

I

(Resolutions, recommendations and opinions)

OPINIONS

450TH PLENARY SESSION HELD ON 14 AND 15 JANUARY 2009

Opinion of the European Economic and Social Committee on ‘The social and environmental dimension of the internal market’

(2009/C 182/01)

Rapporteur: **Andrzej ADAMCZYK**

On 17 January 2008, 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 social and environmental dimension of the internal 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 6 January 2009. The rapporteur was Andrzej ADAMCZYK.

At its 450th plenary session (meeting of 14 January 2009), the European Economic and Social Committee adopted the following opinion by 94 votes to 29, with 15 abstentions.

1. Conclusions

1.1 Although not an end in itself, the internal market is an instrument which is contributing to the growing wellbeing of EU citizens, increasing their prosperity, their access to goods and services and improving the quality and security of their jobs, giving them the opportunity to travel, live, work and study anywhere within the EU's borders.

1.2 This progress is linked to the greater opportunities which the internal market is providing both business — thanks to the expansion of the market for goods, services, freedom of investment — and workers, giving them the unprecedented possibility of seeking employment in any EU country of their choice.

1.3 If Europe wants to remain competitive over the long term, the internal market must ensure a sustainable and long term growth which means also taking environmental dimension into

account. New standards, rules, products and ideas must therefore take this major challenge into consideration, even though this may lead to inevitable tensions in some industries, especially that all this makes sense only if the European economy is given a chance to survive, i.e. if the short term competitiveness is not undermined.

1.4 The final goal is to significantly improve the functioning of the internal market within a social market economy, i.e. to ensure a level playing field for all stakeholders and make sure they operate in the same legal environment. This is crucial for creating conditions of fair competition, creating more and better jobs by incorporating the social and environmental dimensions into the internal market in order to strengthen European competitiveness.

1.5 In their approach to the deepening of the internal market, the European institutions must take into consideration the legitimate interests of business and the need to respect the fundamental social rights recognised by EU law, international labour

standards and the legislation of the individual Member States, including the right to bargain collectively.

1.6 The proper functioning of the internal market requires the resolution of certain ambiguities related to the application of EU law. A straightforward and predictable legal framework is a precondition for the further development and deepening of the internal market.

1.7 More specifically, controversies resulting from the recent judgements of the European Court of Justice relating to the legal interpretation of the Posting of Workers Directive appear to legitimise the requirement to review the directive or conclude an additional agreement between the social partners.

1.8 In this respect, SOLVIT network, as a mediator between the institutions and the public, might potentially play an important role. However, the network is heavily underfinanced and understaffed and its role and operations must be reassessed.

2. Introduction

2.1 Although still in the process of being developed, the internal market has already given EU citizens a host of tangible benefits, and itself represents the principal achievement of the European integration process ⁽¹⁾. The gradual opening up of the markets and removal of barriers has, however, brought with it a number of difficulties and problems which must be dealt with if support is to be garnered for further deepening of the internal market.

2.2 It should be remembered that the development of the internal market is not an end in itself but rather a means of raising the standard of living of the people of the European Union and of increasing their prosperity, their access to goods and services and improving the quality and security of their jobs, giving them the opportunity to travel, live and work freely anywhere within the borders of the EU ⁽²⁾. These benefits are inextricably linked to the increased freedom which companies have to do business e.g. through the expansion of the market for goods and services and the freedom of investment.

2.3 The gradual removal of barriers in areas directly related to the four freedoms can lead to problems and tensions in fields where significant differences still exist between the various countries; this particularly applies to such issues as pay, social security, labour law and the rights of the social partners. Such tensions may be, and are to some extent, eliminated by means of additional regulations designed to:

- clear up the legal confusion which has arisen from the application of regulations from different countries;
- combat social dumping and unfair competition;

- protect consumers' rights ⁽³⁾;
- ensure that producers and suppliers of goods as well as service providers have an effective access to the European internal market;
- ensure the accessibility of all goods and services, especially services of general interest through design-for-all policies ⁽⁴⁾;
- promote active policies to ensure gender equality and to combat all kinds of discrimination.

