.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁶⁾ COM(2009) 673 final of 9 December 2009.

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: Towards a job-rich recovery'

COM(2012) 173 final

(2013/C 11/14)

Rapporteur: **Ms BISCHOFF**

On 18 April 2012, 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:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a job-rich recovery

COM(2012) 173 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 23 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 15 November 2012), the European Economic and Social Committee adopted the following opinion by 204 votes to 2 with 2 abstentions.

1. Conclusions and recommendations

1.1 Europe is failing to get to grips with the crisis, and is becoming increasingly divided as a result. Many of the worst affected countries have seen a dramatic rise in unemployment, especially youth unemployment. European employment policy must make a bigger contribution in order to support Member States' efforts to deal with problems. It should be seen as part of the solution more than has been the case so far, so that by combining forces, the crisis can be overcome with solidarity and Europe stabilised.

1.2 The EESC therefore considers it essential that employment policy be used to bolster development of European infrastructure and qualitative growth. There is considerable need for investment, which can serve to promote employment. Every effort must be made to mobilise both private and public investment and to carry out reforms.

1.3 A European labour market can take shape and win back credibility through an effective employment policy based on solidarity. One of the key elements of this is timely and binding implementation of the Youth Guarantee. In some of the worst affected countries there is also interest in introducing dual education systems. The Commission should support this, enable start-up financing and initiate an exchange of best practice. If we fail to give young people real prospects, especially in the worst affected countries, there is a risk that a "lost generation" will emerge, which would be socially and politically explosive. The EESC calls for solidarity-based solutions similar to the Globalisation Fund.

1.4 Follow-through on the Youth Guarantee is a first crucial step, but existing structural problems also urgently need to be addressed.

The goal of creating a large number of jobs is dependent on:

- labour supply: making use of the employment potential of long-term unemployed people through an inclusive market;
- labour demand, which is mainly possible in growing, highly labour-intensive fields such as the silver economy.

1.5 Employment policy cannot compensate for mismanagement of macroeconomic policy, but it can make a real contribution to boosting competitiveness in knowledge-based societies, by strengthening innovation capacity, and achieving a better balance between demand for, and supply of, skills. In addition, there is an urgent need to increase access to venture capital by European businesses, especially SMEs, and to cut red tape.

1.6 In general, the special role of the social partners in shaping and implementing employment policy needs to be taken into account and strengthened as part of the new governance.

2. European employment policy in a time of crisis

2.1 On 18 April 2012, the European Commission published a communication entitled *Towards a job-rich recovery*, with nine accompanying documents. The communication contains proposals on support measures for job creation and labour market reform and on efforts to strengthen EU governance.

2.2 The Commission's call for a "job-rich recovery" comes at a time when massive job losses in several countries triggered by multiple crises (financial, economic, social, euro and debt crises, and a crisis of confidence) are damaging people's lives, whether because they have lost their jobs, because they cannot find others, because they are forced to accept lower wages or because social security benefits have been reduced or withdrawn.

2.3 The Committee therefore welcomes the Commission's engagement with the employment policy challenges presented by the crisis, and its call for a job-rich recovery. This is long overdue because the consequences of the crisis are growing worse – among other reasons because governments in almost all EU countries are striving to reduce budget deficits through sometimes painful cuts in public expenditure, with a focus on scaling back benefits and public services, as part of efforts to implement newly modified rules on economic governance in the euro area. These policies restrict labour market opportunities – not least for members of groups that were already disadvantaged to begin with⁽¹⁾. Austerity measures hit people who depend on social security payments hardest, including those in insecure employment conditions and other disadvantaged groups in the labour market. The stabilising function of solidarity-based social security systems therefore needs to be maintained and strengthened so that they remain effective and sustainable, especially when it comes to the worst affected and most disadvantaged groups in the labour market.

2.4 At an early stage, the EESC called for special efforts to combat the worrying rise in unemployment: "business as usual" would not do. The Committee stated that employment policy could and should support the job creation process and that a stable economy was the basis of such a policy. It welcomed the European recovery plan that was adopted in 2008, but criticised it for being too limited in scope⁽²⁾.

2.5 Current labour market figures are alarming: in the worst affected countries there is an unbroken negative trend. Unemployment in Europe stands at a record high of 10,5 % (August), or 11,4 % in the euro area. Unemployment is rising in two-thirds of Member States. It has risen especially quickly in Spain (25,1 %), Portugal (15,9 %) and Greece (24,2 %) ⁽³⁾. 25,46 million people are unemployed. It is particularly depressing to

note that long-term employment has also risen and is plainly continuing to do so. More than 40 % of unemployed people have been looking for work for over a year⁽⁴⁾. Persistently high youth unemployment in the EU is especially worrying. It stands at more than 22 %. Here, too, there are big differences between the Member States. In Spain and Greece it is over 50 %; in some Member States (Portugal, Slovakia, Bulgaria, Italy and Ireland), it is around 30 %. Only in three Member States (Germany, Austria and the Netherlands) is it below 10 %⁽⁵⁾.

2.6 Growth and employment policy cannot be viewed in isolation from one another. That is why the Committee has repeatedly called for a European stimulus package with a comprehensive impact on labour market policy, amounting to 2 % of GDP. Business creation and an entrepreneurial mindset should also be promoted throughout society and not least in the educational systems and in training schemes. Alongside additional national investments to boost the impact on employment, which should be implemented in a coordinated fashion, European investment projects must also be identified. The "Compact for Growth and Jobs" agreed at the European Council summit of 28 and 29 June 2012 signalled the first important steps in this direction; these must now be given substance to create the urgently needed room for manoeuvre for sustainable growth and employment across Europe. There should be a special focus on securing labour market transitions, particularly during restructuring processes.

3. The framework for European employment policy

3.1 The Committee therefore shares the Commission's analysis that the prospects for employment growth depend to a large extent on the EU's capacity to generate economic growth through appropriate macroeconomic, industrial and innovation policies and to complement this with an employment policy aimed at bringing about a job-rich recovery. The EESC is concerned that if the policy of cuts continues unabated in the EU, it will be impossible to implement many of the positive proposals in the Employment Package (EP). The EESC is also concerned that the proposed measures alone will not be enough to achieve the objectives set out in the EU's employment strategy. In February 2012 the Committee called for a social investment pact to sustainably tackle the crisis and invest in the future⁽⁶⁾. It therefore welcomes the attention drawn by the Commission in the Employment Package to the EU's commitment to full employment and social cohesion under Article 3 of the Treaty.

4. Proposals for strengthening Europe's employment strategy

4.1 Offering young people real prospects

4.1.1 In its report entitled *Global Employment Trends for Youth 2012*, the ILO warned as recently as May 2012 of the risk of a "lost generation" emerging. Governments, it said, had therefore

⁽¹⁾ OJ C 143, 22.5.2012, p. 23.

⁽²⁾ OJ C 306, 16.12.2009, p. 70.

⁽³⁾ See the EUROSTAT press release 138/2012, 1.10.2012.

⁽⁴⁾ See the EUROSTAT press release 138/2012, 1.10.2012.

⁽⁵⁾ SWD (2012) 90 final, p. 10f.

⁽⁶⁾ See footnote 2.

to prioritise active labour market and employment policies for young people. With this in mind, the Committee welcomes plans to put the Youth Guarantee into practice. As yet untapped ESF funds will not be enough cover this, however. The EESC therefore recommends that countries in particular difficulty be temporarily supported, since they often lack the financial resources for the active employment policy that is needed – especially when it comes to binding implementation of the Youth Guarantee. If ESF funds are not enough to cover this, additional European funds (a Youth Solidarity Fund) should be deployed to meet the shortfall. Multi-billion-euro bailouts were possible for the banks, so it must also be possible to mobilise these amounts by way of a financial transaction tax, for example, which the Committee has long advocated.

4.1.2 Eurofound has studied the strengths and weaknesses of Youth Guarantees ⁽⁷⁾. They are an important short-term measure to prevent marginalisation of young people. They are less effective with specific target groups such as the "hard to help", however, and they do nothing to address structural problems (e.g. deficient education and training systems).

4.1.3 The timing of intervention is also crucial. The EESC considers intervention after three months to be too late; ideally the Youth Guarantee should take effect as early as possible, i.e. at the point of registration at a job centre, because a failed transition damages the economy and leaves lifelong scars. The Committee recommends that the Youth Guarantees also include young adults aged 25-29. Concrete measures should be formulated to this end as part of the National Reform Plans. Many countries need to substantially extend the targeted support offered by government agencies, giving special attention to disadvantaged groups.

4.1.4 It is important to bridge the gap between labour market needs, education and the expectations of young people. One way to achieve this is to provide incentives and support for the development of high-quality apprenticeship schemes. The Committee considers it important that the social partners in the Member States are closely involved in developing these schemes. The EESC calls for better exchange of experience and for ESF support for apprenticeship schemes. Exchange of best practices and start-up financing need to be encouraged and a quality framework for dual education developed. The application of the suggested Quality Charter for Traineeship should be accompanied by incentives.

