

**Opinion of the European Economic and Social Committee on the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Retail market monitoring report 'Towards more efficient and fairer retail services in the internal market for 2020'**

COM(2010) 355 final

(2011/C 84/04)

Rapporteur: **Mr ALMEIDA FREIRE**

On 5 July 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on the

*Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Retail market monitoring report 'Towards more efficient and fairer retail services in the internal market for 2020'*

COM(2010) 355 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 6 January 2011.

At its 468th plenary session, held on 19 and 20 January 2011 (meeting of 20 January), the European Economic and Social Committee adopted the following opinion by 192 votes to four with four abstentions.

## 1. Conclusions and recommendations

1.1 The EESC acknowledges the importance of the retail sector in the Single Market as well as its contribution to the overall European economy. Due to the specific nature of retailing, the EESC welcomes the holistic approach developed by the European Commission in the Retail Market Monitoring Report and concurs with the need to avoid focusing on individual sub-sectors.

1.2 The EESC regrets that too little attention is paid to SMEs who play a fundamental role in terms of employment, value creation as well as in the life of rural areas and city centres. In accordance with the Small Business Act, more priority should be given to SMEs and measures to encourage them to develop and create employment.

1.3 Across Europe there is a concentration of High Volume Retailers, who are attracting more customers through the strength of their offer (the top 5 grocery retailers made up more than 70 % of the market in 2005). Similarly, there is high concentration in a number of product markets, especially for must have products that retailers cannot afford not to offer in their shops.

1.4 Bargaining power is a general practice in a market economy which is exerted by any company, including farmers, collectors and processors of their products, suppliers and retailers. The EESC is concerned with measures in some countries aimed at controlling price levels or margins, which

is in opposition with the principles of free competition and a functioning single market.

1.4.1 Due to important socio-political reasons, e.g. in social or environmental areas, such regulations can be necessary to guarantee social cohesion or environmental protection.

1.5 Considerable price differences among Member States for similar products have been reported within the internal market. The EESC recommends that any study on prices focuses on the transmission of prices and margins throughout the entire supply chain.

1.6 The EESC recalls that retail markets – and retail contractual relationships – are, by nature, national - with differing legal, economic, political and cultural characteristics. Recognising the importance of the food supply chain, the EESC calls for manifestly unfair practices occurring in the entire food supply chain to be analysed and addressed appropriately.

1.7 More specifically, the EESC calls on the Commission to study how 'unfair contractual relations' are dealt with at national level, including enforcement. Furthermore, the EESC recalls the importance, at times of crisis, of ensuring a proper enforcement of existing legislation and that this is a responsibility of Member States, and highlights where action is needed and what would be the most appropriate level, in line with the principles of subsidiarity and proportionality.

1.8 Employment in retail is important and is often the entry point into the labour market for many young, low skilled or unskilled workers. Retail also offers considerable opportunities for entrepreneurs.

1.9 The EESC calls on the Commission to support the promotion of self employment, entrepreneurship and skills development as means to tackle the crisis and to facilitate the entry or re-entry of people into the labour market.

1.10 The Commission rightly identifies areas for priority action. Moreover, the EESC calls for a timely adoption of proposals, and urges the European Commission to speed up its decision-making in an area that requires urgent, practical and tangible action. In particular, the renewed High Level Forum on the Better Functioning Food Supply Chain should become the linchpin for new and nascent agri-food policies, including more balanced relations throughout the entire supply chain.

1.11 Furthermore, the EESC calls on the Commission to study the implementation of the services directive and take appropriate measures with the Member States concerned. The EESC also urges the Commission to take action on interchange fees which act as a hidden tax on consumers.

## 2. Introduction

2.1 The European Commission acknowledges the important role played by the retail sector in the Single Market. In fact, its economic significance for the European Union (4,2 % of the EU's GDP, 17,4 million employees and 20 % of European SMEs as well as the close links with a multitude of markets) explains why retail was chosen for a market monitoring exercise.

2.2 The retail market monitoring report and its staff accompanying paper provide an analysis of issues affecting - from a Single Market point of view - the economic, social and environmental performance of the retail sector. In doing so, the report and staff working document look at the performance of the sector, recent trends and the impact of modernisation on other competitors. They identify problems affecting the performance of retailers also from the point of view of their interlocutors in the upstream and downstream markets.

