



European Economic and Social Committee

INT/688
SMA – Missing measures

Brussels, 16 October 2013

OPINION

of the
European Economic and Social Committee
on
The Single Market Act - identifying missing measures
(additional opinion)

Rapporteur: **Ms Federspiel**
Co-rapporteurs: **Mr Siecker and Mr Voleš**

On 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

The Single Market Act - identifying missing measures
(additional opinion).

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 2 October 2013.

At its 493rd plenary session, held on 16 and 17 October 2013 (meeting of 16 October 2013), the European Economic and Social Committee adopted the following opinion by 119votes to 4 with 13 abstentions.

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1. Introduction

- 1.1 The European Economic and Social Committee (EESC) has been following the Commission's initiatives to relaunch the Single Market from the outset in 2010. In its opinion on the Single Market Act I¹, it listed a number of measures which it thought were missing from the Commission proposals². The comments and conclusions of the "EU Citizenship Report 2010 – Dismantling the obstacles to EU citizens' rights"³ should be taken into consideration. The EESC draws the Commissions attention to the fact that there are more obstacles to the Single Market today than when it was established⁴.
- 1.2 The EESC is one of the major partners in the organisation of the Single Market Month. The contribution of civil society organisations is crucial for properly focusing the measures that are required to relaunch the Single Market, as these organisations are affected by them.
- 1.3 The EU's economic line needs to be redirected after some 30 years and an end put to the belief that the free market always has the ability to correct dysfunctional market behaviour. The recent economic and financial crisis has had a heavy impact on citizens: their sacrifices

1 [OJ C 24, 28.1.2012, p. 99.](#)

2 [OJ C 132, 3.5.2011, p. 47;](#) [OJ C 24, 28.1.2012, p. 99;](#) [OJ C 299, 4.10.2012, p. 165.](#)

3 COM(2010) 603 final.

4 See the *Catalogue of Obstacles to the Single Market* published by the Single Market Observatory:
<http://www.eesc.europa.eu/?i=portal.en.publications.24626>.

must result in new perspectives or support for European integration will diminish further. In this respect, the adoption and implementation of the Single Market Act I and II initiatives are considered to be too slow.

- 1.4 Concrete measures must be taken to combat any kind of poverty, e.g. energy, consumption, over indebtedness etc., caused by the financial crisis and undermining growth and achievement of the Single Market.
- 1.5 The EESC has repeatedly insisted on Member State ownership through proper implementation and enforcement to achieve a properly functioning Single Market. Enforcement must have a new cross-border dimension involving cooperation. A future-proof Single Market must be built on a sustainable, highly competitive economy based on sustainable processes and products, a decent working environment and on innovation. It is important that the Commission puts the EU 500 million citizens at the heart of the Single Market. They represent an important economic strength whose spendings account for 56% of EU GDP, as expressed in Commission's Consumer Agenda⁵.
- 1.6 The Single Market must be an instrument with tangible results, in line with the social and environmental *acquis*. Initiatives under the SMA I and II must be coordinated with the measures and steps undertaken to strengthen EMU (Fiscal Pact, ESM, Euro plus, etc.).
- 1.7 Negotiations on free trade agreements should be used to enforce the level playing field, for instance reciprocity of tariffs, while maintaining high standards of consumer, environmental and social protection. When competing with global players, the EU must secure elements which will enhance its competitiveness, such as accessible energy resources, a skilled labour force and a flexible labour market.

2. **The digital Single Market**

- 2.1 The recently adopted Regulation on selective distribution has maintained the discrimination between off- and on-line distribution channels by allowing that certain distributors can be required to have a physical (brick and mortar) shop office before engaging into on-line sales. The new regulation will not prevent selective distribution of everyday products which can be detrimental to competition and consumer choice.
- 2.2 The European Commission should stand firm and confirm the search neutrality principle, according to which search engines should not manipulate the natural results for their own commercial interests. Remedies based on labelling of search results are not sufficient to restore competition, stop anti-competitive behaviour and foster consumer welfare.

⁵ [OJ C 11, 15.1.2013, p. 54.](#)

2.3 **Data protection**

- 2.3.1 Once the revised Data Protection Regulation is adopted, it will be important to provide Member States with guidelines for specific provisions, thereby ensuring that they are implemented coherently.
- 2.3.2 Specific attention should be given to the development of standard privacy notices. The new regulation includes a provision that requires privacy policies to be transparent and understandable to consumers. The development of standard privacy notices will help ensure that consumers are properly informed about the processing of their personal information and that privacy policies are no longer complex legal texts. It should be ensured that businesses, especially SMEs, do not incur disproportionate administrative burden and costs.

