

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

486TH PLENARY SESSION HELD ON 16 AND 17 JANUARY 2013

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Single Market Act II — Together for new growth’

COM(2012) 573 final

(2013/C 76/05)

Rapporteur: **Mr SIECKER**

Co-rapporteurs: **Ms FEDERSPIEL, Mr VOLEŠ**

On 19 December 2012 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Single Market Act II – Together for new growth

COM(2012) 573 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 8 January 2013.

At its 486th plenary session, held on 16 and 17 January 2013 (meeting of 16 January), the European Economic and Social Committee adopted the following opinion by 162 votes to 24 with 18 abstentions.

1. Conclusions and recommendations

1.1 The Committee recalls ⁽¹⁾ that the Single Market is a centrepiece of European integration, with the potential to deliver directly-felt benefits to European stakeholders and to generate sustainable growth for Europe’s economies. In the current economic crisis a well-functioning, future-oriented Single Market is not merely desirable but essential for the political and economic future of the European Union.

1.2 Against the background of an ongoing economic crisis and, amongst other things, the impact the deregulation of financial markets has had on the national budgets of the Member States, on the real economy, on poverty and on employment in the EU ⁽²⁾, the optimistic tone the Commission strikes in its Communication regarding the implementation of the Single Market (SM) feels inappropriate. The EESC believes

that the Commission has paid too little attention to the unintended negative side-effects of the Single Market. An overly explicit and demonstrative, but premature, claim of success can only frustrate the EU citizens. The consequence could be a further undermining of the Single Market rather than a new dynamic. The Commission should demonstrate a more realistic approach by communicating in a well-balanced tone.

1.3 The better functioning of the Single Market by means of the old and new guidelines is under huge threat from the massive increase to 28 million unemployed, particularly affecting youth in the EU. Hundreds of thousands of SMEs have gone bankrupt and 120 million citizens are at threat of poverty and social exclusion, i.e. approx. 25 % of the EU population. For these reasons, demand and consumption in the EU are massively affected. In addition to key actions the EU and the Member States must step up their efforts to overcome the financial, economic and budgetary crisis and to release the full potential of the Single Market.

⁽¹⁾ OJ C 24, 28.1.2012, p. 99.

⁽²⁾ http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-03122012-AP/EN/3-03122012-AP-EN.PDF

1.4 The EESC calls on the Parliament, Commission and Council to act quickly without affecting quality, in order to ensure that these legislative proposals are adopted before the end of the Parliament and Commission mandates in spring 2014. The EESC would very much welcome the fast application of the measures proposed in the Communication on the Governance of the Single Market to improve the overall implementation of EU rules.

2. General remarks: 'For a highly competitive social market economy'

2.1 The Commission has defined the second phase of the Single Market Act (hereafter SMA) by means of 12 new key actions to improve the functioning of the Single Market. The EESC welcomes the fact that it has been consulted before the communication's publication and that the Commission has taken up some of its recommendations in the SMA II. However, it regrets that there was no formal public consultation this time and that the informal consultation was not evenly balanced between relevant stakeholders.

2.2 Despite the Single Market's positive contribution to economic growth and the creation of new jobs since its establishment, it has not delivered its full potential to all stakeholders, be they businesses, workers, consumers, citizens or others. The Commission mentions an extra 2.77 million jobs but says nothing about the precarious nature of some of these jobs⁽³⁾. We know that since spring 2008, when the consequences of the economic crisis were felt throughout Europe, approximately 10 million jobs have been lost and it appears that we have not yet seen the end of this downturn⁽⁴⁾.

2.3 Though the Commission indicates the guiding principles behind these choices (better regulation agenda, cost of non-Europe, etc.), the sense of urgency regarding some of the choices is not always clear in all European institutions. On the mobility of workers, for instance, the Commission announces an initiative in relation to the EURES portal while at the same time other fundamental activities in this field are still in the Council pending.

2.4 The EESC feels that the Commission has paid too little attention to the unintended negative side-effects of the Single Market. EU regulation of financial markets has been too weak to put an end to defective supervision and to prevent a type of

entrepreneurship geared towards the short-term interests of a privileged group of shareholders. More attention needs to be paid to improving corporate governance. Increasing transparency and accountability should be the highest priority, in order to ensure that the Single Market contributes to developing a legal environment that respects the legitimate interests of all stakeholders.