2.3 The analysis of the sector made in the report is based on an analysis of interactions of retailers with their suppliers (upstream markets) and their consumers (downstream markets). In doing so, the Commission recognises the complexity of interactions that retailers develop in order to ensure that consumers find the right product at the right location, at the right time and at the best price.

2.4 The report announces that the Commission will define measures to improve the smooth functioning of the Internal Market for retail on the basis of the consultation, with an aim to help retailers make the best use of the Single Market and improve their economic, social and environmental performance.

## 3. General comments

3.1 With this report, the European Commission recognises the importance of the retail sector in the Single Market and its contribution to growth, employment and sustainability issues. As the perception of the sector is often based on a simplistic view of retailers buying from farmers and selling to consumers, the approach taken in this report outlines the complexity of the supply chain and of retailers' interactions with their interlocutors. It further helps explain how retailers perform their mission to provide consumers with the right product at the right place at the right time and at the best price, and their challenges.

3.2 The report recognises the role that modernisation in the retail sector has played to help combat inflation over the past 50 years and to increase consumer choice. Greater competition and consolidation in retail have led to lower prices, increased consumer choice and comparatively low margins (as opposed to other sectors, including manufacturing) with an impact on competitors, local authorities, farmers, suppliers, employees, etc.

3.3 The EESC regrets that the report may be too focused on food retail and in doing so, fails to capture the importance of SMEs (over 95 % of companies in retail and 11 million workers), their specific needs and difficulties, including after sales services, their role in the life of city centres, rural areas or suburban areas, their dependence on large manufacturers and competition with suppliers setting up their own distribution networks.

3.4 The report also fails to recognise the importance of the cooperative business model particularly in food retail through consumer cooperatives.

3.5 The report analyses the performance of the retail sector against public policy objectives –accessibility and affordability. In practice however, retailers operate in a highly competitive environment in which companies strive to attract customers and offer them good value for money. Decisions made by retailers regarding establishment and their services therefore respond to market dynamics rather than public policy objectives. Benchmarking the performance of retailers against public policy objectives overlooks the fact that retail is a commercial activity that, to survive in a market economy, needs to remain profitable. Similar conclusions could be drawn for any other market activity.

3.6 Consumer demand has over time grown more sophisticated and cannot be considered as homogeneous. This combined with the importance of competition in commerce explains the complexity of market forces and why different retail formats, with different after sales services, co-exist in reality. This means that smaller formats can be successful if they provide a specific service to specific consumers. Over 11 million Europeans work in an SME in retail. It is therefore crucial that the development of SMEs is further encouraged, in particular through a better regulatory environment and reduced administrative burdens.

#### 4. Specific comments

##### 4.1 *More efficient and fairer retail services for consumers in the internal market*

4.1.1 The core activity of retailers is to provide consumers with a wide range of products meeting quality and safety requirements at the best price. Modernisation in the retail sector over the past 20 years is characterised by swift concentration into large, multinational retail chains operating in different EU and non-EU countries, leading to the saturation of markets in the EU, the integration of information and communication technologies and globalisation, including expansion into other markets and access to a wider choice of products at a lower price for consumers (affordability).

4.1.2 The EESC and the Commission agree that the imbalances with regard to accessibility to outlets and the need to keep rural areas vibrant are key questions to be addressed. Retailers tend to establish in city centres or suburban shopping centres, hence the need to ensure that city centres remain accessible for supply. Increasingly people living in rural areas rely on the use of a car, with an environmental impact, to do their daily shopping meaning that those who cannot afford a car or are not able to drive have a limited access to retail services.

4.1.3 Retailer's decisions on establishment are based on a number of factors, one of the most important being the need to maximise foot flow. This factor alone explains that sparsely populated areas would be less prone to retail establishment as opposed to city centres or purpose built out-of-town shopping centres. Accessibility issues should therefore be addressed on the basis of a thorough understanding of the environment in which retailers operate.

4.1.4 The difficulty for consumers to access a wider choice of retail outlets depends on economic and non economic factors, such as the regulatory environment, including urban planning and retailers' access to property markets. They can be related to local regulations imposing entry barriers to certain types of activities or certain types of stores, authorisation procedures which may remain overly complex and discretionary

in spite of the services directive. Furthermore, regulations reserving the sale of over-the-counter health products to certain monopolies limit competition, hence consumers' access to reasonably priced pharmaceuticals.