4.2 Training boosts competitiveness and creates new prospects

4.2.1 A balanced mix of basic, vocational and academic qualifications is needed, because sustainable employment growth cannot be based on academic/tertiary qualifications alone. It is crucial that cognitive and universal skills be acquired, not just formal higher qualifications. In the future,

there will be even greater demand for transversal and communication skills. The EESC supports the efforts to ensure better recognition of qualifications through validation of skills acquired outside the formal education system, especially in view of the recent Proposal for a Council Recommendation on validation of non-formal and informal learning ⁽⁸⁾. The implementation of the European Qualifications Framework at national level must be strengthened.

4.3 Quality of supply and demand in the labour market

4.3.1 The Committee is pleased that the Commission not only addresses the supply side of the labour market, but also focuses strongly on the demand side. Businesses in Europe are central to efforts to overcome the employment crisis. Small and medium-sized enterprises in particular have been a source of new jobs in recent years. Therefore it is essential to improve access by SMEs to capital and to cut start-up costs by 25 %. There are ongoing efforts to reduce the administrative burden on companies. According to the European Commission, this would have a significant economic impact on the EU economy: increasing GDP by about 1,5 % or around EUR 150 billion, without at the same time diminishing the protection of employees. Social enterprises and civil society organisations can also contribute to job creation, as has been stressed on several occasions, including in EESC opinions ⁽⁹⁾. Moreover, a recent own-initiative opinion by the CCMI ⁽¹⁰⁾ noted that cooperatives, especially employee cooperatives, are able to protect jobs even in times of crisis by reducing profits.

4.3.2 Sustainable competitiveness in a knowledge-based economy requires corresponding investment in upskilling employees. Wage subsidies and in-work benefits for certain target groups (for example, the long-term unemployed) can also be useful ways of stimulating demand.

4.3.3 The EESC welcomes the proposal for "transition management agencies". However, particularly in view of the rising number of long-term unemployed, this cannot be limited to job search services. What is needed is a comprehensive range of services to remove obstacles to employment and for rapid (re-)integration into the job market, particularly at local level, for example through the provision of training. The "active inclusion" strategy which the Commission set itself in October 2008 ⁽¹¹⁾, as well as aiming to safeguard incomes and foster inclusive labour markets, targets access to services designed to enable quality bespoke support for obtaining a job suited to each individual's preferences and skills. With the aim of a labour market strategy tailored to the individual in mind, it is therefore necessary to network the above-mentioned services and create an integrated package of services, which should be supported by strengthening the partnership principle in the context of the ESF and elsewhere.

⁽⁸⁾ COM(2012) 485 final.

⁽⁹⁾ OJ C 229, 31.7.2012, p. 44.

⁽¹⁰⁾ OJ C 191, 29.6.2012, p. 24.

⁽¹¹⁾ C(2008) 5737: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:307:0011:0014:EN:PDF>.

⁽⁷⁾ See the Eurofound report "Youth Guarantee: Experiences from Finland and Sweden", 2012.

4.3.4 The continuing crisis-related stagnation in the demand for labour is leading to an increase in long-term unemployment, resulting in serious difficulties in labour market integration and consequently a growth in poverty caused by loss of contact with the labour market. The EESC recommends that the Member States pay particular attention to setting up an inclusive intermediate labour market in which public resources create an appropriate number of suitable jobs to ensure that the long-term unemployed remain in touch with the world of work and improve their knowledge. This will prevent poverty caused by loss of contact with the labour market from increasing and enable these people to make a smooth transition into the open labour market once the crisis is over.

4.3.5 The creation of a European labour market is still the long-term goal. The EESC welcomes the proposals to remove obstacles to free movement of workers. The conditions for fair mobility generally need to be improved⁽¹²⁾. However, mobility must not lead to the depopulation of regions; rather, risk should be shared on the basis of solidarity to help poorer regions catch up.

4.4 *Flexibility and security*

4.4.1 The Committee has already expressed its opinion on flexicurity on numerous occasions. It welcomes the fact that experience in handling the crisis has led to the flexicurity approach being expanded. Improving internal flexibility has hitherto not been given enough attention in the debate around flexicurity. Fixed-term contracts and temporary work can enable short-term transitions and can sometimes be needed to make it easier for particularly disadvantaged groups to enter the unsubsidised labour market. However, the job insecurity this entails should only ever be temporary, and should be mitigated by social security. The EESC rejects the proposals for a "uniform employment contract" indirectly mentioned in the Communication. Instead, it recommends that precarious work be tackled with greater resolve and that proposals be put forward on how to reintegrate workers into normal working conditions.

4.5 *Encouraging demand and fairness in distribution*

4.5.1 In terms of the economy as a whole, a balance needs to be struck between achieving sufficient growth in demand and retaining price competitiveness⁽¹³⁾. These issues are already being discussed as part of macroeconomic dialogue at both technical and political level. As noted by the Commission on p. 25, this has to happen in a way that respects and guarantees the autonomy of the social partners at all times in accordance with Article 153(5) of the TFEU. The Committee does not support the proposal to establish a new tripartite committee in the EU to monitor wages. Instead, it recommends reforming and reinforcing where relevant the existing structures – the tripartite social summit and the committee for macroeconomic dialogue and social dialogue – to ensure the

effective and balanced involvement of social partners, employment and social affairs ministers and finance and economy ministers.

4.5.2 The Committee welcomes the fact that the Commission is addressing the issue of minimum wages and decent job quality. Minimum wages play an important role in preventing wage dumping, especially in sectors where there is no collective agreement on minimum pay. However, the Committee argues against equating minimum wages with decent pay. Not every minimum wage amounts per se to decent pay, and only fair minimum wages guarantee a fair pension. In general, the complexity of the different national systems of wage setting needs to be taken into account.

4.5.3 The EESC has long advocated expanding the tax base used to fund social security systems, which is why it is encouraging to see the Commission look in the jobs pact at shifting towards environmental, consumption or property taxes – while monitoring redistributive effects – to enable budgetary neutral reduction of the tax wedge on labour. Balancing the budget and strengthening the future sustainability of society and the economy through appropriate employment and training policies not only mean minding expenditure, they also mean improving revenue and using it in a more productive way.

4.6 *Proposals on new governance*

4.6.1 The proposals on new governance are the central plank of the communication. In this chapter, the communication sets a significantly new tone and makes proposals as to how employment policy can be given more impetus and emphasis in the context of the European Semester. The Committee warmly welcomes this, as employment policy has been losing importance with the mid-term evaluation of the Lisbon Strategy, the 2020 goals and the new governance concept in the context of the European Semester. The EESC therefore calls for a prompt evaluation of the European Semester and for earlier and closer involvement of the social partners and civil society.

4.6.2 Whilst the European Semester covers a short period of time, the employment policy goals have a medium-term perspective. On 21 October 2010, the Council decided to leave the employment policy guidelines unchanged until 2014. In 2011, the EESC criticised the fact that the 2010 guidelines:

- did not adequately reflect the need to make tackling unemployment the highest priority;
- significantly weakened the European approach;
- contained no measurable EU objectives concerning target groups; and

⁽¹²⁾ OJ C 228, 22.9.2009, p. 14.

⁽¹³⁾ See footnote 3.

— had nothing concrete to say about quality of work ⁽¹⁴⁾.

4.6.3 The Committee welcomes the proposals for a benchmarking system and a scoreboard to keep track of the implementation of the National Job Plans. The European social partners should be involved in designing the benchmarking system and the criteria for the scoreboard. They should also be consulted at an early stage during preparations for the Annual Growth Survey when establishing the key strategic priorities for employment policy, and when drawing up, implementing and evaluating the employment policy guidelines. Against the background of the above-mentioned need for integrated, tailored services, it would be desirable for the indicators both to have a target group component and to take account of regional circumstances.

4.6.4 The EESC also calls for fair coordination between the employment policy benchmarks and the procedure behind the scoreboard in the event of excessive macroeconomic imbalances.

4.6.5 The Committee supports any initiative that uses the Employment Package to make the current employment policy challenges, objectives and progress more visible, binding and easy to understand again, and to strike a better balance between economic, employment and social policy. It also feels the measures must be designed in a way that supports the EU's gender equality objectives. It notes with concern that promotion of female employment is not adequately reflected in the EP, and that the gender perspective otherwise advocated by the Commission has not been properly integrated.