2.5 Notable is the firmness with which the Commission claims that these 12 new levers will contribute to growth, more employment and more confidence in the Single Market. The EESC believes that the history of the Single Market's introduction demonstrates that some of the measures taken in the past have had ample effect in the short term. An overly explicit and demonstrative, but premature, claim of success can only frustrate the EU citizens, particularly in the absence of robust evidence from impact assessments. The consequence could be a further undermining of the Single Market rather than a new dynamic⁽⁵⁾. The Commission should demonstrate a more realistic approach by communicating in a well-balanced tone.

2.6 Regrettably, the SMA I and II do not underscore the importance of ensuring confidence in relation to the enforcement of rights. The EESC is still impatient to see, at last, an efficient collective judicial redress instrument made available to European consumers. While liberalising markets and increasing competition are key objectives of the Single Market policy and play an important role in enabling consumers to choose freely, consumers also need a robust framework of protective rights in relation to the purchase of goods and services and the efficient enforcement of these rights. Several studies have concluded that the implementation of different EU instruments is slow and enforcement is still relatively weak, particularly in cross-border situations, and the Commission should therefore as a matter of urgency propose binding measures on new enforcement tools.

2.7 It is unfortunate that just 1 out of 12 initiatives is labelled a consumer measure, despite the fact that several levers have an important impact on European consumers' daily lives⁽⁶⁾. We hope that this does not reflect the Commission's general view of consumer policy. It is important that the focus is wide and that consumers are not seen as an appendix to business policy but rather as independent players, with a

⁽³⁾ FLASH-IT, Policy Research Alert 5 – Employment, October 2012.
⁽⁴⁾ Eurostat News release, 31 October 2012.

⁽⁵⁾ Monti 2010: 'That would erode the basis for economic integration and growth and employment throughout the EU, at a time when the emergence of new global powers and of severe environmental challenges make a cohesive EU more necessary than ever, in the interest of European citizens as well as of an effective global governance'.
⁽⁶⁾ European Parliament Resolution of 14 June 2012 on 'Single Market Act: The Next Steps to Growth'.

view to creating a Single Market that benefits everybody, cf. the Monti and Grech reports. The EESC agrees with the Commission that there is still unused potential in the Single Market, after both the 50 proposals and the first 12 levers. However, from consumers' point of view, the Commission could and should have placed more emphasis on prioritizing consumer-friendly initiatives, as previously underlined in an EESC opinion ⁽⁷⁾.

2.8 The EESC is also struck by the lack of awareness of social partnership in this communication. Confidence and trust cannot be restored if involving social partners in EU policies is limited to the policy area of DG Employment. Consultation of social partners is also needed in relation to various activities within DG Market.

2.9 As the EESC has pointed out in previous opinions, any proposal for cross-border consumer transactions should be achieved incrementally, starting with cross-border commercial sales contracts between businesses (B2B) on a pilot basis. Pending the adoption of any proposal for B2C transactions, there should be no further initiative of optional nature regarding cross-border commercial sales contracts.

3. The first 12 levers and the missing elements – state of play

3.1 The Commission has already presented 11 of the 12 legislative proposals for the key actions and the EESC has adopted opinions on these proposals ⁽⁸⁾. The EESC calls on the Parliament, Commission and Council to act quickly, without affecting quality in order to ensure that these legislative proposals are adopted before the end of the Parliament and Commission mandates in spring 2014. The Member States should implement the adopted legislation correctly and enforce it to guarantee the level playing field and barriers created on unjustified and discriminatory grounds must be removed in order to enable the Single Market to function properly.

3.2 The withdrawal of the Monti II regulation does not solve the problems created by the European Court of Justice (ECJ) in its judgments relating to the posting of workers. A solution to the current situation must be found, since it is preventing workers from exercising their rights fully. The Commission should ensure that fundamental social rights cannot be restricted by economic freedoms. The Commission should consider a proposal for a social progress protocol to be attached to the European Treaties. Such a protocol should clarify the relationship between fundamental social rights and economic freedoms by confirming that the Single Market is not a goal in itself, but was established in order to achieve social

progress for all EU citizens (effectively in implementation of Article 3.3 of the Consolidated version of the Treaty on European Union). It should also make it clear that economic freedoms and competition rules cannot take priority over fundamental social rights and social progress and can in no way be interpreted as granting undertakings the right to evade or circumvent national social and employment laws and practices or for the purposes of unfair competition on wages and working conditions.