2.4 **Copyright**

- 2.4.1 Following the recommendations of former Commissioner Vitorino, the European Commission must adopt follow-up action to ensure that current copyright levies systems are progressively phased out. In the short term, the current system should be reformed and it should be clarified that digital content subject to licensing agreements shall not be levied further by virtue of being uploaded to the cloud or stored in the cloud by a service provider. It is also important to make the copyright levy visible to the end-user, and to calculate levies on the basis of economic harm caused by private copying.
- 2.4.2 The 2001 Copyright Directive has failed to achieve the objective of harmonising the copyright laws of the EU Member States. Significant differences exist with regard to exceptions and limitations, which create legal uncertainty for both consumers and creators. A revision of this directive should be a priority.
- 2.4.3 The current system for the distribution of audio-visual content, based on platform and territorial release windows, needs to be adapted to the digital environment and respond to consumers' expectations. The chronological release of films on different media (cinemas, DVD, Video on Demand) and territories should be reduced and allow for a certain degree of flexibility. There is space for experimentation with innovative business models that would allow for a single date of release of audiovisual content in countries with common cultural and linguistic traditions.

2.5 **Digital products**

- 2.5.1 It is necessary to continue the harmonisation process initiated with the 2011 Consumer Rights Directive by revising and updating the 1999 Consumer Sales Directive to meet the challenges of the digital economy: remedies in case of defective digital content products are urgently needed.

2.5.2 The Commission should draw up guidelines for the application of the legislation on unfair contract terms (Directive 1993/13/EEC) to consumer contracts for the supply of digital content.

3. Goods and services

3.1 In September 2013 the European Commission proposed a legislative package for completing the Single Market for Telecommunications. The EESC regrets that the proposal misses the opportunity to further reduce roaming charges and thus to improve the Single Market for European citizens. The EESC welcomes the proposed rules to facilitate switching of operators, to ensure fairer contract terms and commercial practices as well as better enforcement and access to redress. The rules on net-neutrality are a step in the right direction but need to be further enhanced.

3.2 The ratio of harmonised to non-harmonised sectors meets the basic needs of the economy. Any further move to harmonise other goods sectors must be based on a thorough analysis. For non-harmonised sectors covered by the principles of mutual recognition, the Commission should issue guidelines about the role and legal status of private testing bodies that do not accept certificates issued by testing bodies from other countries. The bilingual list of non-harmonised products on the European Commission website should be completed.

3.3 There is still no Single Market for retail financial services for consumers. Because of business and commercial obstacles, it is basically impossible for consumers to buy financial services abroad. Current big differences in terms of quality and price between bank accounts, savings accounts and mortgages, etc. between Member States could make it interesting for consumers to obtain financial products from other countries. The EESC calls on the European Commission to analyse this situation and propose initiatives. Consumers often do not obtain objective and independent recommendations/advice as regards their major financial decisions, linked to savings for retirements, other investments or long term credits. Independent and affordable financial advice models should be promoted across Europe.

3.4 Enforcement in relation to financial services is still not satisfactory: some Member States have no public body in charge of consumer protection. If they exist, their legal powers are often too limited. Also the European Supervision Authorities (EBA - the European Banking Authority, the ESMA – European Securities and Markets Authority and EIOPA – the European Insurance and Occupational Pensions Authority) established two years ago, do not have a strong enough remit in the area of consumer protection. Their competences in this respect should be expanded, and the authorities must be able to coordinate with national authorities.

3.5 The Single Market for Services, including network infrastructure services (telecommunications, electricity, gas, transport and insurance), has the greatest potential for further improvement. Improving the performance of Single points of contact in all Member

States is a prerequisite for the directive to contribute to growth and job creation. The Commission should issue regulatory recommendations for the removal of obstacles revealed by the peer-to-peer review of the implementation of the directive⁶. The EESC calls for a complete database of all permission regimes to identify regulatory best practices and pinpoint useless and unacceptable requirements by issuing authorities.

4. Free movement of workers

4.1 The EESC supports steps to improve free movement of labour, including the elimination of barriers such as the recognition of qualifications. It is especially necessary to modernise and liberalise this system, increase coordination in the healthcare sector in order to prevent labour shortages in sending countries, deepen coordination of social security systems and create a one-stop-shop to facilitate registration procedures⁷.

4.2 The general framework directive, associated directives and the permanent monitoring via multiannual strategy plans have resulted in the convergence of safety rules (including minimum requirements) which are recognised by workers, including those in (temporary and mobile) cross-border situations. Since 1978 this process has been carried out continuously by successive Action Plans. When the last one ended in December 2012 the Commission did not start a new Action Plan. To continue this convergence process, the European Commission should urgently adopt a new EU Strategy Action Plan to promote high safety standards (as underlined by the Advisory Committee on Safety and Health at Work) in close cooperation with the social partners.

