

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

470TH PLENARY SESSION HELD ON 15 AND 16 MARCH 2011

Opinion of the European Economic and Social Committee on 'Consumers and cross-border possibilities within the Single Market'*(exploratory opinion at the request of the Hungarian presidency)*

(2011/C 132/02)

Rapporteur: **Mr PEGADO LIZ**

By letter dated 15 November 2010, Mr Péter Györkös asked the European Economic and Social Committee, on behalf of the Hungarian EU Council presidency, to draw up an exploratory opinion on:

Consumers and cross-border possibilities within 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 4 March 2011.

At its 470th plenary session, held on 15 and 16 March 2011 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 175 votes to two with eight abstentions.

1. Conclusions and recommendations for the Hungarian presidency

1.1 The EESC thanks the Hungarian presidency for having given it the opportunity to issue an opinion on the main developments regarding possibilities for European consumers within the Single Market and thereby to contribute to the work of the EU presidency during the first half of 2011.

1.2 The EESC considers that there is a need to kick-start discussions on establishing a new approach to consumer policy with a view to 2030 and hopes that the Hungarian presidency, the other institutions and the social partners will take on this challenge.

1.3 The Committee welcomes the Council's approval of a common approach regarding consumer law on 24 January 2011, but is concerned about the subsequent developments in the European Parliament, and therefore urges the Hungarian Presidency to maintain the path set by the Council, ensuring that the final result can restore consumer confidence.

1.4 With regard to the review of the directive on unfair commercial practices, the EESC recommends that the Hungarian presidency give more consideration to the issue of total harmonisation from the outset of discussions, once an impact assessment has been carried out, and that account be taken of the reduced consumer protection resulting from harmonisation, in the Member States which have transposed the directive.

1.5 With regard to a legal instrument for collective action at EU level, the EESC calls upon the Hungarian presidency to show political courage in order to ensure that this is adopted as soon as possible, particularly since numerous studies have shown this project to be appropriate and feasible.

1.6 With regard to the review of the 'package travel' directive and the legislation on air passengers' rights, the EESC recommends that the Hungarian presidency deal with them jointly and establish rights, obligations and responsibilities in the event of disputes or unsatisfactory or fraudulent conduct.

1.7 In relation to the single market in retail financial services, the EESC recommends that the Hungarian presidency move ahead with the issues regarding minimum banking services for all European citizens, a reliable electronic payment system which is identical in all Member States, the strict definition of banks' responsibilities when granting credit, a uniform insurance system throughout European territory, the classification of unfair terms and unfair commercial practices specific to financial services, comparability of bank charges, deposit guarantees and a greater obligation to provide advice on complex financial products. Strengthening financial supervision is the absolute minimum in view of the ongoing financial crisis.

1.8 With regard to the Digital Agenda, the Hungarian presidency will have to take urgent decisions regarding a precise definition of consumers' fundamental rights in the digital environment, the review of the framework directive on data protection and the protection of copyright in the digital domain.

1.9 Finally, with regard to the implementation of the new provisions of the Treaty and the Charter of Fundamental Rights on services of general interest (SGI), the EESC calls on the Hungarian presidency to actively pursue the course opened up by the conclusions of the Council of 6 and 7 December 2010 in order to ensure that SGIs are not overlooked when the Europe 2020 strategy is implemented.

1.10 In particular, the Hungarian presidency has raised the issue of local cross-border trade. To date, no study has been carried out assessing the consequences of such trade in the Member States. The EESC's first recommendation to the Hungarian presidency is to ask the Commission for a precise statistical analysis of these transactions, and then to commission the studies required to determine whether this kind of trade is of a specific nature, warranting a particular legal approach at European level. Lastly, the needs of consumers in this kind of trade should be assessed (information, the language of contracts, comparability of prices when one of the currencies is not the euro, exchange rates, commissions and bank charges etc) as well as the most effective ways to meet those needs at local level.

2. Introduction

2.1 The EESC is pleased that the Hungarian presidency has asked it to draw up an exploratory opinion on what has been one of the Committee's favourite themes in the last twenty years. In its own-initiative opinion on the *Single market and consumer protection: opportunities and obstacles* of 7 November 1995 ⁽¹⁾, the EESC provided a summary of all earlier opinions on the subject, whilst setting out the issue and the main concerns as to the obstacles and difficulties faced by consumers in taking full advantage of the single market. Unfortunately, most of the issues raised in that opinion remain relevant today.