3.3 The EESC has identified a number of measures that were missing from the SMA I and which it felt would also contribute to boosting citizens' confidence. The measures still missing include the revision of the copyright directive, copyright levies, net neutrality, the social progress protocol, micro- and family businesses, measures to support the creation of new companies and the expansion of existing ones, over-indebtedness and interbank transfers, with a view to consolidating the operation of the Single Euro Payments Area (SEPA).

4. The 12 new levers

4.1 Transport

The EESC welcomes the measures to improve the interconnection of the Single Market in the field of railways, maritime and air transport, but believes that a holistic approach is lacking, since the Commission's proposal is missing actions regarding rail goods services, road transport, which is the largest segment of goods and passenger transport, and multimodal transport, as a way to optimise the effectiveness of transport.

4.1.1 Rail

The way in which the privatisation of rail transport is defined and defended does not reflect the fact that reasons other than purely economic ones need to be taken into account in important European regions, in order to keep public transport afloat. Merely introducing profitability could erode the public function of rail transport systems. It is not sufficient to assess the success or otherwise of privatisation purely on the basis of savings. Quality and safety for staff and the general public should be the foremost consideration.

4.1.2 Water

A true Single Market for shipping can only be achieved by ensuring a level playing field with other modes of transport. This means moving decisively towards administrative – i.e. customs – simplification for purely intra-EU shipping. Community goods should be treated differently from third-country goods (in particular using the electronic manifest) in order to cut red tape and pass responsibility on to carriers. Basically, goods inspected upon entry into the EU need not be inspected again in another port of destination within the EU.

⁽⁷⁾ OJ C 299, 4.10.2012, p. 165.

⁽⁸⁾ OJ C 24, 28.1.2012, p. 99.

This would also help, on the one hand, to create maritime transport without barriers within the EU and, on the other, to establish the much-needed motorways of the sea – key sea routes between EU ports in combination with other modes of transport. The EESC is currently preparing an opinion on Blue Growth and will present pragmatic proposals early in 2013.

4.1.3 Air

While acknowledging the importance of measures to tackle the current fragmentation of European airspace, the EESC regrets that the revision of the Air Passenger Rights Regulation covering compensation and assistance for passengers in the event of denied boarding, cancellations or long delays, has not yet been presented. This EU legislation needs to be clarified and updated in terms of its scope of application and the interpretation of certain general provisions. The EESC also calls on the Commission to present a legislative proposal requiring airlines to guarantee the protection of all passengers in the event of airline insolvencies and to act against the proliferation of unfair contract terms, the lack of transparency in ticket pricing and the difficulties consumers face in obtaining redress, by obliging airline companies to adhere to ADR systems and also to the decisions made by the national air travel authorities.

4.2 Energy

In many Member States, choosing between different energy suppliers is not yet an option due to a lack of competition. Affordability of services, quality complaint handling, comparability of offers and prices, easy switching of suppliers and the transparency of tariffs and contract terms are still to be achieved across Europe. The EESC calls on the Commission and the Council to keep national retail energy markets under close supervision, and, where needed, to act promptly, in order to ensure that the third energy package is implemented efficiently to the benefit of citizens. It is important that Member States transpose the relevant provisions contained in the third package in such a way as to help vulnerable citizens and to prevent energy poverty in their countries. Consumer engagement is a necessary prerequisite for the success of the smart meter rollout, which may provide energy efficiency potential. However, there are still many unresolved issues such as whether the potential benefits outweigh the costs for consumers as well as data protection issues. These problems should be solved as soon as possible in the interest of all energy users.

4.3 Mobility of citizens

The Commission is a strong supporter of mobility. However, mobility as such is not a target in itself. It takes a lot for people

to leave their home soil, and comparisons with the US are not always viable. Workers and the self-employed that do cross borders are often confronted with a lack of recognition of their qualifications, long working hours, poor working conditions, discrimination, unfair treatment and language barriers. Improving working conditions and promoting equal treatment should be part of a European active labour market policy. In particular, the EESC deplores the fact that, after more than 20 years, no progress has been made on the important issue of the recognition of vocational qualifications⁽⁹⁾. The mobility of trainees, apprentices and young entrepreneurs should be promoted in Europe.