4.1.5 Over the past 20 years, people with lower incomes have largely benefited from access to a wider choice of products and better prices as a result of modernisation, increased competition and globalisation. The development of private labels, which are on average 30 % cheaper than branded products, has played an instrumental role in this process.

4.1.6 Due to the retail business model, retail prices reflect operational costs with a relatively small margin as compared to other sectors, which run on higher margins. The EESC is concerned with measures in some countries aimed at controlling price levels or margins. Due to the important socio-political area, such regulations can be necessary to guarantee social cohesion and prevent poverty.

4.1.7 Considerable price differences among Member States for similar products have been reported within the internal market. The EESC recommends that any study on prices focuses on the transmission of prices and margins throughout the entire supply chain. The EESC further agrees with the Commission that various factors influence the formation of a price. Apart from operational costs, these include average household disposable income, VAT, transport costs, rental costs, salary costs, the regulatory framework, the level of competition or commercial practices such as territorial supply constraints and abusive practices taking place throughout the entire supply chain. The EESC calls on the Commission to study the impact of these practices and take action to ensure that procurement is possible in other Member States so that consumers can benefit from lower prices, better choice, higher quality, alternative products, etc.

4.1.8 The EESC notes that consumer surveys have identified the need to develop sources of independent comparative information on retail offers.

4.1.9 The EESC agrees that e-commerce could play a role to increase competition in some areas, which would help lower prices and is concerned with the slow take up of e-commerce, especially for cross border transactions. The EESC notes that one of the obstacles to the development of cross border e-commerce transactions, especially for SMEs, is the lack of common consumer protection rules across Europe and urges the European institutions to rapidly adopt a directive on

consumer digital rights based on 'targeted full harmonisation' in the most advanced form. Such directive shall not prevent any Member State from maintaining or introducing more stringent protective measures for consumers, in accordance with Art. 169(4) TFEU.

#### 4.2 *More efficient and fairer retail services for operators in the Internal Market*

4.2.1 The EESC concurs with the statement that 'an internal market for retail services (...) must allow those that are competitive, whatever their size to coexist and grow on the market'.

4.2.2 Location is a key determinant when opening a new outlet and it is the case that retailers may have to wait for several years before they can open a new outlet in a given area and create jobs. Difficult entry into the market and access to the property market are identified as potential impediments to the development of small retail and should be further analysed. This analysis could be carried on the basis of readily available information taking into account the consumer perspective (choice of shopping location), competition policy aspects, subsidiarity and proportionality.

4.2.3 The services directive, which was due to be implemented in all EU Member States by 31 December 2009, aimed at doing away with a number of discriminatory practices linked to the granting of an authorisation to establish. In practice, however, a number of new barriers are being erected and there are cases of urban planning regulations being misused to control competition and favour the establishment of certain forms of retail or enterprises. The EESC calls on the Commission to study the implementation of the services directive and take appropriate measures with the Member States concerned.

4.2.4 Another problem encountered by retailers is the absence of a transparent and competitive internal market for payments. Current practices of card schemes are anti-competitive and breach a fundamental tenet of the Internal Market. Interchange fees act as a hidden tax on retailers, especially the smallest. With interchange fees at the heart of the system, SEPA will lead to the extinction of cheap and efficient national debit card schemes. As a result, the cards market will shrink to a duopoly leading to higher interchange fee levels to the detriment of consumers. The EESC calls on the Commission to take action on interchange fees which act as a hidden tax on consumers.

#### 4.3 *More efficient and fairer retail services for suppliers in the internal market*

4.3.1 As service providers, retailers provide their suppliers with an access to their distribution network be that for one outlet or across the EU. Services include for example specific placement on shelves, marketing and logistic activities, etc. Each of these bears a price, which often takes the form of fees.

4.3.2 Retail is only one of several other distribution channels that are available to suppliers. Without retailers, only a few suppliers would be able to build large distribution networks and consumers would suffer from less choice and higher prices. However, every link in the supply chain is important, as without raw materials there would be no processing and without processing there would be no retail. The EESC therefore believes that the EU must establish the mechanisms needed to ensure real balance in the product retail and distribution chain.

