Opinion of the European Economic and Social Committee on the cost of non-Europe — the benefits of the single market

(exploratory opinion)

(2022/C 443/07)

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Referral	Presidency of the Council of the European Union, 26.1.2022
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	27.6.2022
Outcome of vote (for/against/abstentions)	63/1/1
Adopted at plenary	13.7.2022
Plenary session No	571
Outcome of vote (for/against/abstentions)	194/0/3

1. **Conclusions and recommendations**

1.1. The European Economic and Social Committee (EESC) believes that the single market is about improving welfare through social and economic convergence aimed at reducing inequalities and ensuring that worsening social imbalances do not end up becoming serious obstacles to European integration.

1.2. The EESC is of the view that national legal texts potentially hindering the internal market must be notified to the European Commission (EC) and must be commented upon and evaluated. Without this, these procedures remain ineffective creating unnecessary obstacles.

1.3. In regard to national certification, the EESC recommends that Member States commit themselves towards less restrictive national measures via the ‘reinforced cooperation’ route.

1.4. The EESC also calls for an effective implementation and enforcement of directives already negotiated and voted upon, such as the Better Regulation package.

1.5. The EESC believes that the Digital Services Act (DSA) ([1]) and the Digital Markets Act (DMA) ([2]) are a crucial step in achieving a level playing field across operators in digital markets. Also, maximum harmonisation in the scope of the DMA should be a priority.

1.6. Equally, the free flow of data is vital for European innovation, for the growth of businesses and in support of the Digital Single Market.

1.7. The EESC underlines that territorial supply constraints (TSCs) are hampering the development of the single market and calls on the EC to address the anti-competitive effect of TSCs.

1.8. The EESC recommends a coordinated approach between Member States on the marketing of products affected by the crisis in Ukraine. The crisis caused by Russia’s aggression has created formidable supply restrictions.

([1]) COM(2020) 825 final (OJ C 286, 16.7.2021, p. 70).
([2]) COM(2020) 842 final (OJ C 286, 16.7.2021, p. 64).

1.9. The EESC recommends more effective national policy measures and providing mobility incentives with an emphasis on active labour market policies such as in-work benefits for EU workers.

1.10. Whilst acknowledging that the capital markets union (CMU) is a complex project, the EESC notes that the EU still has 27 capital and financial markets which do not work as one, thereby limiting the single market's potential.

1.11. At this time of great uncertainty, it is necessary to ensure a competition policy that is particularly geared towards delivering the transitions that the EU has committed to. Moreover, any form of commercial, social, regulatory, fiscal or environmental dumping that distorts competition must not be allowed.

1.12. Finally, the EESC is of the view that 'open strategic autonomy' should be adopted, especially in key sectors, to help build resilience, diversification and an ambitious agenda for commerce.

2. **Background**

2.1. *Objective of the single market*

2.1.1. The objective of the EU single market was the removal of barriers to movements in goods, services, capital and people in an effort to enhance productivity and competitiveness across the EU.

2.2. *Shared responsibility of the single market*

2.2.1. The functioning of the single market is a shared responsibility between the EU and the Member States. However as things stand, there are still many differences in interpretation and application of EU law. In many instances, such differences can be deemed to be unjustified or disproportionate and in any event pose an obstacle to the free movement of people, goods and services.

2.3. *Responsibility of Member States*

2.3.1. Objectively, there might be valid grounds for divergence among Member States but such justifications are not always provided and at times Members States do not attempt to balance justification at national level against possible negative impacts on the single market. As a consequence of this, there are still many regulatory and non-regulatory barriers within the EU that make the single market 'incomplete' and fragmented such as:

— National legislation justified on the assumption that the principle of subsidiarity is being applied;

— The non-recognition of the supposedly mutual recognition principle;

— A proliferation of over transpositions otherwise known as gold plating and non-compliance transpositions with national governments and parliaments over transposing EU legal texts that were agreed at EU level. In effect, a number of barriers impacting the single market derive from incorrect or incomplete application of EU legislation, and Member States applying national rules that run counter to the objectives of the single market. Hence inaccurate or incorrect implementation by Member States and lack of enforcement by the Commission have damaging consequences both at EU and at national level for citizens and businesses alike;

— Applications at national level of forthcoming European measures with governments and parliaments attempting to anticipate the application of EU policies by placing national interests first despite the EU policies still being developed by the Commission. An example of this being the EU policy on circular economy.