4.4 Access to finance

The proposed measures to facilitate access to long-term investment funds are a positive step. Nevertheless, this will not solve the problems that SMEs face due to a lack of operational capital. SMEs, as the backbone of the EU economy, should not be discriminated against in terms of access to financing as a result of the strict rules on banks' reserves⁽¹⁰⁾. The Committee refers to its previous opinions on SME's access to financing⁽¹¹⁾. Here we recommend creating revolving tools to provide such credits to enable SMEs to access financing easily without excessive collaterals⁽¹²⁾. The guarantees for these credits should be provided from national or European resources. The Member States also should consider other possibilities such as tax holidays for private and family investors in SME start-ups and their extension for a certain number of years, as well as other incentives. These measures should complement the proposal for the free cross-border movement of European venture capital which is aimed at innovative companies, as proposed in the SMA I, but this does not solve the lack of financing for other SMEs.

4.5 Business environment

The proposal for the modernisation of insolvency legislation is a step in the right direction in terms of improving the business environment, particularly when aimed at giving entrepreneurs a second chance. There is still too much red tape which SMEs, and especially microenterprises, are unable to handle. We call on the Commission to continue its efforts to reduce the administrative burden and to identify quantitative and qualitative targets. In this respect, the impact assessment should be

⁽⁹⁾ OJ C 191, 29.6.2012, p. 103.

⁽¹⁰⁾ See CRD IV.

⁽¹¹⁾ OJ C 351, 15.11.2012, p. 45.

⁽¹²⁾ Seczenyi card in Hungary – see http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.iapmei.pt%2Fconferencia%2F1_Laslo_Krisan.ppt&ei=DM29UKvHJNGRhQehsoGwDA&usg=AFQjCNHWIFTA7fbjHyT1ShycR1qL7tKRQ

constantly improved. To date, the evaluation of administrative burdens has focussed too much on the regulations themselves and, partly as a result of this, has been too 'technocratic' in nature. A Member State regulation may very well be motivated by the desire to maintain the quality of the service provided and thus be in the interest of public welfare and hence not unnecessary⁽¹³⁾.

4.6 Services

The EESC welcomes the fact that the SMA II includes the revision of the Payment Services Directive (PSD) and stresses that the development of a competitive and well-functioning European payments market benefitting all consumers and businesses should be the revision's primary objective. It is particularly important to make payment services accessible to consumers, but also to ensure that these services are provided securely, efficiently and cheaply. The revision should ban the practice of imposing consumer surcharges for the use of payment methods across the EU. Direct debit users should be given unconditional refund rights for authorised and unauthorised transactions. Consumers should have strong protection regardless of the payment method used, with account taken of the existing strong consumer protection rules in some Member States. The many benefits for all stakeholders concerned, as well as the need for a reasonable cost for SME offering these payment methods to their customers should be considered in this context. The EESC is pleased that the Commission intends to present a legislative proposal on multi-lateral interchange fees for card payments.

4.7 A digital Single Market

The EESC welcomes the European Commission's intention to reduce cost and increase efficiency in the deployment of high-speed communication infrastructure by adopting common rules. The EESC supports the proposal to improve the high-speed broadband internet connection as a technical condition for the expansion of e-commerce. It is important to adopt a consistent model for the cost methodologies used by national regulatory authorities across the EU in order to ensure that costs are fair and are calculated according to the same standards. Properly regulated telecoms markets need to ensure that consumers have a choice. If fair access by new operators to new generation access networks is not effectively achieved, the quality of retail service choices for consumers will be distorted or limited. All competitors should have access to the infrastructure under equal conditions and access to networks for new entrants and incumbents at reasonable prices (i.e. cost-based) should be ensured.

4.8 Electronic invoicing in public procurement

Enterprises have long called for the widespread use of e-invoicing, including in cross-border activities. We therefore

strongly support the proposal to introduce it as a general rule for public procurement contracts. Nevertheless, the electronic form should also be applied to the presentation of bids, since its lack of use is one of the reasons for the low number of SMEs from other Member States being involved in public procurement in other Member States (see also CWP 2013).

4.9 Consumers

4.9.1 Unsafe consumer products, including products bearing the CE mark, are still found on the EU market, posing avoidable risks to health and safety. The EESC is therefore pleased that the European Commission will propose a legislative 'product safety package' consisting of a Single Market surveillance instrument for all non-food products, a proposal for a new General Product Safety Directive (GPSD) and a multiannual market surveillance framework plan. The revision should provide for more clarity on how the various EU legislations dealing with product safety interact with each other. In particular, manufacturers' responsibilities need to be strengthened and clarified. It must be ensured that the level of enforcement is the same across the EU and that market surveillance activities are effective across the EU.

