

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

539TH EESC PLENARY SESSION, 12.12.2018-13.12.2018

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A European retail sector fit for the 21st century’*(COM(2018) 219 final)**(2019/C 110/07)*Rapporteur: **Ronny LANNOO**Co-rapporteur: **Gerardo LARGHI**

Consultation	European Commission, 18.6.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	21.11.2018
Adopted at plenary	12.12.2018
Plenary session No	539
Outcome of vote	171/3/2
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission's communication on modernising the retail sector. The Committee stresses once again the economic and social importance of the retail sector for all the stakeholders and for society as a whole⁽¹⁾. The EESC points out that it has already recommended in previous opinions the creation of an open economic environment, aimed at ensuring fair competition, to generate the conditions for the positive coexistence of and cooperation among large, medium, small and micro retailers.

1.2. The defence and promotion of diversity in the retail sector is crucial in order to meet consumers' needs and to defend and promote the European productive system. The EESC therefore thinks a balance needs to be struck between measures in favour of large retailers, set out very clearly in the communication, and corresponding ones that meet the needs of micro and small enterprises.

1.3. The EESC notes that the Commission's proposal focuses too much on 'price' as the most interesting element for consumers, to the detriment of other key aspects such as information, product quality and personalisation, proximity, mobility, the circular economy and durability, value for money and service received before or after purchase. Diversification of products should be properly protected by the Commission in the interests of all parties.

⁽¹⁾ Turnover in 2016: EUR 9 864 468,4 million; number of enterprises (in 2015): 6 205 080; value of production (in 2015): EUR 2 687 115 million. In 2016, 33 399 447 people were employed in this sector of which 27 892 082 were employees.

1.4. The Committee believes that the right of establishment should be addressed in accordance with the subsidiarity principle and that the best way to address the needs of all the stakeholders involved is through reaching agreement at national, regional and local level.

1.5. In particular, the EESC thinks that some barriers to freedom of establishment and some operational restrictions, as currently present in some Member States, act as a barrier to the establishment of new enterprises, but that full liberalisation does not ensure the necessary balance between large companies, small businesses and family businesses.

1.6. The EESC considers that national regulations on shop opening hours and working times are crucial in ensuring a level playing field among different-sized businesses and above all in guaranteeing adequate social protection to both the employed and the self-employed, also taking account of changes in consumer habits.

1.7. The EESC reiterates that reaching agreement at national or subnational level is the best way to establish opening times and days, to reconcile the needs of consumers to have access to particular products and services and the desire of some businesses to open on Sundays and holidays, while also ensuring a balance between work and family life for entrepreneurs and employees, and providing for time set aside for training.

1.8. The EESC also points out, in line with the Social Pillar, the need to guarantee fair remuneration and quality of work to all workers in the sector, whether online or offline. It draws attention, in particular, to the case of the labour contracts of thousands of those working for online businesses that are still not covered by collective bargaining, as well as to the contracts in large retailers designed only to cater for greater customer footfall at weekends (resulting in an increase in casual contracts) or which do not count weekends or nights as overtime. Finally, in the EESC's view, the creation of an effective social dialogue mechanism that also involves small and micro enterprises would give businesses better development opportunities and workers a better system of safeguards.

1.9. The Committee agrees with the Commission on the need to encourage and support innovation in the retail sector, lifelong learning for employers and workers, and product promotion over the long term. However, it thinks that, alongside the Commission's proposal, there should be a roadmap to accompany this process in the context of the digital transition, with appropriate funding and a particular focus on small and micro enterprises in collaboration with SME-representing organisations.

1.10. The EESC calls on the authorities at all levels to engage in close cooperation with all the stakeholders with a view to drawing up a specific action plan on the future of European retail in the 21st century (i.e. information, training, financing and good practices, etc.).

2. Gist of the Commission document

2.1. The Communication aims to contribute to unlocking the potential of the retail sector for the EU economy by identifying best practices. Efforts are therefore needed on the part of the EU institutions and Member States to support the competitiveness of the sector at a time when it is being transformed by the rapid growth of e-commerce and the transformation of consumer habits.

2.2. For the Single Market to deliver, appropriate action must be taken at all levels. The productivity of the EU retail sector has been lagging behind other sectors. This is due to the accumulation of tax regulations at all levels and to a delay in the transition to the digital market.

2.3. Retailers face numerous restrictions with regard to the establishment of shops and operations. Many of these restrictions are justified by legitimate public policy reasons. They may also create barriers for start-ups and productivity.

2.4. The opening of new commercial outlets is a crucial element for the viability of the sector. It is important to be able to pursue strategies with regard to market access that combine an online and an offline presence. Simple, transparent and efficient establishment procedures offer opportunities for the retail sector to improve its productivity.