2.4 To ensure the proper functioning of the internal market, it is necessary to resolve the various ambiguities surrounding the application of EU law. It is completely unacceptable that, in matters which are of key importance to them, the social partners might be obliged to resort to the European Court of Justice, whose decisions are sometimes a source of either incomprehension or controversy.

2.5 In this context, it has to be appreciated that the Commission had decided to invite social partners and Member States to discuss the issues raised by recent Court rulings and has organised a Forum to debate how to respect social rights against the background of increasing labour mobility ⁽⁵⁾.

3. Internal market: benefits and challenges

3.1 The internal market has brought a whole variety of benefits. These include benefits for businesses, employees as well as for the public at large, who benefit from the successful operation of the internal market in a variety of areas. The unquestionable achievements of the internal market include the growth in prosperity related to rising GDP, the freedom to travel, reside, work or study in any EU country, significantly broader access to high-quality goods and services, often at lower prices which is linked with enhanced access of producers, trade operators and service providers to the internal market and, last but not least, the extension of consumer rights which now encompass the whole EU area, irrespective of the country of purchase.

3.2 The limitations imposed on the free movement of persons by a number of Member States, in the form of 'transition periods', continue to cause controversy despite their limited timeframes. It should, however, be noted that protecting the labour market has proved more difficult than expected in those countries which have applied transition periods; equally, the exodus of skilled workers in search of employment represents a genuine problem for their countries of origin.

⁽¹⁾ COM(2007) 724 final.

⁽²⁾ OJ C 93, 27.4.2007, p. 25.

⁽³⁾ OJ C 175, 27.7.2007, p. 14.

⁽⁴⁾ OJ C 175, 27.7.2007, p. 14.

⁽⁵⁾ COM(2008) 412.

3.3 The EESC is, however, of the opinion ⁽⁶⁾ that labour market integration is the best safeguard against social exclusion. The Commission should work together with the social partners to make better use of Europe's labour force potential in our rapidly changing societies. One problem which still needs to be resolved is that of the mutual recognition of qualifications ⁽⁷⁾.

3.4 For businesses, the benefits include access to a large market with a population of almost 500 million, easier cross-border trade and business start-up procedures, the wider application of European standards and labelling as well as improved cross-border cooperation and transfers of technology. Another benefit is an easy access to the capital markets although the functioning of financial services still has to be improved. All these achievements of the internal market, irrespective of whether they involve businesses or the public directly, entail their own social implications and their own challenges.

3.5 While it may seem obvious that the introduction of the internal market has brought about unprecedented economic growth, which has also had a positive effect on public social well-being, there is still much debate as to whether the degree of openness of the market and the scope of regulation in individual areas are socially desirable or acceptable. The controversies surrounding recent judgments of the European Court of Justice (Viking ⁽⁸⁾, Laval ⁽⁹⁾, Rüffert ⁽¹⁰⁾, Commission v Luxembourg ⁽¹¹⁾), the earlier debate on the Services Directive as well as the problems concerning the opening up of labour markets, social dumping, unfair competition and the impact of the internal market on the functioning of the European social model certainly require analysis and, perhaps, decisions concerning new legislation or co-regulation.

3.6 The internal market has led to lower prices for many products, which is good for both the consumer and for the competitiveness of the European economy. However, this fall in prices often takes place at the cost of employees who are laid off as a result of business restructuring or the transfer of jobs elsewhere. From the social point of view, it is therefore necessary to reconcile the interests of consumers (low prices) with the interests of employees i.e. job security, employment standards and work and pay conditions.

3.7 Economic growth brought about by the internal market has also contributed to the creation of new jobs. This would be a very positive phenomenon were it not for the fact that such jobs are often poorly paid due to the need to remain competitive.

3.8 It has to be stressed in this context that Europe has achieved its high competitiveness mainly through investments in new technologies, workers' training and education, improvement of work organisation, better health and safety conditions at the workplace as well as active promotion of social dialogue and partnership. However, as workers are also consumers, increasing an economy's competitiveness by limiting the cost of labour can, in effect, lead to a decrease in purchasing power or, in other words, lower consumption and reduced growth.