4.3 The withdrawal of the Monti II regulation does not solve the problems created by the European Court of Justice in its judgments that are based on inadequate EU legislation on the posting of workers⁸ and its implementation. European social partners have not been able to reach an agreement on this. Nevertheless, the Commission should consider a proposal to Member States to attach a social progress protocol to the European Treaties stating that social rights are not subordinate to economic freedoms. This could clarify that the Single Market is not an end in itself, but was also established in order to achieve social progress and prosperity for all EU citizens⁹.

4.4 Where substantive EU rights are infringed, workers, consumers and businesses must be able to enforce the rights granted to them by EU legislation. However, in this context the EU only refers to the rights of consumers and businesses. It is necessary that workers have the same

⁶ The EESC's Single Market Observatory will assess the impact of the Services Directive on the construction sector in a number of Member States from the civil society perspective.

⁷ C. Dhéret; A. Lazarowicz; F. Nicoli; Y. Pascouau; F. Zuleeg. *Making progress towards the completion of the Single European Labour Market*. EPC Study No 75, May 2013.

⁸ See EESC opinion, [OJ C 76, 14.3.2013, p. 24](#).

⁹ Art. 3.3. TEU.

possibility to enforce rights from EU legislation in cross-border labour conflicts. Although it is often claimed that workers have access to justice and can seek redress, respect for working conditions and legal provisions through local courts in the host countries, in practice, they are directed to the courts in their home country¹⁰.

5. **Transposition, implementation and enforcement**

5.1 A new challenge for enforcement of consumer rights comes from big international companies or associations who apply Europe-wide marketing strategies which can no longer be tackled by national enforcement concepts. Better cooperation between national enforcement authorities and a more prominent role for the European Commission in jointly coordinating these actions should be aimed at. Synergies between public and private enforcement players, such as consumer organisations, should be better exploited.

5.2 The cooperation between national enforcement authorities has become a key issue but has not been very successful to date. The European Commission should have a stronger role in coordinating national enforcement activities in cases with a Europe-wide dimension of infringement of consumer law. Furthermore, giving the European Commission powers for the enforcement of EU consumer law (as in competition law)¹¹ should be further debated.

6. **Specific consumer issues**

6.1 The EESC regrets that only a non-binding initiative on collective redress has been proposed after all these years and in spite of the four consultations conducted. In addition, the principles enshrined in the European Commission's recommendation do not meet consumers' needs and fall short of the status quo in some Member States.

6.2 **Unfair commercial practices**

6.2.1 Better enforcement of the Unfair Commercial Practices Directive should be aimed at, particularly in the digital environment: notably in e-commerce (e.g. practices that mislead consumers on their legal guarantee rights, non-transparent and unfair contract terms) and in the air transport sector regarding online bookings, etc.

6.3 **Standardisation of pre-contractual information for consumer contracts**

6.3.1 The EESC welcomes the initiative proposed in the 2012 Consumer Agenda on the standardisation of pre-contractual information, set out in Articles 5 and 6 of the Consumer Rights Directive. This should help make pre-contractual information comprehensive, transparent and easy to access and read. This exercise would require the help and support of

¹⁰ http://www.uva-aias.net/uploaded_files/publications/WP118-Cremers,Bulla.pdf.

¹¹ http://europa.eu/rapid/press-release_IP-13-228_en.htm.

consumer associations and take into account research on consumer behaviour towards information load (e.g. SWD(2012) 235 final, 19 July).

6.4 **E-commerce and cross-border delivery**

6.4.1 It is necessary to address the problems of high(er) prices for cross-border delivery compared to domestic delivery and to create more competitive online markets. The price of cross-border delivery is often so high that shopping abroad is not a real advantage for consumers, even if the goods are cheaper. Study done for European Commission in 2011¹² confirmed that published cross-border prices for parcels are on average twice as high as domestic benchmark prices.

6.5 **Consumer information**

6.5.1 Large parts of European, as well as national law are based on the idea that informed consumers are empowered consumers who are able to choose the best possible products and services. Consumer information is still one of the prime regulatory tools but its limits are well known, as consumers often do not read or understand contract information, which is written and presented in an incomprehensible manner. The Commission should study and follow up with policy measures designed to improve consumer information and involve business, regulators and consumer organisations.

6.5.2 The work started by the Commission on principles for comparison tools, such as independence and impartiality, should urgently yield concrete policy measures, including guidelines for regulators and businesses.

6.6 **Sustainable products**

6.6.1 Sustainability and product safety on the one hand and consumer confidence on the other are two sides of the same coin. Planned obsolescence of products (built-in limitation of durability) as a commercial strategy is in contradiction with sustainable production and consumption principles. The European Commission should examine a possible need to link consumer expectations regarding the durability of a product with the legal guarantee period. The Committee stresses that measures on durability and service life, after-sales service and spares inventories would promote sustainable consumption and production.¹³

¹² *Intracommunity cross-border parcel delivery* – Study for European Commission, FTI Consulting, London 2011.