2.5. The Commission recommends that Member States assess and modernise, if necessary, their regulatory frameworks, taking inspiration, where relevant, from best practices already developed in other Member States.

2.6. Operational restrictions usually affect mainly brick-and-mortar retailers. Public authorities should assess the balance, proportionality and efficiency of such restrictions to ensure a level playing field with e-commerce.

2.7. The cost of compliance is between 0,4 % and 6 % of retailers' annual turnover. For micro-companies, this is a particularly heavy burden. Fostering the development of the retail sector to the ultimate benefit of consumers requires a broad approach: simplifying regulatory frameworks, ensuring that they are fit for a multi-channel environment as well as reducing the overly burdensome and costly measures and procedures imposed on retailers to ensure compliance with these rules.

3. General comments

3.1. The European Economic and Social Committee (EESC) welcomes the attempt undertaken by the Commission to modernise the retail sector in order to deal with the new challenges relating to digitalisation and e-commerce.

3.2. In its previous opinions, particularly INT/682 on A European retail action plan⁽²⁾, the Committee has already recommended the creation of an open economic environment aimed at guaranteeing fair competition between entities of the same size. In particular, the EU should create the conditions for diversity, positive coexistence and cooperation among online and offline large, medium, small and micro-retailers. Promotion of diversity in EU retail is a great way of responding to the various needs of consumers, but also to defend and promote the European productive system.

3.3. The EESC notes that the Commission focuses too much on 'price' as the most interesting element for consumers whereas the main goal should be providing accurate information for consumers (consumer awareness). Consumers should feel free to take other elements into account when purchasing a product, such as its quality, personalisation, durability, consumer mobility, proximity, value for money, service provided during or after purchase, impact on the circular economy, and environmental criteria. Diversification of products represents added value for the EU's productive and retail sectors and should be properly protected by the Commission⁽³⁾.

3.4. The EESC finds the Commission's approach skewed in favour of large retailers and thinks it important to balance this with the needs of small and micro enterprises. In particular, the Committee believes a coexistence needs to be guaranteed of large companies and micro and family-run businesses.

3.5. The EESC agrees that some restrictions on the right of establishment and operational restrictions implemented in some Member States could act as a barrier to the establishment of new enterprises and their scaling-up. However, it thinks that a full liberalisation of the right of establishment would not be a panacea. Furthermore, in this connection, the subsidiarity principle should be respected and agreements reached at national, regional and local level to find appropriate responses to local needs and to those of all the stakeholders.

3.6. The EESC does not agree with the Commission's negative reading of the Visser judgement. For the EESC, this case confirms the purpose of the legislator with regard to the Services Directive: it codifies the case law of the Court of Justice of the European Union regarding the freedom of establishment and only prohibits certain requirements, such as economic needs testing, while recognising that '[the] objective of protecting the urban environment is capable of constituting an overriding reason relating to the public interest that may justify a territorial restriction'. It is important to balance such needs according to the proportionality and subsidiarity principles.

3.7. In this connection, much can be done in the process of forging a single European market, to simplify the procedures for starting a business and to make these procedures transparent and uniform, while respecting the legitimate existing constraints on a territorial scale established in line with the subsidiarity principle.

3.8. The EESC considers it of the utmost importance to keep and protect some specific economic environments, in particular when these are connected to the conservation of national historical and artistic heritage, social policy objectives and cultural policy objectives; a different approach could have a disruptive impact on local communities and consumers⁽⁴⁾.

⁽²⁾ OJ C 327, 12.11.2013, p. 20.

⁽³⁾ OJ C 440, 6.12.2018, p. 165.

⁽⁴⁾ See footnote 2.

3.9. Overall, the EESC believes that cross-border expansion, scaling-up and e-commerce should be seen as a serious option, and the enterprises in coordination with their organisations should be supported in this process, but this cannot be considered an obligation or the only way that all enterprises can grow, in line with the primary interest of consumers (multi-channel distribution and service). This is why it is essential to encourage and sustain innovation processes, training and product promotion over the long term, including supporting small and micro enterprises and their representing organisations with appropriate funding.

3.10. An efficient retail policy needs to strike a balance between profitability and efficiency with regard to the location. (Medium) long-term considerations have to be taken into account especially as regards brick and mortar establishments and their relation to existing and possible future developments (housing, available services, etc. and thus to existing city centres and neighbourhoods). The EESC considers that the Commission should complete its proposal, in collaboration with the relevant national and regional organisations, by introducing structural measures with a view to incorporating territorial development factors for local communities and cities centres (tourist areas, local spatial planning, building regulations, conditions, etc.).