3.9 The partial opening up of the labour market to economic migrants poses its own specific set of problems. Some Member States have failed to effectively accommodate economic migrants into their collective working arrangements and/or other rules, legal provisions or practices, undermining local labour standards as a result and expanding the informal economy. This leads to a deterioration in working conditions and the erosion of the social dialogue, resulting in social dumping and unfair competition; such developments should be vigorously opposed by both trade unions and employers' organisations.

3.10 Certain practices of businesses employing posted workers were qualified as social dumping and unfair competition by some stakeholders. Moreover, in its judgments in the cases of Viking, Laval, Rüffert and Commission v Luxembourg, the European Court of Justice ruled that such practices were legal and in line with the Posting of Workers Directive which led to major controversies especially as the rulings were clearly in contradiction with the declared purpose of the directive. Promoting the cross-border provision of services requires fair competition and guarantees of employees' rights. It would, therefore, seem that ensuring equal opportunities, fair competition and respect for employees' rights will require new legal initiatives and additional negotiations between the social partners especially on the issue of posted workers.

3.11 However, before new regulations are elaborated, the Committee ⁽¹²⁾ believes there is an urgent need to take measures to ensure the proper implementation of Directive 96/71/EC, especially given that its objectives have not been fully achieved even 10 years after its enactment.

3.12 The question of opening the market for services and the problems related to Services of general interest, which are, inter alia, covered by the recently adopted Services Directive, remains a separate issue. This directive is currently in the process of being implemented and its impact cannot therefore yet be assessed. It is, however, clear that the social dimension of basic services extends significantly beyond employee issues and social dialogue alone, and that it is equally concerned with ensuring that everybody has access to these services ⁽¹³⁾.

⁽⁶⁾ OJ C 77, 31.3.2009, p. 15

⁽⁷⁾ OJ C 224, 30.8.2008, p. 100.

⁽⁸⁾ OJ C 51, 23.2.2008, case C-438/05.

⁽⁹⁾ OJ C 51, 23.2.2008, case C-341/05.

⁽¹⁰⁾ OJ C 128, 24.5.2008, case C-346/06.

⁽¹¹⁾ OJ C 209, 15.8.2008, case C-319/06.

⁽¹²⁾ OJ C 151, 17.6.2008, p. 45.

⁽¹³⁾ OJ C 161, 13.7.2007, p. 80.

3.13 In the context of recent price increases in Europe, the question of accessibility of services of general interest is closely linked with the question of affordability, especially as far as energy is concerned. However, the problem of energy supplies must be considered not only in relation to recent and most probably also future price increases but also taking into account the environmental aspects of energy consumption.

4. The impact of recent rulings on the internal market

4.1 The internal market requires a clear set of rules if it is to function properly. Its further integration will heavily depend on the extent to which an acceptable balance can be found between its economic, social and environmental dimensions within a straightforward and predictable legal framework.

4.2 Recent rulings by the European Court of Justice caused controversy in industrial circles across Europe. Clear solutions to issues that remain controversial are vital for re-establishing a much-needed common ground for public confidence.

4.2.1 In the Viking case the International Transport workers' Federation (ITF) and the Finnish Seamen's Union threatened industrial action over Viking Line's plans to reflag one of the Finnish vessels to Estonia and replace the crew with cheaper workers from that country. The Court ruled that a threat to strike to force an employer to conclude a collective agreement could in this case restrict the freedom of establishment.

4.2.2 The Laval case involved a Latvian company posting workers into Sweden on Latvian terms and conditions, well below Swedish collectively bargained terms and conditions. The Swedish unions responded by taking industrial action and by arranging a boycott of supplies to the Vaxholm site. The Court took the view that where the Posting of Workers Directive applies it is unlawful for unions to organise industrial action for terms and conditions above the mandatory rules for minimum protection in the Directive.

4.2.3 In the Rüffert case a German company won a tender with the Land Niedersachsen which involved construction work in a prison. The German company subcontracted the work to a Polish company which paid the workers only 47 % of the minimum rate set in the regional sectoral collective agreement. Therefore the Land Niedersachsen cancelled the contract but in the ECJ's view the local law obliging public building contractors to respect collective agreements is incompatible with the Posting of Workers Directive unless the agreement is declared universally binding.