4.7 *Proposed sources of new employment*

4.7.1 In the accompanying documents the "green economy" is touted as a promising potential source of new employment. However, this potential is highly dependent on the legislation in each Member State governing activities affecting the environment. In contrast with other areas of growth, such as information and communications technology (ICT), growth in the green economy is governed by not just economic but also political interests due to the length of time it takes for investments in this sector to pay off. Clear environmental policy incentives are therefore needed. In addition, such incentive structures should enable a long-term planning perspective and minimise uncertainty about a possible change of rules. Close cooperation and coordination of environmental policy and economic policy are critical if implementation is to succeed. This cooperation must not be misused, however: of particular concern here is the stretching of the concept of "green jobs" to cover employment funded through green taxes ⁽¹⁵⁾. Such a definition shifts the focus from the activity itself, no matter how broadly that may be defined ⁽¹⁶⁾, as the main criterion of green jobs.

4.7.2 Employment potential in the green economy is also determined by economic cycles, and the relevant sectors are not stable. The transition to the green economy will also initially entail job losses in traditional industries. The consequences of this have to be cushioned in a socially responsible manner, and the individuals retrained so as to strengthen their prospects for finding new work. The greening of the economy could stimulate demand for high, medium and low skilled jobs, as shown by the Commission in its working document on "green growth" ⁽¹⁷⁾. Overall there is a substitution effect, which is why the Committee doubts that the net balance in terms of employment will be as positive as the Commission assumes. There are also areas of green technology that may experience a short-term boom (construction, for example), whereas long-term employment is more likely to be found in high-skill positions. These workers, too, will require adequate social security, and labour market transitions will need to be sustainable.

4.7.3 The sustainability of employment potential in the green economy is also heavily dependent on the skill profile of the workforce. A study on skill profiles ⁽¹⁸⁾ in nine EU countries shows that job growth in this sector is more likely to take the form of high-skill positions. At the same time, training provision in this sector remains severely fragmented. Regular coordination of the social partners and education providers will be needed to optimise the educational set-up for green jobs. Environmental policy is also of considerable relevance to education policy insofar as the green economy is concerned, because the former guides demand for qualifications. Research and development that link talent and venture capital are missing in Europe, which has so far failed to create its own Silicon Valley. Jobs in industry depend on the manufacture of applications, however. In general, the Communication does not address the engine that is R&D. One sector that offers opportunities to producers, service providers and the general interest alike is that of "ageing well" in the broadest sense, exploiting ICT to remain active, connected, mobile, included, in good health and well assisted (soon to make up 30 % of our society) ⁽¹⁹⁾. The example of Asia (China, Japan) is worth considering. Rapidly identifying users' rights and setting up systems of protection would save time and boost the number of jobs.

4.7.4 The EESC has already pointed out in a previous opinion ⁽²⁰⁾ that if the 20 % target for renewable energies by 2020 is met, this can be expected to produce a net effect of approximately 410 000 new jobs and an additional 0,24 % of economic growth as measured against 2005.

⁽¹⁷⁾ SWD(2012) 92 final.

⁽¹⁸⁾ See the briefing note from the European Centre for the Development of Vocational Training (CEDEFOP) on "A strategy for green skills?", February 2012.

⁽¹⁹⁾ See the EESC hearing of 11 September 2012 on "Active ageing and information technology".

⁽²⁰⁾ OJ C 376, 22.12.2011, p. 1.

⁽¹⁴⁾ OJ C 143, 22.5.2012, p. 94.

⁽¹⁵⁾ SWD(2012) 92 final.

⁽¹⁶⁾ See, for example, UNEP's definition of green jobs as those that "contribute to preserving or restoring the quality of the environment".

4.7.5 Another sector seen by the Commission as a growth area for jobs is information and communications technology (ICT). This industry is very heterogeneous, extending all the way from purely technical programming to consulting through to customer services. Because of its technological focus and fast pace of investment, this sector is particularly knowledge-intensive and therefore puts considerable demands on its employees. Because of this, but also because of the speed with which knowledge becomes obsolete, education policy, on-the-job training and individual learning initiative are of great significance in this sector as well. The work typically requires a high level of flexibility from employees in terms of location and working hours. HR policy strategies geared towards different stages of life are therefore needed in order to secure employee commitment to companies over the long term. Employees in this sector are also often at high risk of mental strain and illness.

4.7.6 In the health and care sector, particularly the silver economy, it is relatively easy to predict demand as the population grows older. "Silver employment" means the creation of new jobs as production structures adapt to the needs of an ageing population. The most important areas of silver employment are health and long-term care, which are labour-intensive and for which there is very high demand from an ageing population. There is currently a shrinking supply of young and well qualified labour. Even though the health and care sectors are key sources of value creation in the economy, many of their jobs are not attractive enough because of fixed-term contracts and low pay – especially those involving provision of personal services. An additional problem is the significant physical strain of the work, which prompts many workers to retire early. However, high-quality products and services can only be secured over the long term by ensuring correspondingly high-quality job conditions. Numerous jobs could be created through measures in the health sector and to improve (long-term) care systems, particularly in the home, and here, too, promoting investment could open up a number of opportunities supporting the development of inclusive enterprises and social enterprises in this sector.

Brussels, 15 November 2012.

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 — The External Dimension of EU Social Security Coordination’

COM(2012) 153 final

(2013/C 11/15)

Rapporteur: **José María ZUFIAUR**

In a letter dated 18 April 2012, the European Commission asked the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, to draw up an opinion on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — The External Dimension of EU Social Security Coordination

COM(2012) 153 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 October 2012.

At its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), the European Economic and Social Committee adopted the following opinion by 137 votes to 2 with 9 abstentions.

1. Summary and recommendations

1.1 The EESC believes that due to economic globalisation and the concomitant increase in international trade and migration flows, the internationalisation of social standards needs to be taken further in order to ensure that citizens in general and workers (whether migrant or sedentary) in particular, regardless of their nationality, are not denied their rights and can benefit from what might be termed *social globalisation*. There are losses and gains that also affect businesses.

1.2 As a result, the EESC welcomes the publication of the Commission's Communication on *The External Dimension of EU Social Security Coordination*. This Communication stresses the importance of a common EU strategy for coordinating social security systems with third countries, while respecting the national remit and ensuring the necessary coordination and compatibility with EU law of bilateral social security agreements concluded with third countries. It also advocates stronger cooperation between Member States in order to develop an international coordination policy in this area through the news and the media. Finally, it points out that non-EU businesses and nationals know that each Member State has its own social security system, which could hinder them when establishing themselves in the EU.

1.3 The EESC supports the external dimension of coordination rules set out in the Commission's Communication and advocating complementarity between national and EU approaches in order to avoid imbalances, loopholes and vacuums.

1.4 The EESC highlights the improvements resulting from the adoption of decisions on social security coordination with Morocco, Algeria, Tunisia, Israel, the Former Yugoslav Republic of Macedonia and Croatia. It also urges the EU Council to go further down this road with respect to the proposals for decisions relating to Montenegro, San Marino, Albania and Turkey.

1.5 The EESC points out that it makes sense to continue to develop the EU's global approach through EU agreements which respect the national remit but reduce certain dysfunctions resulting from the national approach and offer better prospects for all the Member States.

1.6 The EESC urges the Council to task the Commission with pushing forward and concluding, within the legal framework of the Treaties, international social security agreements in the context of negotiations with the EU's strategic partners and the emerging BRIC powers (Brazil, Russia, India and China), the Balkan States and the Eastern European neighbours, as well as with other States with a significant number of nationals working in the EU ⁽¹⁾, which ensure reciprocal protection for EU nationals and the nationals of signatory States. In particular, the EESC recalls the need to protect the nationals of States that are not considered to be of strategic importance to the EU due to their geopolitical or economic situation and who might therefore be at the greatest disadvantage.

⁽¹⁾ Over 20 million third-country nationals work in the various EU Member States.

1.7 The EU's external action in this area could be developed through the deployment of a multilateral policy that establishes closer links with other international organisations or supranational regional entities. A good example of this type of multiregional cooperation is the Ibero-American Social Security Agreement between the Latin American countries, Spain and Portugal. As a result, the EESC supports the initiatives of the Commission and the Chilean presidency of the next EU-LAC summit to improve social security cooperation on both sides.

1.8 The EESC urges the association councils comprising the EU and the respective non-EU States to finalise their work towards the final approval of decisions on the coordination of social security systems established by the stabilisation and association agreements with Israel, Tunisia, Algeria, Morocco, Croatia and the Former Yugoslav Republic of Macedonia.

1.9 The EESC calls for existing or future trade or economic partnership association agreements to include bilateral clauses on social security, referring in particular to equal treatment, the export of pensions and the elimination of double contributions.

1.10 The EESC suggests that EU cooperation on social security should be directed in particular towards those States that want to meet the goals set out in the Social Protection Floor initiative of the International Labour Organisation (ILO) but need assistance to reach or improve on the required thresholds. This would also make it possible to conclude bilateral social security agreements based on the principles of equal treatment, maintenance of entitlements acquired or in the process of being acquired and administrative cooperation. To this end, Regulation (EC) No 883/2004 ⁽²⁾ and Convention 157 ⁽³⁾ and Recommendation 167 ⁽⁴⁾ of the ILO could serve as models, with the necessary adaptations.