4.3.3 Across Europe there is a concentration of High Volume Retailers, who are attracting more customers through the strength of their offer (the top 5 grocery retailers made up more than 70 % of the market in 2005). Similarly, there is high concentration in a number of product markets, especially for must have products that retailers cannot afford not to offer in their shops. High competition between retailers results in tensions in the supply chain to reduce prices and margins. Bargaining power is a general practice in an open market economy which is exerted by any company, including both retailers and their suppliers, but when this practice becomes abusive, it must be eradicated. Retailers, including the larger ones, have no negotiation power with manufacturers of 'must have' products, be they large or small suppliers. Equally, small and medium sized suppliers have no negotiation power vis-à-vis large retailers for certain product categories. It is reported that operators in the supply chain are unable to complain out of fear of reprisal. The EESC encourages small retailers to form together buying alliances so as to increase their bargaining power vis-à-vis their suppliers, obtain better conditions and better serve consumers. Cases of abuse of buying power should be condemned and the EESC calls on a proper enforcement of competition rules for all actors of the supply chain.

4.3.4 The European Economic and Social Committee has adopted two opinions relative to the functioning of the food supply chain <sup>(1)</sup> recommending a Code of Practice at Member State level and the appointment of a mediator to intervene if

<sup>(1)</sup> NAT/460: *A better functioning food supply chain in Europe* by Mr Narro and Kapuvári; CCMI/050 *Retail industry: developments and impact* by Ms Sharma.

necessary. The European Parliament, the Spanish Presidency of the European Union and the European Commission <sup>(2)</sup> have also adopted a series of recommendations for a better functioning of the food supply chain. The EESC also welcomes the launch of the High Level Forum <sup>(3)</sup> for a better functioning food supply chain which establishes a platform of stakeholders on business to business contractual practices throughout the entire food supply chain.

4.3.5 The EESC recalls that retail markets - and retail contractual relationships - are, by nature, national - with differing legal, economic, political and cultural characteristics. Commercial relationships are usually dealt with at national level either through regulation, case law and/or codes of good practice. Many Member States have attempted to regulate a number of practices. In many cases however, such attempts have led to the erection of new barriers by limiting the capacity of foreign businesses to establish in a given country, in breach of internal market principles. The EESC calls for manifestly unfair practices occurring in the entire supply chain to be analysed and addressed appropriately. More specifically, the EESC calls on the Commission to study how 'unfair contractual relations' are dealt with at national level, including enforcement. Such a study would outline the effectiveness of national practices; highlight whether action is needed and what would be the most appropriate level, in line with the principles of subsidiarity and proportionality. Furthermore, the EESC recalls the importance, at times of crisis, of ensuring a proper enforcement of existing legislation and that this is a responsibility of Member States.

4.3.6 To ensure consumer choice, retain their individuality and strengthen their local image, retailers have developed private label products, for which they bear producer responsibility. The success of these products is based on wide consumer acceptance as nearly 80 % of European consumers <sup>(4)</sup> consider those supermarket brands as a good alternative to other brands.

4.3.7 Private label ranges are developed in partnership with their suppliers, which in a vast majority of cases are SMEs. The European Commission recognises that those partnerships, based on a subcontracting relation, have often proven to be the most stable and durable relationships. Suppliers benefit from consumer data, incentives to further innovate and access to a wider market. However, concerns have been raised on their impact on innovation, competition, SME development and consumer choice. The EESC calls on the Commission to study

the impact of own brand products on suppliers, competition, innovation and consumer choice.

#### 4.4 *More efficient and fairer retail services for employees in the internal market*

4.4.1 Employment in retail is important and is often the entry point into the labour market for many young, low skilled or unskilled workers. The retail sector heavily relies on flexible work patterns so as to adapt to consumer demand throughout the day, week or seasons. Fierce price competition generates pressure for flexible working hours on the part of employees, which has in many cases become incompatible with the organisation of their private lives. Legislation and collective bargaining should therefore identify forms of flexibility that are compatible with both the necessary organisation of businesses and with employees' need to effectively balance their private and professional lives. In this respect, female participation in retail is higher than in any other sector and part time work is also important. Retail also offers considerable opportunities for entrepreneurs.

4.4.2 The EESC calls on the Commission to support the promotion of self employment, entrepreneurship and skills development as means to tackle the crisis and to facilitate the entry or re-entry of people into the labour market. The EESC urges businesses in the sector to apply national and Community rules in the area of equal opportunities and gender equality in order to help boost both the quality and the level of female employment in the sector.