¹³ [OJ C 66, p. 5, 3.3.1997, p. 5.](#)

7. **Business environment**

- 7.1 The EESC calls for a reduction in the administrative burden, especially for SMEs, while stressing the need to apply Smart regulation at EU and national level¹⁴. Member States should display the transposition of EU legislation online and in real time, involving civil society in the transposition process and raising awareness about new rules.
- 7.2 Committee invites the Commission to take into account the specific characteristics of the small and micro companies within the SME group when preparing impact assessments and drawing up legislative texts; and that micro, small and medium businesses should be treated as three separate groups and not as one group defined as SMEs.¹⁵
- 7.3 Access to finance is crucial, particularly for SMEs. The EU must support the shift from (largely prevailing) bank financing to other capital products such as venture capital and capital markets. To make this work, investors have to feel that there is a stable investment environment with long-term strategies.
- 7.4 The EESC recommends evaluating the possibility of establishing a European guaranteed financial fund to provide SMEs matching certain basic criteria with financial means through a system that would allow the qualified company to easily access credit without involving collateral or other conditions usually required by banks. The management of this system should involve representative business organisations in charge of the qualified business¹⁶.
- 7.5 Increasing transparency and accountability should have highest priority so that the Single Market effectively contributes to developing a legal environment that respects the legitimate interests of all stakeholders. Initiatives on corporate social responsibility should cover possible abuse of subcontracting and outsourcing, notably related to cross-border service provision and/or labour recruitment. An EU legal instrument must be considered to fight abuse by and of letterbox companies that cause distortion of competition for SMEs, circumvention of labour standards and avoidance of statutory payments. Legal action against EU-wide active non-genuine undertakings has to be facilitated not only in the country of origin but also in the other Member States.

8. **Taxation**

- 8.1 Better cooperation between Member States and at global level on transparency and information regarding bank accounts in the EU is required to fight tax evasion, which amounts to one trillion euros in the EU. The EESC calls for a quick agreement on the EU

14 A possible option could be the UK's "one-in/one-out" principle (basically, if a new regulation is introduced, another one must be removed).

15 EESC opinion on "Smart regulation - Responding to the needs of small and medium-sized enterprises" (not yet published in OJ).

16 See the experience with the so-called "Seczenyi card" in Hungary.

Savings Directive and on mandates to negotiate stronger tax agreements with Switzerland and other countries.

9. Networks

9.1 Energy

9.1.1 The Commission's Communication "Making the Internal Market Work" of November 2012 is an important step towards creating an internal energy market by 2014. More progress should be made by taking into account the realities facing European energy consumers. Switching energy suppliers needs to be facilitated and consumers must get independent advice so they can decide what is best for them. Proactive national regulators, sufficiently empowered to monitor billing, switching and consumer complaints, are key for the Single Market.

9.1.2 The EU must diversify its sources of energy imports, find alternatives and create networks. Support to some renewable energy sources may lead to the distortion of the market therefore this type of support should be gradually decreased. One-stop-shops should be set up to make procedures for granting permits faster, more transparent and simple. This would significantly cut the burden on promoters willing to invest in energy infrastructure.

9.2 Transport

9.2.1 The proliferation of unfair terms in air transport contracts is an issue of growing concern throughout the EU. In recent years, several consumer organisations have pursued legal action against major European airlines resulting in national courts declaring many terms and conditions commonly used by airlines to be unfair. The European Commission has missed the opportunity to address this issue in its review of the 261/2004 regulation on air passenger rights. The European Commission should establish a binding list of unfair clauses for air passenger contracts.

9.2.2 For better functioning of the SM there is a need to promote **rail goods services** and multimodal transport¹⁷. More efforts must be deployed to adopt the Technical Specifications for Interoperability¹⁸.

9.2.3 Transporters of goods by road are still restricted in their cross-border operations. Conditions are not in place to allow further opening of the EU haulage market. Changes to the EU rules on access to the transport market (including cabotage) should be linked with harmonisation in enforcement and in social and fiscal areas. Without these preconditions, changes to the

¹⁷ See EESC opinions, [OJ C 143, 22.5.2012, p. 130](#) and [OJ C 24, 28.1.2012, p. 146](#).

¹⁸ COM(2013) 32 final: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the progress made towards achieving interoperability of the rail system.

cabotage rules risk having a negative impact on fair competition and sustainability of the sector. Meanwhile, the existing rules must be enforced¹⁹.

Brussels, 16 October 2013.

The President
of the
European Economic and Social Committee

Henri Malosse

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As agreed by the social partners in sectoral social dialogue,
<http://www.iru.org/cms-filesystem-action/Webnews2012/CabotageStatement.E.pdf>.