1.11 The EESC calls on the Commission to monitor all existing bilateral agreements between EU and non-EU States by keeping a regularly updated list of these instruments and checking that they comply with EU principles and relevant case-law.

2. Introduction

2.1 The EESC realises that Member States have developed bilateral and multilateral policies on the coordination of social security systems through international agreements with third countries. Nevertheless this approach may suffer from being

fragmentary and incomplete because in many cases it focuses exclusively on the protection of the nationals of the signatory States or responds to concrete interests which are not always shared by all Member States.

2.2 The EESC believes that although the importance of this edifice of international bilateral rules has to be recognised, it can lead to a scenario where not all third-country nationals are entitled to the same rights or guarantees within the EU. There could be situations where non-EU nationals working in a given State would not have access to social security or export of pensions unless they were covered by a bilateral agreement establishing the principle of equal treatment. As a result, the nationals of a country with a bilateral agreement would be entitled to social security whereas the nationals of a country without an agreement would not have this right even if they both happened to be working for the same company in the same staff category. There could also be situations where the nationals of one non-EU State would be protected under the national legislation of one Member State but not of another. This could impact on fair competition between States because contributions would be paid for third-country nationals in the first case, but not in the second. This would give the second State a financial advantage since it would cut social costs. This could undermine the concept of Europe as a non-discriminatory or anti-discriminatory level playing field.

2.3 It would also breach the principle upheld by the Posted Workers Directive, which calls for equal treatment between posted workers and the nationals of a Member State.

2.4 Similarly, the EESC believes that the external dimension of coordination rules must protect the rights of EU citizens when they are outside the EU or have worked or work in third countries.

2.5 The EESC believes that the idea of separately negotiated bilateral agreements between the various Member States and each and every third country constitutes a positive and commendable but incomplete initiative. This would involve a substantial, excessive and disproportionate effort with no guarantee of success; in addition to which, these agreements might not only differ but could actually contradict each other. Furthermore, negotiations, especially with strong emerging countries with high potential (e.g. BRIC), can result in a lopsided balance of power unless Member States work together on the basis of shared interests and positions. The possibility of the EU, as such, entering into social security negotiations with non-EU States or associations of third countries should therefore be looked at and, if appropriate, put into practice in accordance with the Treaties.

2.6 We believe that these instruments would avoid the need for double social security contributions, i.e. to the systems of the country of employment and the country of origin, especially for posted or seconded workers. It should be stressed that the

⁽²⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁽³⁾ Convention concerning the Establishment of an International System for the Maintenance of Rights in Social Security, Geneva, 68th session of the General Conference of the ILO (21 June 1982).

⁽⁴⁾ Recommendation concerning the Establishment of an International System for the Maintenance of Rights in Social Security, Geneva, 69th session of the General Conference of the ILO (20 June 1983).

elimination of double contributions would significantly reduce costs. This would benefit worker mobility and the competitiveness of our businesses outside the EU and, at the same time, encourage non-EU businesses to establish themselves in the EU. Furthermore, it would be possible to establish a single rule to avoid a discretionary and arbitrary application of the law of the country of employment or origin, as the case may be, and that tax and social security obligations do not coincide in the same State.

3. General comments

3.1 The EESC has expressed its views on the coordination regulations, which have had their personal (new groups) and material (new entitlements) scope of application extended within the EU. Furthermore, some European countries which are not EU members (Norway, Iceland, Liechtenstein, and Switzerland) are also included in the scope of these regulations, which have provided the basis and model for other multilateral instruments. The best example is the Ibero-American Social Security Agreement, a genuine offshoot of EU coordination laws. Consequently, the EESC believes that the Member States' or the Union's international coordination laws should be guided and informed by the main principles and mechanisms of Regulation (EC) No 883/2004.

3.2 The EESC points out that social security legislation, and social security provisions in particular, can transcend and be applied beyond the EU's borders. In this way, principles of equal treatment among the workers of the Member States can protect EU workers and have legal consequences outside the EU. In fact, the judgments of the Court of Justice of the European Union (CJEU) in a number of cases (cf. Boukhalfa (C-214/94 - a Belgian worker paid less than her German colleagues at the German Consulate in Algeria); Hirardin (C-112/75); Fiege (C-110/73); Ziemann (C-247/96); and van Roosmalen (C-300/84 - recognition by France and Belgium of social security contributions made in Algeria and in the Belgian Congo respectively for all EU nationals and not just their own) are solid evidence that the principle of non-discrimination can have extraterritorial application even in situations involving countries outside the EU. Furthermore, this *vis attractiva* has been confirmed by the judgments in the cases of Prodest (C-237/83) and Aldewered (C-60/93) since the CJEU recognised that Regulation (EEC) No 1408/71⁽⁵⁾ could be applied to the temporary posting of EU workers to third countries.

3.3 The EESC welcomes the adoption of the decisions on the position to be taken by the European Union within the stabilisation and association councils established by the stabilisation and association agreements with Israel, Tunisia, Algeria, Morocco, Croatia and the Former Yugoslav Republic of Macedonia with regard to the adoption of provisions on the

coordination of social security systems. These instruments improve EU social security policy at the bilateral level (EU/other state signatory) by establishing and regulating the principle of equal treatment and the export of pensions. This affects the reciprocal obligations and rights of EU citizens who work or have worked in any of the abovementioned countries and of the nationals of States that have signed one of these agreements who work or have worked in the EU. These are not unilateral EU laws, applicable in one direction. They are international agreements that benefit both signatories. Furthermore, this type of agreement and the corresponding implementing decisions can reduce the effort involved by accomplishing through a single legal act what would otherwise take multiple bilateral agreements to achieve.

3.4 The EESC welcomes the ILO's Social Protection Floor initiative, which in the EESC's opinion cannot assume a single or standardised form, nor can it be used to straightjacket the development of social protection systems. It must be viewed as a minimum threshold to be developed. In fact, the "Social Protection Floor" should pose a permanent and continually evolving challenge to make progress and improvements with a set objective, i.e. the overall protection of citizens and workers.

3.5 The EESC supports the creation of a mechanism (working group) at EU level to strengthen cooperation between Member States in order to share information and good practice in the coordination of social security systems, study the best way to unite and ensure complementarity between national and EU policies, and develop future EU action with third countries.

3.6 The EESC believes that civil society organisations, especially workers' and employers' representatives, must be taken into consideration when developing the external dimension of coordination rules. The impact of these provisions on labour relations and the wide variety of groups affected point to the need to consider proposals from governmental as well as non-governmental partners. A number of calls to address the external dimension of social security and the need for more cooperation between Latin American, Caribbean and EU countries, and especially with countries that have a strategic partnership with the EU, such as Brazil and Mexico.

3.7 The EESC also draws attention to the EU-LAC meeting on the coordination of social security systems held between ministers and senior officials with responsibility for social security matters, held in Alcalá de Henares in May 2010, which can be considered as the starting point of EU efforts to coordinate the external dimension of social security and led to the Communication under consideration.

⁽⁵⁾ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [OJ L 149, 5.7.1971, p. 2, English special edition Series V, Chapter 1952-1972, p. 89].

3.8 The EESC stresses that it makes sense to continue to extend the international and EU approach through agreements between the EU and other States and regional organisations because it is more suitable and efficient than a strictly national approach where Member States take unilateral action. In this context, we should recall the Ibero-American Agreement on Social Security⁽⁶⁾ as a paradigm. In this regard, the EESC would like the Ibero-American Social Security Organisation to study the possibility of allowing other EU Member States, in addition to Spain and Portugal, to participate in this agreement so that social security relations can be established with various Latin American States through a single act of ratification, thereby avoiding multiple bilateral negotiations and agreements.

4. Potential and weaknesses of the current situation

4.1 An international and EU approach is needed in the area of international social security in order to complement the policies that Member States are pursuing with third countries, otherwise it will be impossible to fully implement obligations under EU law. A clear example of this is the judgment in the Gottardo case (Case C-55/00) whereby the CJEU, on the basis of the principle of equal treatment, extended the personal scope of application of all bilateral agreements concluded between an EU Member State and a third country to all EU citizens even if the legal instrument in question refers solely to the nationals of the signatory States.

4.1.1 At the same time, the judgment recognises that the obligations arising from the decision can only apply to Member States and not to third countries, over which the CJEU has no jurisdiction. This is where the difficulty in executing the decision becomes clear, since a third country can refuse to extend the agreement's personal scope of application to all EU citizens, and therefore to fill in certificates, or recognise the right to sickness benefits or simply to provide information to persons not covered by the agreement's scope of application.

4.1.2 As a result, the merit of the judgment in the Gottardo case is that it not only develops the external dimension of EU law but also establishes its limits and shortcomings because it requires cooperation from other States or supranational regional organisations.