4.4.3 The current financial crisis and the contraction of consumption have triggered closures, restructurings, mergers and take-overs of commercial activities across Europe. The risk of long-term unemployment for individuals therefore remains high. The EESC calls on the Commission to support the promotion of self-employment and workforce skills development as a means to tackle the crisis and enable people to re-enter the employment market.

4.4.4 There is a long tradition of collective bargaining in commerce both at European and national level. Differences between countries result from different cultures and tradition of industrial relations and any proposed measure in this field should remain subject to the principle of subsidiarity. The EESC calls on the Member States and the candidate countries to reinforce social dialogue between the partners and an industrial relations system within the sector.

<sup>(2)</sup> COM(2009) 591 Commission communication *A better functioning food supply chain in Europe*.

<sup>(3)</sup> Commission decision of 30 July 2010 establishing the High Level Forum for a Better Functioning Food Supply Chain (2010/C 210/03).

<sup>(4)</sup> AC Nielsen study *consumer attitudes towards private labels*, 2005.

4.4.5 Undeclared work and the informal economy are a major issue and should be dealt with as a matter of urgency as they generate both unfair competition among businesses as a result of tax and contribution evasion, and harmful effects on employees' working conditions, particularly regarding workforce health and safety protection. The EESC calls on the Commission and the Member States to take measures to simplify and reduce administrative burdens in particular for small and micro-enterprises and to further raise awareness of the benefits of regular work.

4.4.6 The EESC calls for an open debate with the Social Partners on franchising and urges Member States to reinforce measures to fight against the informal economy as it creates further discrimination and unfair competition to the detriment of SMEs.

4.4.7 Modernisation, technological development and increased use of ICT in retail has led to an increasing mismatch between skill needs of companies and those of staff in retail. The EESC draws the Commission's attention to the need to better equip workers with better skills throughout their career paths/working lives. In this respect, the EESC also calls on the social partners in commerce to deepen their ongoing cooperation in addressing the mismatch between the skill needs of companies and those of employees through the identification of sectoral solutions and means to anticipate and manage the impact of new technologies on skills and employment.

4.4.8 There is a long tradition of Corporate Social Responsibility in retail. In fact, for many years commerce companies have been initiating and implementing a broad range of responsible practices. These practices do not only cover social and environmental issues but also other fields such as health, product safety, and supply chain related matters or local engagement.

4.4.9 The EESC agrees with the Commission that it is essential to tackle the issue of price competition, which generates powerful pressure on wage costs and employees' working hours. To this end, the EESC proposes that the Commission carry out a specific study on the impact of shop opening hours, including Sundays, on local economic and social development, the level of service provided for consumers, and employees' quality of life.

4.4.10 Major pockets of unfair competition and social dumping persist among businesses in the sector, regardless of size, as differing employment legislation and collective bargaining arrangements between countries produce different investment policies and economic and social models. The EESC urges the social partners to open, within the European social dialogue arena, a debate to identify the best policies in order to contribute to economic, social and territorial cohesion and remove those obstacles in the path of harmonious development and fair competition in the sector across Europe. The Commission should support such an initiative and take appropriate measures to eliminate conduct hampering the creation and operation of a fair, efficient internal market that promotes development.

4.4.11 Employee Financial Participation is playing an increasing role in the retail sector, particularly in the larger European retailers, allowing employees to have a greater say in the quality of employment, motivation and working conditions. The Commission should review this tool as part of its monitoring of the sector.

#### *4.5 More efficient and fairer retail services for future generations in the internal market*

4.5.1 The EESC acknowledges the importance of retailing in encouraging more sustainable consumption and production patterns in the EU. It recalls that the direct impact of retailing operations as such has been overestimated but that indirectly, as the closest link between consumers and manufacturers, retailing can do a lot. The EESC welcomes the Retail Forum whose role is to share good practice amongst retailers and between retail and stakeholders on specific issues. The EESC also recognises the work of the Sustainable Consumption and Production Round table.

4.5.2 The EESC draws the Commission's attention to the need to ensure consistency in policy making between environmental and other policy goals such as the internal market. Over the past years conflicts have arisen and it has become increasingly common for the basic principles of the Internal Market to be overruled on the grounds of environmental protection. Furthermore, the EESC warns against a possible shift of responsibility from producer to retailer.

Brussels, 20 January 2011.

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

---