4.9.2 Child-appealing products should be explicitly addressed and the prohibition of food-imitating products should be maintained. The EU policy must constitute a major step forward for safety and health. Attention should be paid to unfair competition for EU businesses required to obey EU rules. The revision of the GPS Directive should effectively prevent dangerous products being placed on the market, which requires a European market surveillance system including effective controls at EU external borders.

4.10 Social cohesion and social entrepreneurship

4.10.1 The proposals presented here are placed under this heading in a rather artificial way. The EESC recognises the importance, at this time of crisis, of focussing on combating further social exclusion and poverty. In this regard, social enterprise has been highlighted as a key factor in the strategy for overcoming the crisis. The lack of a dedicated key action for the development and growth of the social economy and social enterprises is disappointing. The suggested key action 12 fails to address the increasing social exclusion and poverty in Europe. The EESC would therefore recommend a clear and dedicated key action on social enterprise based on the proactive recommendations of the EESC which the Committee believes will better address the need for further social cohesion⁽¹⁴⁾.

⁽¹³⁾ See EESC opinion OJ C 318, 29.10.2011, p. 109, point 3.2.

⁽¹⁴⁾ This area was equally highlighted in the EESC opinion: OJ C 299, 4.10.2012, p. 165.

4.10.2 The EESC welcomes the proposal to give all EU citizens access to a basic payment account, to ensure that payment account fees are transparent and comparable and to make it easier to switch payment accounts. The EESC hopes that the Commission will this time put forward binding legislation rather than the recommendation of July last year which was highly criticised for its voluntary nature. The EESC notes that the transparency and comparability of payment account fees for consumers has either shown significant shortcomings or failed entirely. The proposed EU legislation should ensure that every consumer has the right of access to a basic payment account and should remove any obstacle to switching payment accounts.

Brussels, 16 January 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected during the discussions (Rule 39(2) of the Rules of Procedure):

a) Point 3.2 (amendment 5)

3.2 The withdrawal of the Monti II regulation does not solve the problems created by the European Court of Justice (ECJ) in its judgments relating to the posting of workers. A solution to the current situation must be found, since it is preventing workers from exercising their rights fully. The Commission should ensure that fundamental social rights cannot be restricted by economic freedoms. The Commission should consider a proposal for a social progress protocol to be attached to the European Treaties. Such a protocol should clarify the relationship between fundamental social rights and economic freedoms by confirming that the Single Market is not a goal in itself, but was established in order to achieve social progress for all EU citizens (effectively in implementation of Article 3.3 of the Consolidated version of the Treaty on European Union). It should also make it clear that economic freedoms and competition rules cannot take priority over fundamental social rights and social progress and can in no way be interpreted as granting undertakings the right to evade or circumvent national social and employment laws and practices or for the purposes of unfair competition on wages and working conditions. The Commission introduced two legislative proposals aimed at improving and reinforcing the transposition, implementation and enforcement in practice of the Posting of Workers Directive. The first one on the enforcement of Directive 96/71/EC aims at enhancing the protection of workers temporarily posted abroad, by improving information, administrative cooperation and controls and is still under discussion. The second proposal concerning the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (Monti II) has been withdrawn.

Regarding the principle of the equal value of fundamental social rights vis-à-vis economic freedoms, the EESC is of the opinion that primary law in particular must ensure this approach. The EESC notes that the third recital of the preamble, and specifically Article 151 of the TFEU, are intended to promote improved living and working conditions 'so as to make possible their harmonisation while the improvement is being maintained' and expressly calls for a 'Social Progress Protocol' to be included in the Treaties in order to enshrine the principle of the equal value of fundamental social rights and economic freedoms and thereby make it clear that neither economic freedoms nor competition rules should be allowed to take precedence over fundamental social rights, and also to clearly define the impact of the Union's objective of achieving social progress⁽¹⁾.

Reason

Will be given orally.

Outcome of the vote on the amendment:

Votes in favour: 77

Votes against: 114

Abstentions: 11

⁽¹⁾ OJ C 376, 22.12.2011, p. 74.