4.1.3 This is why the EESC calls for a period of discussion on the need to strengthen a unified EU approach in the area of international social security through EU agreements or reciprocal cooperation policies with other global players.

4.2 The EESC welcomes the adoption of Regulation (EU) No 1231/2010⁽⁷⁾ extending the provisions of Regulation (EC) No 883/2004 to third-country nationals. Nevertheless, it still believes that there are loopholes and legal vacuums, which the new approach taken in the Communication specifically seeks to fill. Indeed, this regulation only applies in the presence of cross-border situations within the EU. Consequently, the regulation's principle of equal treatment only applies in general to situations where third-country workers have worked in more than one Member State. This means that the majority of third-country workers, who have worked in only one EU State, are not included in the personal scope of application of Regulation (EU) No 1231/2010. This means that they enjoy no EU guarantees with regard to equal treatment and non-discrimination, but depend on what is decided under national law. Furthermore, the regulation does not consider the aggregation of insurance periods in a worker's State of origin or the export of pensions to that State. Finally, this EU instrument does not call for or require reciprocity for EU citizens, who will not receive any corresponding treatment from third countries.

4.3 The EESC also believes that a very important step has been taken in the external dimension of the European Union through the directives⁽⁸⁾ adopted on migration and the Commission proposals currently being debated by the Council and European Parliament. Indeed, the directives which have already been adopted extend the principle of equal treatment in the area of social security, subject to certain specific restrictions, to migrant workers from third countries. They also cover the exportability and portability of pensions to third countries under the same conditions applied to the nationals of the Member State in question, without the need for a bilateral agreement. Nevertheless, there are still a number of unregulated matters, such as reciprocity, the aggregation of insurance periods outside the EU or the export of pensions when a State's national law does not offer its own citizens this right. Furthermore, the EESC would like previously adopted directives on migration to be used, where social protection is concerned, as the general basis for the directives currently being negotiated, adjusting them to specific situations and to the groups to be protected.

5. Concepts

5.1 **International coordination of social security:** the purpose of coordinating social security systems is to protect people who have worked in two or more countries and have therefore come under different social security systems. To this

⁽⁶⁾ Multilateral Ibero-American Agreement on Social Security of 10 November 2007.

⁽⁷⁾ **Regulation (EU) No 1231/2010** of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

⁽⁸⁾ Especially **Directive 2011/98/EU** of the European Parliament and of the Council of 13 December 2011 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 (OJ L 343, 23.12.2011., p. 1).

end, States conclude agreements with each other, which often include provisions on equal treatment, the principle that only the legislation of one Member State applies, continued social security coverage by the country of origin for posted workers, the export of pensions and the aggregation of insurance periods in the signatory States. Regulation (EEC) No 1408/71, and its successor, Regulation (EC) No 883/2004, establish the regulatory provisions for the application of these principles in the EU and serve as a starting point for agreements with third countries.

5.2 The national perspective of the external dimension of social security is put into practice through agreements concluded between a Member State and third countries intended to provide social security protection for workers who have worked in two States. In some cases, only the nationals of the signatory States are included in their personal scope of application.

5.3 The EU perspective of the external dimension of social security takes account of the interests of the EU as a whole. It refers to the negotiation of EU agreements with one or more third countries or other social security protection measures. As a rule, it concerns all EU citizens.

5.4 Association and/or stabilisation agreements can include the application of the principle of equal treatment and the export of pensions. They apply to EU nationals and the nationals of the signatory State. They are implemented through decisions.

5.5 EU social security agreements with third countries do not currently exist but could be introduced through the establishment of the applicable legislation to avoid double contributions, through the export of pensions and completed through the aggregation of insurance periods. These agreements are significantly different from the previous ones, which are far more general and deal only peripherally with social security issues.

5.6 Association, trade, or economic partnership agreements regulate economic and trade matters or even sustainable development and cooperation policies between the EU and third countries or regions. Some of these include social security clauses.

6. Examples

6.1 Equal treatment and the export of pensions:

6.1.1 Take the situation of nationals of Member States A and B working in non-EU country C, which does not make legal provision for the social security affiliation of non-nationals or

for the export of pensions and has a bilateral agreement with Member State A, covering the maintenance of acquired social security rights (export of pensions) but not with Member State B. In such a case, the nationals of Member State A and Member State B are in completely different situations. Whereas the former will be entitled to social security from State C and, if entitled to a pension, will be able to receive it in their country of origin if they return, the latter will have no pension rights, and even if they do, they will not be able to receive their pensions in their country of origin. This is an example of different treatment due to the existence or non-existence of a bilateral agreement, which usually depends on whether State C has an interest in negotiating such an agreement with one or the other EU Member State. In view of this fact, it would make far more sense for a social security agreement to be negotiated directly between the EU and country C. Another possibility would be to include social security sections in broader agreements (regional, multipartite, partnership, etc.), containing clauses on equal treatment and the export of pensions.

6.1.2 Take the situation of nationals of Member States A and B, who are given a two-year posting to non-EU country C, whose legislation requires all people working in its territory to pay contributions. Furthermore, Member States A and B both require contributions to be paid for posted workers. For its part, Member State A has a bilateral agreement with State C, under which contributions are paid only in the country of origin whereas companies based in Member State B will have to pay double contributions, i.e. in their own country and in State C. In the latter case, companies posting workers will lose competitiveness because their social costs are higher, which could be avoided if the EU concluded a social security agreement directly with this non-EU country.

6.1.3 Take the situation of nationals of non-EU countries C and D working in Member State A, which has a social security agreement with State C but not with State D. The Member State makes no legal provision for equal treatment or the export of pensions and the nationals of countries C and D are not protected by any EU legislation (e.g. they could be seasonal workers). These workers will not receive the same protection (full rights for State C nationals and none for State D nationals), with the result that the principle of equal treatment will not be fully applied. This would not happen if the EU negotiated a social security agreement with State D.

6.1.4 Take the situation of nationals of non-EU country C working in Member States A and B. Member State A makes legal provision for the export of pensions or it has an agreement with State C on the export of pensions, but B does not. Both workers have acquired pension rights in the Member State where they worked and then returned to their countries. Those who had worked in Member State A will be able to receive a pension but those who had worked in Member State B will lose their pension rights. This would not happen either, if there were an EU agreement covering these and other social security rights.

6.1.5 Take the situation of nationals of a non-EU country working in Member States A and B. The social security legislation of State A recognises the principle of equal treatment in the area of social security, but not State B's. Thus contributions would be paid for third-country nationals in the first case, but not in the second. This would give State B a financial advantage and would undermine the concept of Europe as a non-discriminatory level playing field. An EU agreement would also solve this problem.

6.2 **Reciprocity.** Take the situation of nationals of non-EU country B working in Member State A, for whom, by virtue of domestic social security legislation or EU legislation, the principle of equal treatment is recognised. Then take the situation of nationals of Member State A working in non-EU country B, which does not recognise the principle of equal treatment. Since the principle of equal treatment is not recognised by domestic law or by EU legislation on reciprocity, a clear-cut situation of inequality is created. An EU-negotiated agreement would solve this problem if reciprocity were required of the parties.

6.3 **Repercussions of the Gottardo judgment.** Take the situation of a national of Member State A, who has worked in Member State B and in third country C, which has a bilateral social security agreement with B, which only covers the nationals of the signatory States, whereas there is no bilateral agreement between A and C. This national claims to have paid contributions in State B for eight years and in State C for ten years. In State B, 15 years of contributions are needed to receive a retirement pension. In compliance with the judgment in the Gottardo case, Member State B must aggregate the periods for which the worker paid contributions in State C. In order to do this, it needs the cooperation of State C and its formal notification of the insurance periods for which contributions were paid. Since State C is not bound by the Gottardo judgment, it can refuse to comply. In other words, this judgment cannot be applied without the good will of State C. In order to tackle this gap, the EU would have to cooperate with third countries to ensure its enforcement. The Commission would also have to be tasked with the follow-up and coordination of bilateral agreements to ensure that they were negotiated or renegotiated to include all EU citizens.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposals for Regulations of the European Parliament and of the Council on the Instrument for Pre-accession Assistance (IPA II) and for establishing a European Neighbourhood Instrument'

COM(2011) 838 final and COM(2011) 839 final

(2013/C 11/16)

Rapporteur-General: **Mr SIBIAN**

On 25 July 2012, 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

Proposals for Regulations of the European Parliament and of the Council on the Instrument for Pre-accession Assistance (IPA II) and for establishing a European Neighbourhood Instrument

COM(2011) 838 final and COM(2011) 839 final.

On 17 September 2012, the Committee Bureau instructed the External Relations Section 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 Sibian as rapporteur-general at its 484th plenary session, held on 14 and 15 November 2012 (meeting of 14 November 2012), and adopted the following opinion by 142 votes to 2 with 3 abstentions.