2.2 Completion of the single market, which is one of Europe's largest strategic projects, launched by Jacques Delors, and which was given a precise deadline, is still a work in progress, even though more than 30 years have passed. The recent publication of the Single Market Act attests to this fact. The Committee has always argued for an 'instrumental' single market that benefits citizens/consumers. Furthermore, a European consumer policy that is clear, coherent and comprehensive still needs to be adopted.

2.3 The Hungarian presidency's request, which the EESC is honoured to receive, is thus fully justified and enables the Committee to contribute to the work that has been planned under the Commission's programme for the first half of 2011, in line with the work carried out by the recent presidencies, especially the Belgian presidency.

2.4 This exploratory opinion will also be an opportunity for the EESC to pay tribute to the late Hungarian member, Mr Istvan Garai, who was the director of a prestigious Hungarian consumer association, a great champion of consumers' interests and rights and rapporteur for important opinions in this field, who sadly died in 2008, whilst still in office.

3. A major objective

3.1 A single presidency is not long enough to draw up guidelines for a given policy in a transparent and participatory manner, to carry out a prior impact assessment, for the policy to be adopted in a democratic manner by the EU and implemented by the Member States and for an ex-post evaluation to be carried out.

3.2 The five-year strategic programmes, which are moreover usually influenced by purely economic factors, are also inadequate unless they form part of a policy with a more wide-ranging vision. The 2007-2013 Strategy, which was adopted on 13 July 2007 and is currently being implemented, is a prime example of something already criticised by the EESC.

3.3 The 2020 Strategy should focus primarily on consumer promotion and protection, but that is not the case.

3.4 The only outline of a political approach of this type dates back to 1985, with what was known as the 'New Impetus', launched by Jacques Delors and taken up and built on by Commissioner Emma Bonino (1995-1999). Unfortunately, due to a lack of political will, its objectives have never been achieved, with the exception of a few symbolic actions.

⁽¹⁾ OJ C 39, 12.2.1996, p. 55.

3.5 The current challenge of laying down the bases and guidelines for a consumer promotion and protection policy with a view to 2030, taking on board the González report, is as great a challenge as any EU presidency can face, but at the same time, it must be recognised that we are already lagging behind other strategic initiatives such as the 2020 Strategy, the *Single Market Act*, *Smart Regulation*, etc.

3.6 The main lines of this policy in the medium and long term are:

- a) Daring to challenge and replace the legal base contained in the Treaty (Article 169, in the light of Article 12 TFEU) ⁽²⁾,
- b) Placing consumer policy at the heart of EU policies as a policy of citizenship, and making this the cornerstone and the ultimate beneficiary of all other policies,
- c) Redefining consumers' rights in the light of this new approach, systematically referring to the treaties and to the Charter of Fundamental Rights,
- d) Emphasising the cross-cutting nature of consumer policy, with all that this entails, ensuring that this policy really is mainstreamed, both in the Commission's own departments, in its relations with the other institutions and at all tiers of authority in the Member States,
- e) Carrying out a genuine codification of Community consumer law, taking advantage of the excellent academic work done under the Common Frame of Reference, and drawing all possible conclusions – especially the reasonable and appropriate use of optional schemes – adopting the Proactive Law Approach,
- f) Clearly accepting the instrumental nature and subsidiary role of the single market policy and placing this unambiguously at the service of citizens as consumers, who are the ultimate beneficiaries,
- g) Establishing common principles for the organisation and participatory representation of consumers in the EU, as a key and decisive factor for implementing policies that concern them.

3.7 This last point warrants particular attention, because it has not been systematically taken on board at the European level. Both the public authorities in the Member States responsible for consumer protection and consumer protection organisations and associations have actually been calling for a long time for general principles and guidelines to be drawn up for the participatory organisation and representation of

consumers. A more systematic approach to consumer representation in all Member States, particularly amongst regulators of the different sectors, based on uniform principles, would boost the credibility of consumer organisations and also make consumer protection more effective.

4. Certain topical issues relating to consumer protection policy

4.1 In a fully completed single market, consumers should be able to exercise fully the rights they have under the 'acquis communautaire', wherever they are in the EU, under the same conditions as in their own countries. However, neither the various consumer policies nor the current initiatives meet consumers' legitimate expectations in a satisfactory manner.

4.2 The Hungarian presidency's political agenda includes significant objectives, some of which will, of course, be maintained by subsequent presidencies.