4.2.4 In the Luxembourg case the ECJ supported the Commission's complaint in deciding that Luxembourg had gone too far in implementing the Posting of Workers Directive in relations to requirements in force in this country for domestic companies for, among others, maximum work and minimum rest periods, automatic wage indexation and respect of collective agreements.

4.3 The rulings on the above cases also raised concerns about the interpretation given by the European Court of Justice regarding the EU Directive on posted workers. Those cases were highly divisive and viewed by many actors as a promotion of wage dumping. In those cases, foreign companies bypassed collective agreements, legal provisions or practices and regulations in force in the country of their operations to the detriment of local companies and at the expense of employees.

4.4 The internal market needs to be a source of legal certainty, not ambiguity. It is therefore of crucial importance to agree on those principles that need to be revisited in accordance with both the letter and the interpretation of the law and to find a clear common ground.

5. Mechanisms and instruments improving the operation of the internal market

5.1 The functioning of the internal market has been progressively complemented by a number of mechanisms that have enhanced its operation. Those mechanisms may be useful for assessing channels for improving the integration of both the social and environmental dimension in the internal market.

5.2 Debates about harmonisation and mutual recognition have been revived in recent years in the context of the latest enlargement processes. There is wide agreement that harmonisation should focus on what is really necessary, and that it is not realistic to aim for too much harmonisation in a European Union of 27 states. Mutual recognition, on the other hand, despite being one of the pillars of the internal market, is widely ignored. Harmonisation could be useful for the construction of the European Social Model, however, the social dimension remains to a large extent the preserve of the 27 Member States, in most cases with the full support of the social partners and in line with the principle of subsidiarity. It could, however, serve a good purpose in the environmental field, establishing rules for products and processes, in accordance with the ambitious objectives that the Union has set itself.

5.3 As a mediator between the institutions and the public, the SOLVIT network could be hugely important in this respect. It is responsible for informing, advising and reviewing issues related to the internal market which concern companies, consumers, workers, etc in the Member States. It accumulates a vast amount of data and know-how. However, generally speaking, the network is heavily under-funded and understaffed and its role and operations must be reassessed.

5.4 The 'new approach' has led to EU legislators keeping a low profile while laying down the basic requirements and delegating the technical aspects to standardisation bodies. Even if this can hardly be replicated with respect to the social dimension, it could

— and does, indeed, already have — a fundamental importance in the environmental field (quality standards, etc — it would be useful for the Commission to update a number of relevant areas).

5.5 The country of origin principle continues to be a contentious issue as also illustrated by the fact that consumer organisations are not satisfied with it. It states that when an action or service is performed in one country but received in another, the applicable law is the law of the country in which the action or service is performed. The aim of this principle is to stimulate the free movement of goods and services and to encourage cross-border competition. However, it was rejected during the debate on the Services Directive, as it would in fact require states to apply different legal regimes to companies and persons according to their country of origin.

5.6 The Lamfalussy process provided a good example of how pan-European regulatory matters could be improved as it gave a more consistent interpretation and provided for a simpler convergence of national practices and traditions on specific regulatory issues. Beyond the financial services example, the Lamfalussy process is a reference point for the creation of a system that provides quality and simplicity. It remains to be seen whether it is capable of providing a more efficient mechanism for legislating in other areas, especially the environment.

5.7 The Monti clause makes reference — in the context of the free movement of goods — to the fact that the Directive should not be interpreted as affecting in any way the exercise of EU fundamental rights, including the right to take industrial action. Recent rulings by the European Court of Justice have questioned the validity of the Monti clause and it is important to clarify what its limits are and why.

6. A better framework for integrating the environment in the internal market

6.1 Both energy and environment have become — and will remain for the foreseeable future — top priorities for governments and citizens in Europe. Unfortunately, the protection of the environment is often regarded as a burden for the market, a new set of negative conditions that necessarily affect business competitiveness.