1. Conclusions and recommendations on the IPA II draft regulation

1.1 The EESC welcomes the new approach taken under IPA II draft regulation which, compared with the previous instrument, offers greater flexibility and provides for equal treatment among beneficiary countries, in that it makes no distinction in the type of support available for candidate and potential candidate countries.

1.2 The EESC supports the new strategy proposed under the IPA II draft regulation that will allow for a tailored support to each beneficiary country. Comprehensive multiannual strategy papers will be adopted on a country-by-country basis according to the specific needs and agendas of each of them as they prepare to join the EU.

1.3 The EESC considers that the revision of the strategy papers at mid-term might be too late and proposes that mid-term be seen as the latest possible timeframe for revision. It is important to focus on achieving the objectives, so flexibility is a must. The EESC recommends that, prior to mid-term reviews, annual revision be undertaken in order to increase the efficiency of support. The annual progress reports of the European Commission could serve as a solid basis for revising and adapting the programming according to the needs of the countries concerned.

1.4 The EESC welcomes the objective of the new draft regulation to simplify and reduce the administrative burden involved

in managing the financial assistance. However, the EESC has reservations about the sector-based approach to the allocation of assistance. This mechanism should be used judiciously, according to the specific circumstances of each beneficiary country, bearing in mind that pre-accession assistance is designed to help candidate countries and potential candidates prepare for future membership. IPA gives countries a "test run" of the obligations of membership before accession, including how to manage the structural, cohesion, agricultural and rural development funds. Therefore, any sector-based approach should be used only when appropriate rules and procedures are in place (e.g. in relation to procurement rules, conflicts of interest etc.) and when the state budget expenditure plan is broad enough and is not drawn up merely on a yearly basis. Usually, the sector-based approach is related to sectors such as health, education etc., while IPA assistance also focuses on sectors such as anti-corruption, and capacity building for public administration, which are less likely to comply with this approach because there are many recipient bodies, rather than just one institution.

1.5 The EESC welcomes the emphasis the new draft regulation places on increased coordination and cooperation with other donors and international and other financial institutions at strategic level.

1.6 The EESC also welcomes the flexibility provided for under the new instrument, which allows allocations to be transferred from one policy area to another, and makes it possible to carry over funds from one year to another ⁽¹⁾.

⁽¹⁾ Where allowed under the new Financial Regulation.

1.7 The EESC stresses the need to support and develop local ownership in the programming and implementation of IPA II. To this end, appropriate mechanisms must be put in place to involve national authorities, social partners and civil society and to strengthen their capacity. Their involvement should be encouraged at all stages of assistance: design and preparation, implementation, monitoring and evaluation. The assistance to be provided to civil society should also be channelled through local intermediary support organisations and national resource centres.

1.8 The enlargement process requires the harmonisation of labour and social laws in the Western Balkans with the EU social *acquis*. IPA II therefore will become a catalyser for promoting social inclusion, social cohesion, decent work and quality employment in the region.

2. IPA II draft regulation: main elements

2.1 The draft regulation on the Instrument for Pre-accession Assistance (IPA II) establishes the legislative framework for the new financial instrument (IPA II), replacing the current one that will expire on 31 December 2013.

2.2 The new pre-accession instrument focuses on delivering on enlargement policy, helping promote stability, security and prosperity in Europe. The new instrument supports the candidate countries⁽²⁾ and potential candidates⁽³⁾ to EU accession as they prepare to join the EU.

2.3 As the socio-economic development of these countries (with only one exception, Iceland) is low and given also that they need to be prepared to face the global challenges and to adapt to EU efforts to address them, it is evident that substantial and result-oriented investments are necessary to bring these countries closer to the EU standards. The IPA II draft regulation offers technical and financial assistance to these states as they cannot by themselves sustain all the necessary efforts and costs of meeting the criteria for joining the EU.

2.4 The financial reference provided for under the draft regulation on IPA II for the period 2014 to 2020 will be approximately EUR 14 billion.

2.5 The new instrument is designed to allow more flexibility and to simplify and reduce the administrative burden involved in managing financial assistance.

2.6 Simplification will involve reorganising the component structure of the IPA assistance now in place, thus making it possible to simplify the legislative framework and provide undifferentiated access to assistance under each policy area to each

state (be it candidate or potential candidate country). Out of the five components of the previous version of IPA instrument, only two (*Support for transition and institution-building* and *Cross-border cooperation*) were previously open to potential candidate countries, while the other three were available to candidate countries only (*Regional development*, *Human resources development* and *Rural development*).

3. Specific comments on IPA II draft regulation

3.1 Along with support for the promotion and protection of human rights and fundamental freedoms, enhanced respect for minority rights, promotion of gender equality, non-discrimination, freedom of the press, and the promotion of good neighbourly relations, the EESC strongly recommends that Article 2(1)(a)(ii) should include the promotion of social rights and the protection of vulnerable groups in order to highlight the importance that the beneficiary countries should place on these rights and thus to ensure the requisite balance between social inclusion and the development of democracy and civil society.

3.2 Accordingly, the proposed indicators mentioned under Article 2(2) should be adapted to take proper account of these amendments. One indicator should therefore be the level of development of civil society and the capacity of the social partners and other civil society organisations. Another indicator that should be included in the draft regulation is respect for the rights of the persons belonging to vulnerable groups.

3.3 IPA support should help combat social exclusion and widening disparities within society and should support the access of socially excluded groups and regions to the funds. Therefore, the EESC considers that, in addition to the indicator set out under Art. 2(2) subparagraph 1, second indent, another indicator related to social justice of social and economic development strategies should be included.

3.4 The EESC considers that all indicators should be result-oriented and should be both qualitative and quantitative.

3.5 The EESC also considers that improving social dialogue and supporting the development of social partners' capacity are key objectives that should be given more emphasis in the draft regulation. Simply mentioning the development of civil society and social dialogue is not considered sufficiently strong and compelling in this respect.

3.6 In most of the beneficiary countries, the social partners are underdeveloped or are facing tremendous challenges in fulfilling their role, especially in the midst of such a harsh economic crisis. Business associations should also be supported. The EESC would thus highly recommend a more strategic investment in supporting the development of these.

⁽²⁾ Croatia, the former Yugoslav Republic of Macedonia, Iceland, Montenegro, Serbia and Turkey.

⁽³⁾ Albania, Bosnia and Herzegovina, and Kosovo.

3.7 The EESC takes note of the importance given in the draft regulation to the issue of donor coordination in order to increase effectiveness and efficiency in the delivery of assistance and to prevent double funding. However, the EESC would like to see more specific measures that could be adopted to ensure that donor coordination is conducted in an efficient manner at both country and EU level.

4. Conclusions and recommendations on the draft regulation establishing a European Neighbourhood Instrument (ENI)

4.1 The EESC welcomes this draft regulation and especially the "more for more" approach, which encourages the countries covered by the Instrument⁽⁴⁾ to demonstrate sustainable progress towards democracy and respect for human rights and international law.

4.2 The EESC welcomes the proposal that gender equality and anti-discrimination should be cross-cutting objectives in all actions carried out under the proposed regulation.

4.3 The EESC recommends that the European Commission include the Civil Society Facility for the countries covered by the European Neighbourhood Policy and the Endowment for Democracy in the draft regulation.

4.4 The EESC believes that the goal of partnership with societies reflected in this instrument should be translated into the involvement of civil society organisations, including the social partners and regional and local authorities, at all stages of the assistance cycle. The "Arab Spring" has shown how important it is to support civic movements in the EU's neighbourhood.

4.5 The ENI should become a flexible instrument to enhance the capacity of civil society organisations, to enable them to scrutinise public policies and play a substantial role in democratisation processes.

4.6 The EESC recommends that platforms for dialogue between civil society and government in the EU's neighbouring countries be set up, and is willing to assist the European Commission and the European External Action Service in achieving this goal.

4.7 The EESC recommends that EU Delegations carry out a comprehensive mapping of CSOs in the region, which could help all EU institutions to cement relations with an emerging civil society sector.

4.8 The EESC recommends that the ENI regulation also focus more on building the capacity of institutions in the partner countries responsible for providing assistance, to ensure a good take-up level and a high degree of transparency in the use of the funds.

4.9 The EESC considers that the ENI should boost cooperation in the area of higher education, especially through youth and student exchanges between the Union and its neighbours. The instrument should provide opportunities to build networks enhancing the capacity of NGOs in the field of youth in the EU's neighbouring countries.

4.10 The EESC recommends that through this instrument, the Commission also promote a sustainable industrial policy, corporate social responsibility, environmentally responsible business and policies that support SMEs, tackle labour market issues and improve social policies.

5. ENI draft regulation: the main elements

5.1 The European Neighbourhood Policy (ENP) aims to establish an area of prosperity and good neighbourhood at the EU's borders.