3.11. The EESC considers that national regulations on shop opening hours and working times, in accordance with the new technological solutions, play a crucial role in ensuring a level playing field among different sized businesses and guaranteeing adequate social protection to both employed and self-employed and, above all, are a crucial tool for the social protection of self-employed and employed people.

3.12. The EESC reiterates that reaching agreement at national or subnational level with the organisations concerned is the best way to establish opening hours and days. It is crucially important, in fact, to reconcile the needs of consumers to have access to particular products and services and the desire of certain companies to open on holidays or in the evenings, and to protect the rest needs of micro enterprise owners and their employees, which also ensuring a balance between work and family life, and providing for time set aside for training.

3.13. The EESC also points out, in line with the Social Pillar, the need to guarantee fair remuneration and quality of work to all workers in the sector, whether online or offline. It draws attention, in particular, to the case of the labour contracts of thousands of those working for online businesses that are still not covered by collective bargaining, as well as to the contracts in large retailers designed only to cater for greater customer footfall at weekends (resulting in an increase in casual contracts) or which do not count weekends or nights as overtime. Finally, in the EESC's view, the creation of an effective social dialogue mechanism that also involves small and micro enterprises would give businesses better development opportunities and workers a better system of safeguards.

3.14. The EESC welcomes the recommendation that public authorities should facilitate the adoption of digital technologies on the part of small enterprises. However, this cannot be the only option. Traditional shops remain a crucial element not only of growth in the EU but also with regard to social cohesion in particular in the local communities and for non-native digital consumers. For this reason, online and offline commerce should coexist. In this connection, the EESC is of the opinion that the Commission underestimates the difficulties faced by small and micro enterprises when it comes to taking part in and profiting from e-commerce.

3.15. The EESC agrees with the Commission on the need for quality training for employers who want to get involved in e-commerce. Nevertheless, the Committee considers that the situation is more complex and SMEs, especially small and micro-enterprises, face multiple challenges, such as: a) changing and adapting their internal organisation; b) knowledge of foreign languages; c) obtaining and understanding legal and administrative information; d) establishing an efficient and competitive delivery system; e) overcoming fiscal and social dumping at EU level (VAT fraud, counterfeiting, etc.). For this reason, the EESC urges the Commission and the Member States to support SMEs and their organisations throughout their transition towards e-commerce, with a wide approach that considers all the conditions needed for the creation of successful online enterprises.

3.16. The EESC considers that e-commerce could be a significant option for many SMEs. Moreover, the Committee points out that just recently the Commission published the first proposal aimed at regulating platform-to-business relations in the digital market. This measure is focused on transparency but it does not tackle some frequent abusive practices which

impede fair competition (e.g. parity price clauses, fiscal dumping, varying taxation, etc.) between commercial users and big online platforms⁽⁵⁾). For this reason the Committee recommends that the Commission create a level playing field with regard to fair competition in the digital market.

3.17. In the EESC's view, various measures are needed to provide the necessary conditions for the retail sector, and in particular SMEs and micro-enterprises as the highest net employment creators, to tackle the skills mismatch: strengthen identification and anticipation of skills needs, including guidance; improve education and training outcomes according to labour market needs, including promotion of VET; improve framework conditions to better match supply and demand; provide better support for the training needs of SMEs and micro-enterprises.

3.18. The EESC welcomes the Commission's attention to the cost of compliance especially for small enterprises, as well as the fact that it highlights the lack of awareness of the sector's specificities.

4. Specific comments

4.1. The EESC invites the Commission to face the growing problem of the desertification of city centres and the social and environment consequences of this. How liveable large and small cities are depends not least on the survival of many small and micro enterprises (local shops) that meet the needs of many consumers but risk being crushed by growing concentration of the large retail groups.

4.2. The EESC regrets the absence of any reference to a sustainable retail sector and the role that small and micro retailers can play in this process. However, a more favourable framework is needed to make them aware of the link between sustainable choices and competitiveness and to provide them with tailored information and technical assistance, as well as the necessary credit schemes to implement what can be improved. Given the weak position they have in terms of influencing consumers and producers, small and micro-retailers should not have choices imposed on them.

4.3. In the communication, no attention is paid to the frictions that exist in the contractual relations between enterprises, e.g. unbalanced franchising contracts, payment delays and unfair trading practices. In particular, the growing concentration of power among big retailers in Europe poses serious challenges⁽⁶⁾. In order to tackle distorted competition and to remain competitive, both of these issues should have been addressed in the communication.

4.4. The EESC recommends to the Commission, as already pointed out in the EESC opinion on the 'New Deal For Consumers', to define and implement an effective dispute resolution system capable of tackling situations resulting from abuses of economic power and practices that distort competition.

Brussels, 12 December 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽⁵⁾ OJ C 440, 6.12.2018, p. 177.

⁽⁶⁾ See footnote 3.