4.3 Firstly, with regard to the **proposed directive on 'consumer rights'**, the EESC believed ⁽³⁾ that it should be reworded to deal only with certain fundamental principles regarding rights to information and the right of withdrawal in the case of distance and off-premises sales and that the sections on unfair terms and on the sale of goods and associated guarantees should be removed.

4.4 In view of the developments in the Commission's approach, demonstrated by Commissioner Reding's recent public statements, the EESC notes that, on 24 January, the Council adopted a position which chimed completely with its opinion, a fact which it welcomes. However, in view of the recent developments on this issue in the EP and the contradictory positions taken by the IMCO and JURI Committees and the conclusion scheduled for the coming months, the EESC urges the Hungarian Presidency to resolutely maintain the path set by the AGRI Council in January, coordinating it in a realistic fashion with the future common reference framework for European contracts (CRF), as recommended in the EESC's opinion ⁽⁴⁾.

4.5 With regard to the **directive on unfair commercial practices**, the EESC notes that its slow transposition in most of the Member States has been deplorable, as it had predicted in its opinion ⁽⁵⁾. The Court of Justice itself has taken this same view.

⁽²⁾ OJ C 185, 08.08.2006 p. 71.

⁽³⁾ OJ C 317, 23.12.2009, p. 9.

⁽⁴⁾ OJ C 84, 17.03.2011, p. 1.

⁽⁵⁾ OJ C 108, 30.04.2004, p. 81.

4.6 The EESC therefore recommends that the Hungarian presidency work on the basis of studies showing the resulting low level of consumer protection and the consequences for competition in the States which have transposed the directive on unfair practices, and give more consideration to the wisdom of the non-targeted application of the principle of total harmonisation from the outset of the discussions on the review of that directive.

4.7 With regard to a **legal instrument for collective action at Community level**, the EESC takes note of the Commission's intention to relaunch the debate through a new consultation of the interested parties, but wonders whether there is a real political will to achieve a tangible result after some thirty years of discussions, consultations, reports, opinions, green papers and white papers, communications and resolutions, studies, conferences and symposiums of all kinds.

4.8 In several opinions, both older and more recent, the EESC has expressed very clear support for a European legal instrument enabling consumers who consider themselves victims of collective harm to seek legal redress and damages collectively. It would fully accord with European judicial law and allow compensation to be paid for collective material and/or moral damage (the opt-out system) suffered by consumers in any Member State and under identical conditions. The adoption of that position by the Hungarian presidency would greatly benefit consumers and other holders of collective rights, and would boost the completion of the single market and fair competition.

4.9 With regard to the review of the **'package travel' directive**, the EESC has not yet been asked for an opinion. The Commission intends to present a proposal at the beginning of 2011 and has already begun to gather ideas for a possible review of the legislation on air passengers' rights.

4.10 Without wishing to anticipate the EESC's opinions on these two subjects, the EESC recommends that the Hungarian presidency deal with them jointly, in order to ensure a consistent approach, and to extend the scope of the directive to individual and collective transport service contracts, with or without related services, and to define rights, obligations and responsibilities in the event of disputes or unsatisfactory or fraudulent conduct. Particular attention must also be paid to the unfair terms and unfair commercial practices specific to the sector. The consequences of the bankruptcy of agencies, tour operators and airlines also require a strict regulatory framework.

4.11 The completion of the **single market in retail financial services** has made some progress – such as the SEPA directive, following the adoption of the euro, the MiFID directive, the CAD directive, and the recent Commission

proposals of 12 July 2010 on deposit guarantee schemes and investor compensation schemes ⁽⁶⁾ – but there is still much to be done: it lacks overall political direction, which could truly benefit consumers and SMEs in the single market. The Commission itself has described retail financial services as a sector in which consumers face a significant number of problems ⁽⁷⁾.

4.12 The EESC has expressed its view on this subject on many occasions, through both referrals and own-initiative opinions, but lasting, practical and effective solutions have yet to be found. Some memorable examples include responsible lending and over-indebtedness ⁽⁸⁾ to which the 'consumer credit' directive was not able to respond; the failure of the proposals on mortgage credit when the idea of harmonising it was accepted years ago, the fragility of the provisions on cross-border payments and the use of debit/credit cards; the lack of true mobility of bank accounts and minimum universal banking services, the weakness of the provisions for dealing with financial crises and ensuring immediate compensation for losses and damages for bank customers.