5.2 For the period 2014 to 2020, the European Neighbourhood Policy (ENP)'s goals will continue to be supported by the EU through a dedicated financial tool - the European Neighbourhood Instrument (ENI) - which will replace the European Neighbourhood and Partnership Instrument (ENPI) established in 2006.

5.3 The ENI will provide greater support to partners committed to building democratic societies and undertaking reforms, in line with the principles of "more for more" and "mutual accountability".

5.4 The ENI draft regulation includes provisions to simplify the instrument in a number of aspects, striking a balance between flexibility and the focus on policy goals and key areas of cooperation.

5.5 The ENI draft regulation promotes complementarity, coherence and mainstreaming priority policy areas, in accordance with the EU 2020 strategy, while remaining focussed on the main ENP objectives.

5.6 The financial reference amount for the implementation of the Regulation on ENI for the period 2014 to 2020 will be approximately EUR 18 billion.

6. Specific comments on the ENI draft regulation

6.1 The EU's external action under this instrument aims to have an impact reflected in tangible changes in the partner countries. That impact should, whenever possible, be monitored through an adequate mechanism and assessed on the basis of pre-defined country-specific, clear, transparent and

⁽⁴⁾ Euromed Region and Eastern Neighbours.

measurable indicators: concrete, measurable and implementable benchmarks against which a country can be assessed according to whether it upholds the democratic values that the EU wishes to promote through the ENI.

6.2 In order to improve implementation of the "more for more" principle, an appropriate part of the overall budget allocation under this instrument might be set aside in the form of incentives to provide enhanced support to partner countries demonstrating progress in building or consolidating a deep and sustainable democracy. This principle should furthermore be implemented in a way that also takes account of vulnerable groups in these countries and should not lead to cuts in development assistance to individual countries but rather to a redistribution of the assistance from government to civil society.

6.3 The EU delegations should also be given a greater role in cooperation with other international donors. The documents

referred to in Article 7(1) and (2) should include detailed and up-to-date donor matrices and should describe the steps to be taken to enhance donor coordination, in particular between the EU and its Member States.

6.4 According to the draft regulation, in relations with its partners across the world, the European Union is committed to promote decent work and the ratification and effective implementation of internationally recognised labour standards. The eradication of child labour and the importance of multilateral environmental agreements should be also highlighted.

6.5 The draft regulation should be more explicit in terms of strengthening domestic accountability and establishing an institutionalised consultation and monitoring mechanism with civil society organisations, environmental and social partners and other non-state actors.

Brussels, 14 November 2012.

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 establishing a financing instrument for the promotion of democracy and human rights worldwide’

COM(2011) 844 — 2011/0412 (COD)

(2013/C 11/17)

Rapporteur-General: **Mr IULIANO**

On 25 July 2012, 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 Regulation of the European Parliament and of the Council establishing a financing instrument for the promotion of democracy and human rights worldwide

COM(2011) 844 — 2011/0412 (COD).

On 17 September 2012, the Committee Bureau instructed the Section for External Relations 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 Iuliano as rapporteur-general at its 484th plenary session, held on 14 and 15 November 2012 (meeting of 15 November 2012), and adopted the following opinion by 152 votes to 2 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC appreciates the broad range of rights covered by the EP’s amendments, with particular emphasis on gender issues, the rights of migrants, the need to ensure the inclusion of disabled people, and minorities’ rights.

1.2 The EESC supports the reference to the holistic approach that the Union should take when dealing with human rights and fundamental freedoms, including their indivisibility⁽¹⁾. On this basis, the EESC calls for greater importance to be given to economic, social and cultural rights; the protection of labour standards as enshrined in the ILO Conventions is now more than ever a key pillar of democracy development.

1.3 The EESC supports the inclusion of the right to work and enjoyment of just and favourable conditions of work, including forming and joining trade unions linked to the promotion of core labour standards and corporate social responsibility⁽²⁾. On the latter point, explicit reference should be made to the UN Guiding Principles on Business and Human Rights⁽³⁾. The EESC also supports the promotion of the right to free enterprise.

1.4 On this basis, freedom of association and collective bargaining should be explicitly mentioned, as well as support

for the social partners and social dialogue in view of promoting the implementation of international labour standards.

1.5 The EESC is pleased that more importance is given to the emergence of an independent civil society, which will contribute to democratisation and good governance processes including domestic accountability⁽⁴⁾. Accordingly, the role of civil society organisations (CSOs) should be given priority and bolstered by this regulation (at national, regional and international level), including their direct involvement in policy dialogue during the programming process⁽⁵⁾.

1.6 The EESC upholds the need to reinforce the capacity of the EU delegations in partner countries as these delegations increasingly require relevant expertise in the areas of human rights and democracy support, as well as familiarity with civil society development⁽⁶⁾. Moreover, the role of the delegations will be crucial in ensuring coherence with other EU external relations instruments such as DCI or EDF with regard to national-level support for civil society.

1.7 The EESC supports the call for more flexible procedures that should be sufficiently accessible for beneficiaries and should lead to a reduction in the administrative burden (especially in emergency situations)⁽⁷⁾.

⁽¹⁾ See the European Parliament’s negotiating position on the *Proposal for a Regulation of the Parliament and of the Council establishing a financing instrument for the promotion of democracy and human rights worldwide*, Committee on Foreign Affairs, Rapporteur: Alexander Graf Lambsdorff, Paragraph 6.

⁽²⁾ See EP negotiating position, Article 2, 1 b (ix).

⁽³⁾ <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>.

⁽⁴⁾ See EP negotiating position, Paragraph 9.

⁽⁵⁾ See EP negotiating position, Paragraph 11a.

⁽⁶⁾ See EP negotiating position, Paragraph 15a.

⁽⁷⁾ See EP negotiating position, Paragraph 16d.

1.8 Lastly, the EESC reiterates the need to be involved in the instrument's programming process as well, particularly for annual and multiannual strategy programming and mid-term review and assessments.

2. Background

2.1 Following a referral by the Council, the European Economic and Social Committee (EESC) has drafted the following opinion on the European Commission's *Proposal for a Regulation establishing a financing instrument for the promotion of democracy and human rights worldwide* ⁽⁸⁾.

2.2 This proposal is currently being examined by the European Parliament (EP) ⁽⁹⁾ under the co-decision procedure, in its first reading.

2.3 In this context, the EP has already proposed various amendments which will be subject to negotiations between the EP and the Council. The final adoption of the proposed regulation is scheduled for 2013, and it will enter into force from 2014.

2.4 This regulation is intended to replace the current legal basis of the European Instrument for Democracy and Human Rights (EIDHR) ⁽¹⁰⁾, the EU's dedicated financial instrument for supporting activities which protect human rights and democracy in third countries.

2.5 The EESC has recently worked on this subject, approving an own-initiative opinion on the EIDHR in 2009 ⁽¹¹⁾, carrying out a review of the instrument and providing specific recommendations.

2.6 With this opinion, the EESC intends to build on those recommendations, formulating further proposals on the proposed regulation, and taking account of the amendments recently tabled by the EP.

3. Additional remarks

3.1 As in its previous opinion ⁽¹²⁾, in this report the EESC reiterates the need to give greater importance to economic, social and cultural rights (ESCR) in the European Union's policies in general and through the use of the thematic

instruments available, such as this new instrument for the promotion of democracy and human rights. Indeed, ESCR can often be a starting point for subsequent support for civil and political rights. As the EC has pointed out ⁽¹³⁾, globalisation and recent events such as the Arab Spring have shown that inequalities, discrimination and exploitation are the new challenges for the full promotion of human rights. The protection of labour rights and all related rights as enshrined in the ILO Conventions is therefore, more than ever, a key pillar in this respect. On this basis, freedom of association and collective bargaining should be explicitly mentioned in this regulation, as well as support for the social partners and social dialogue ⁽¹⁴⁾ in view of promoting the implementation of international labour standards ⁽¹⁵⁾. At the same time, the EESC underlines the importance of promoting the right to free enterprise, as a key principle of economic and social rights.

3.2 The EESC values highly the importance of this thematic instrument which, by reason of its independence, is crucial for preserving the autonomy and right of initiative of CSOs when addressing violations of human rights and for promoting and preserving genuine democracy. As the EC rightly said in its recent communication on *The roots of democracy and sustainable development: Europe's engagement with civil society in external relations* ⁽¹⁶⁾, "An empowered civil society is a crucial component of any democratic system and is an asset in itself. It represents and fosters pluralism and can contribute to more effective policies, equitable and sustainable development and inclusive growth. It is an important player in fostering peace and in conflict resolution. By articulating citizens' concerns, civil society organisations (CSOs) are active in the public arena, engaging in initiatives to further participatory democracy". Therefore the EESC calls for this regulation to give priority to supporting CSOs, including their involvement in policy dialogue mechanisms at country, regional and global level, during the programming processes of this instrument.

