

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 ⁽¹¹⁾.

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).

⁽¹¹⁾ 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.