6.2 However, it is widely agreed today that one of the most effective ways of ensuring Europe's future competitiveness is to progress significantly further with the development of ideas, products and standards which respond to one of the most important challenges which humanity faces today and, therefore, the development of an internal market which truly takes into account the environmental dimension, which is a central part of this objective. This, however, does not detract from the fact that new regulations in this area may inevitably cause tension in certain industries, especially that also short term competitiveness remains of crucial importance.

6.3 The treaty of Amsterdam reinforced the idea of the integration of the environmental dimension into other policies being the key to the promotion of sustainable development. The European Commission has explored ways of improving the synergies between the single market and environmental issues by taking into account such measures as public procurement, effective impact assessment, standardisation, financial reporting, or economic instruments such as environmental taxes, etc. The Commission has also enquired about new sectors and problems that may require harmonisation measures.

6.4 To date, given the broad sectors and practices involved in the sustainable-environmental dimension, the integration of environmental concerns in the single market has not been a clear cut issue. It affects important areas of policy such as energy and transport while issues that were originally restricted to the free movement of goods have been expanded to other areas. Therefore, and bearing in mind the great importance that the environment has in the policy agenda today, it would be necessary to make much more progress on those specific issues that can be improved and to identify which internal market tools would be the most appropriate for achieving these goals.

7. Final remarks

7.1 The internal market is a work in progress. The ultimate goal is to construct an internal market which is free of barriers. A completed internal market means that all stakeholders have equal access to each national market. And, lastly, equal access to the markets of every Member State also means that business, workers and service providers operate in the same legal environment thereby ensuring a level-playing-field and avoiding unfair competition within the borders of the European Union and any undermining of the competitiveness of the internal market as a whole.

7.2 The Committee expressed the opinion ⁽¹⁴⁾ that the success of the internal market is the shared responsibility of the European Union and the Member States which must take greater ownership of it. The role played by the social partners in its construction and enforcement should also be emphasised.

⁽¹⁴⁾ OJ C 77, 31.3.2009, p. 15

7.3 The current debate on the limits of European integration, including the recent discussion on the Services Directive, show just how difficult it is to reconcile the principles of the internal market with the need for high social standards, social protection, functioning and accessible public services and fair competition. The discussions on the internal market should primarily focus on formulating a response to these legitimate questions. In answering these questions, the European institutions must take account of both the legitimate interests of business and the fact that economic freedoms need to be subject to regulation so as to ensure that their exercise does not undermine the fundamental social rights recognised by EU law, international labour standards and the laws of the individual Member States, including the right to negotiate and the right to enter into and implement collective agreements.

Brussels, 14 January 2009.

*The President of
the European Economic and Social Committee*
Mario SEPI

7.4 The recent Communication of the Commission on the renewed social agenda ⁽¹⁵⁾ reiterates Europe's strong commitment to harmonious, cohesive and inclusive societies respecting fundamental rights in healthy social market economies. The Commission also declares its commitment to ensuring that there is no contradiction between fundamental freedoms of the Treaty and the protection of fundamental rights.

7.5 The functioning of the internal market under the provisions of the Lisbon Treaty still remains to be evaluated; the first EESC assessment of the text of the Treaty indicates, however, that the internal market, while not undergoing structural modification, seems to be defined in a more social light.

⁽¹⁵⁾ COM(2008) 412.

APPENDIX

to the opinion of the European Economic and Social Committee

The following section opinion text was rejected in favour of an amendment adopted by the assembly but obtained at least one-quarter of the votes cast:

1.4 The final goal is to remove all barriers to the functioning of the internal market i.e. to ensure a level playing field for all stakeholders and make sure they operate in the same legal environment. This is crucial for creating conditions of fair competition for all and for increasing the competitiveness of the EU economy.

Outcome:	Votes in favour: 79	Votes against: 46	Abstentions: 11
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The following amendment, which received more than a quarter of the votes cast, was rejected in the vote:

Delete point 4.3**Reason**

The EESC has no competence to undermine the rulings of the ECJ. It should be a dangerous precedent that would lead to a weakening of our prestige.

Outcast	Votes in favour: 44	Votes against: 78	Abstentions: 14
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