3.3 The EESC highlights the need to move towards a more coherent framework for CSOs support programmes within the different EU financial instruments for external actions such as the instrument which is the subject of this opinion, the DCI (geographic and thematic programmes) and the EDF. We

⁽¹³⁾ *Human rights and democracy at the heart of EU external action – towards a more effective approach*, Joint Communication to the EP and the Council, COM(2011) 886.

⁽¹⁴⁾ As already pointed out by the EESC: "social dialogue should be expressly mentioned as a priority instrument in its own right for the participation and representation of interest groups – in this case, the social partners (employers and workers) – and the reconciliation of their interests. Social dialogue is a means of reconciling the interests of the parties which often enables them to reach their own accommodation. The principle of equality of representation and the affirmation of the fundamental principles of democracy is thus intrinsic in this process. In this way, social dialogue constitutes tangible proof of the exercise of the freedoms of expression and association which are, as the EIDHR itself states, 'the preconditions for political pluralism and democratic process'." EESC opinion 53/2009, paragraph 5.2, p. 9.

⁽¹⁵⁾ In this respect we would point out that social dialogue was already integrated into the EIDHR Strategy Paper 2011-2013, and "the right to peaceful assembly and association, including the right to form and join a trade union and the right to collective bargaining" was included in the EIDHR Annual Action Plan 2011.

⁽¹⁶⁾ COM(2012) 492 final.

⁽⁸⁾ COM(2011) 844.

⁽⁹⁾ See EP negotiating position.

⁽¹⁰⁾ *Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide*. OJ L 386/1, 29.12.2006.

⁽¹¹⁾ See EESC opinion *European Instrument for Democracy and Human Rights (EIDHR)*. OJ C 182, 4.8.2009, p. 13.

⁽¹²⁾ See EESC opinion. OJ C 182, 4.8.2009, p. 13.

therefore call for reinforced internal coordination mechanisms during the programming phases among the bodies concerned, such as the EEAS, DEVCO and the Member States themselves. This is particularly true at country level, where the EU delegations are to play a crucial role in securing coherence and complementarity between the various CSO support programmes. The EESC accordingly welcomes the initiative of developing *EU roadmaps for engagement with CSOs* ⁽¹⁷⁾ at country level which should activate and ensure structured dialogue and strategic cooperation, increasing the coherence and impact of EU actions.

3.4 On this basis, it is fundamental that adequate capacity at delegation level is provided in order to be able to interact fully with CSOs, understand the variety of actors and specific roles of these organisations and thereby ensure more strategic engagement. The EC communication itself states that "regular and participatory mappings are recommended, covering the diversity of actors and including networks and platforms at national/sector levels" ⁽¹⁸⁾. The EESC fully upholds this approach, and reiterates the need to support inclusive and transparent dialogue schemes with independent and representative CSOs at country level.

3.5 Lastly, the EESC reiterates the possibility of also being involved in the instrument's programming phase, particularly for annual and multiannual strategy programming and mid-term review and assessments. In this way, it can pass on the results of the work that it is conducting with its civil society

partners in the third countries with which it has special relations (India-EU Round Table, the Euro-Mediterranean area, ACP countries, Latin America, etc.). It also asks to be consulted on the instrument's mid-term review and assessments.

3.6 The EESC intends to play an active role in this process, based on its own experience and its own consultation "networks" (economic and social partners throughout the world and Economic and Social Councils, where they are active and representative).

3.7 The EESC can also play an important role vis-à-vis civil society in the area of post-election follow-up in order to consolidate democratic systems.

3.8 The EESC set up three years ago an EIDHR Monitoring Committee tasked with: (i) meeting urgent consultation requests under the new procedures introduced for the financial instruments, and (ii) monitoring the programming and implementation of the EIDHR. The Monitoring Committee was also charged with analysing the other EU instruments intervening in third countries and experimented an effective cooperation with the Commission and the Parliament. The current committee could develop into a more structured EESC subcommittee able to collaborate with the various support programmes available for CSOs in third countries under various EU financial instruments.

Brussels, 15 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁷⁾ *The roots of democracy and sustainable development: Europe's engagement with civil society in external relations*, COM(2012) 492 final, p. 9.

⁽¹⁸⁾ COM(2012) 492 final, p. 9.

Opinion of the European Economic and Social Committee on the ‘Amended proposal for a Regulation of the European Parliament and of the Council establishing an action programme for taxation in the European Union for the period 2014-20 (Fiscalis 2020) and repealing Decision No 1482/2007/EC’

COM(2012) 465 final — 2011/0341/b (COD)
(2013/C 11/18)

On 11 September and 18 October 2012 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 114 and 304 of the Treaty on the Functioning of the European Union, on the

Amended proposal for a Regulation of the European Parliament and of the Council establishing an action programme for taxation in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC

COM(2012) 465 final — 2011/0341/b (COD).

Since the Committee has already set out its views on the contents of the proposal in question in its opinion adopted on 22 February 2012 ⁽¹⁾, it decided, at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November), by 147 votes to 1 with 12 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 14 November 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ EESC opinion on *Programme 2014-2020 (FISCUS)*, OJ C 143, 22.5.2012, p. 48.

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 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98’

COM(2012) 447 final — 2012/216 (COD)
(2013/C 11/19)

On 8 August 2012, the European Parliament, and, on 10 September 2012, the Council 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 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98

COM(2012) 447 final — 2012/216 (COD).

Since the Committee endorses the contents of the proposal, it decided at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), by 140 votes, with 10 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

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 the protection of species of wild fauna and flora by regulating trade therein (Recast)’

COM(2012) 403 final — 2012/0196 (COD)
(2013/C 11/20)

On 11 September 2012 the European Parliament and on 12 September the Council decided to consult the European Economic and Social Committee, under Article 192(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 on the protection of species of wild fauna and flora by regulating trade therein

(Recast)

COM(2012) 403 final — 2012/0196 (COD).

Since the Committee endorses the content of the proposal, it decided, at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), with 151 votes in favour and 5 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

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 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms’

COM(2012) 432 final — 2012/0208 (COD)
(2013/C 11/21)

On 11 September 2012 the European Parliament and on 17 September 2012 the Council 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 850/98 concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms

COM(2012) 432 final — 2012/0208 (COD).

Since the Committee endorses the content of the proposal, it decided, at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), by 143 votes to 3 with 7 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

*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 1100/2007 establishing measures for the recovery of the stock of European eel’

COM(2012) 413 final — 2012/0201 (COD)
(2013/C 11/22)

On 11 September 2012 the European Parliament and on 3 September 2012 the Council 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 1100/2007 establishing measures for the recovery of the stock of European eel

COM(2012) 413 final — 2012/0201 (COD).

Since the Committee endorses the content of the proposal, it decided, at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), by 150 votes to 1 with 6 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances’

COM(2012) 416 final — 2012/0202 (COD)

(2013/C 11/23)

On 11 September 2012, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 192(1) of the Treaty on the Functioning of the European Union, on the

Proposal for a decision of the European Parliament and of the Council amending directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances

COM(2012) 416 final — 2012/0202 (COD).

Since the Committee endorses the contents of the proposal, it decided, at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), by 61 votes to 9 with 4 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

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 certain technical and control measures in the Skagerrak and amending Regulations (EC) No 850/98 and (EC) No 1342/2008’

COM(2012) 471 final — 2012/0232 (COD)

(2013/C 11/24)

On 11 September 2012, the European Parliament, and, on 12 September 2012, the Council 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 on certain technical and control measures in the Skagerrak and amending Regulation (EC) No 850/98 and Regulation (EC) No 1342/2008

COM(2012) 471 final — 2012/0232 (COD).

Since the Committee endorses the contents of the proposal, it decided at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November 2012), by 157 votes to 2 with 9 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

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 Council Directive 2001/110/EC relating to honey’

COM(2012) 530 final — 2012/0260 (COD)
(2013/C 11/25)

On 22 October 2012, the European Parliament and on 4 October 2012, the Council 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 Directive of the European Parliament and of the Council amending Council Directive 2001/110/EC relating to honey

COM(2012) 530 final — 2012/0260 (COD).

Since the Committee endorses the contents of the proposal, it decided at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November), by 150 votes nem con with 8 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Amendment to the Commission proposal COM(2011) 628 final/2 for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy’

COM(2012) 551 final — 2012/0260 (COD)
(2013/C 11/26)

On 5 October 2012, the European Parliament and on 10 October 2012, the Council decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the

Amendment to the Commission proposal COM(2011) 628 final/2 for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy

COM(2012) 551 final — 2012/0260 (COD).

Since the Committee endorses the contents of the proposal, it decided at its 484th plenary session of 14 and 15 November 2012 (meeting of 14 November), by 149 votes to 3 with 9 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 14 November 2012.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

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