4.13 The economic and financial crisis is still having a serious impact on consumers and small investors. Practical measures such as the creation of a universal bank account and minimum banking services for all European citizens, a reliable electronic payment system which is identical in all Member States and a strict definition of banks' responsibilities when granting credit would also be possible avenues, as well as a uniform insurance system throughout European territory, the classification of unfair terms and unfair commercial practices specific to financial services, comparability of bank charges and a greater obligation to provide advice on complex financial products. Furthermore, financial supervision should be geared towards the needs of consumers and effective mechanisms for resolving disputes and for providing compensation in the event of loss or damage due to the malfunctioning of financial systems (banks and insurance) should be established.

4.14 The EESC welcomes the Commission's approach to the **rights of consumers in the digital environment**, as demonstrated by the 'Digital Agenda' under the 2020 Strategy ⁽⁹⁾, but there is still much to be done before everybody can enjoy a universal service in the field of telecommunications and information. The rapid adoption of a new Commission communication would be welcome and would provide an opportunity for the Hungarian presidency to adopt a firm position regarding the neutrality of the Internet and the inclusion of broadband as part of universal service, as the EESC has called for in the past.

⁽⁶⁾ COM(2010) 368 final.

⁽⁷⁾ SEC(2009)1251 final of 22.09.2009.

⁽⁸⁾ OJ C 149, 21.06.2002, pp. 1-4.

⁽⁹⁾ OJ C 54 of 19.02.2011, p.58.

4.15 The EESC has a particular interest in the recognition and protection of consumers' rights in the digital environment in general, and not just in relation to e-commerce. It is not just necessary to review as soon as possible the directive on the legal aspects of e-commerce, but also to seek ways to remedy the under-development of e-commerce.

4.16 The Hungarian presidency will also have to take urgent decisions regarding a precise definition of the fundamental rights of consumers in the digital world, as well as the review of the framework directive on data protection, and the protection of copyright, in the digital domain.

4.17 Finally, the EESC very much hopes that the Hungarian Presidency will follow up the conclusions of the EPSCO Council of 6 and 7 December 2010 on social services of general interest, taking full account of the recommendations of the 3rd SSGI Forum organised by the Belgian presidency on 26 and 27 October, and thus contribute to the implementation of the new provisions of the Lisbon Treaty and the Charter of Fundamental Rights on services of general interest.

5. The specific case of cross-border local trade

5.1 The Hungarian presidency has asked the EESC for an opinion on an issue which, though important, has not yet been studied in depth at EU level. This is cross-border local trade, i.e. purchases of goods and services by consumers on either side of the geographical borders of their countries, either between EU Member States or with non-EU countries.

5.2 Certain Member States had already studied this phenomenon, even before the introduction of the euro, in order to identify the types of transaction, the flow of currencies, prices and their consequences for cross-border regions and competition etc.

5.3 However, European-level study exists assessing the quantity and consequences of inter-regional cross-border transactions for Member States. In fact, this type of trade is not

mentioned in the Commission communication of 1991⁽¹⁰⁾, in the Green Paper on trade of 1996⁽¹¹⁾, or in the White Paper of 1999⁽¹²⁾. The first thing that the Commission should be asked for, therefore, is a precise mapping and statistical analysis of these transactions.

5.4 However, at the beginning of the 1990s, the Commission and a number of regional consumers' organisations created a network of information and advice centres intended to assist consumers facing difficulties in cross-border trade: the Euroguichets. These focussed primarily on information for consumers and were located in border towns.

5.5 In 2001, the Commission launched the European extra-judicial network (EEJ Net), for the extra-judicial settlement of disputes. At that time, eleven Euroguichets in nine Member States were asked to provide consumers with legal advice, in addition to their traditional responsibilities.

5.6 The current European Consumer Centres Network (EEC Net) was then created in January 2005 through the merger of EEJ Net and the Euroguichets.

5.7 It made sense to merge the two networks in view of the introduction of the euro and the expected growth of e-commerce and distance selling. However, this merger ended the regional location of the Euroguichets and their role in relation to cross-border local trade.

5.8 The question therefore arises of whether this kind of trade is still of a specific nature, warranting particular EU action.

5.9 The needs of consumers in this kind of trade should also be considered (information, the language of contracts, the comparability of prices when one of the currencies is not the euro, exchange rates, commissions and bank charges, etc.), as well as the most effective ways to meet those needs at local level.

Brussels, 15 March 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁰⁾ COM 1991/0041 final of 11 March 1991.

⁽¹¹⁾ COM (96) 530 final of 20 November 1996.

⁽¹²⁾ COM (1999) 6 final of 27 January 1999.