— National interests prevailing on matters of strategic European ecosystems.

2.4. *Economic cost of restrictions to single market*

2.4.1. The examples referred to above illustrate the main costs of non-Europe and several studies have in fact highlighted the huge economic gains from a 'complete' single market. The overview report from the European Parliament has shown that these range from between EUR 650 billion and EUR 1,1 trillion per year, the equivalent of between 5 and 8,6 % of the EU's GDP ([3]).

2.4.2. The same RAND Europe study for the European Parliament investigated the economic impact of lower trade barriers on the single market. According to the study, the impact of improved trade flows, economic growth and job creation due to lower trade barriers would lead to economic benefits of between EUR 183 and EUR 269 billion per year ([4]).

2.4.3. Also relevant in terms of lost potential benefits is the EC's estimation of a fully integrated EU digital single market. The EC states that it would promote innovation, contribute EUR 415 billion to the EU economy each year and create hundreds of thousands of new jobs ([5]).

2.4.4. All this points to the significant potential economic benefits (and associated welfare benefits) that would have been provided by a more complete single market. Put differently, this represents the total economic cost or lost added value and collective public good of non-Europe.

2.4.5. Despite limitations, the internal market has so far helped preserve and foster the economic prosperity of the EU. However, the competitiveness and resilience of the EU economy needs to be strengthened through further single market reforms as well as by addressing strategic dependencies. An entrepreneurial culture in the EU also needs to be promoted, where innovative businesses of all sizes, and in particular micro-, small and medium-sized enterprises (MSMEs), as well as start-ups are provided with more effective support and can thrive in order to contribute to more resilient and cohesive societies. Just as important, a well-functioning single market will facilitate the vision for a more social Europe: one that places the well-being of citizens at the top of the political agenda, and helps to avoid downward social levelling.

3. **Restrictions**

3.1. Existing restrictions include those associated with regulation, national law issues, tax issues, logistics and supply issues, and other more nuanced differences across EU Member States which make trade across the EU still challenging.

3.2. Restrictions are also holding back key economic sectors such as services, which remain fragmented along national lines, as shown hereunder:

— Historically restrictive national rules often justified by the subsidiarity principle;

— Flawed implementation and application of the Services Directive that hinders the freedom of establishment, the free movement of services and the freedom to provide a service;

— National trade laws that hinder business in the way they do business. Often these laws hamper competitiveness of the sector, are protectionist and undermine investment by trustworthy and legitimate business in other Member States;

— National requirements that hinder the free movement of goods. Often Member States do not notify new national technical requirements according to the procedure laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council ([6]), and do not apply the principle of mutual recognition in non-harmonised activities, as in gold plate directives, etc.

(3) https://www.rand.org/blog/2017/11/why-the-eu-single-market-has-still-not-reached-its.html
(4) https://www.rand.org/blog/2017/11/why-the-eu-single-market-has-still-not-reached-its.html
(5) https://www.rand.org/blog/2017/11/why-the-eu-single-market-has-still-not-reached-its.html
(6) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

3.3. The EESC points out that infringement procedures are lengthy, expensive and the outcome is uncertain. For businesses, this constitutes too high a cost and discourages them from expanding their business or investing elsewhere within the EU. Moreover, these restrictions deprive consumers of more choice, improved service and lower prices. The EESC also calls for stronger action on the part of the Commission in applying infringement procedures.

3.4. This cost affects the wider economy, limiting competitiveness, growth potential, and the further development of the market system economy.

3.5. As in any economy, the EU is impacted by external shocks but the response to these shocks and how markets react are essentially determined by individual Member State policies at home and the measures taken to stimulate economic behaviour. The war in Ukraine has exposed the EU's dependence on global value chains. The unfolding crisis is likely to affect sectors differently but there is no doubt that chinks in the single market armour have been exposed, particularly, the restrictions on the free movement of goods and services, and essential commodities.

3.6. Finally, it should be noted that around 82 % of products traded in the single market are subject to harmonised rules and some 18 % of intra-EU trade in goods fall under mutual recognition. However, there are still new cases of national technical rules that appear to run counter to EU law. Besides, in many Member States, there has also been a recent surge in national labelling requirements for food and beverage products justified by consumers' protection and environment. At the same time, the principle of mutual recognition is not functioning smoothly. Evidence of this is that 71 % of SMEs that applied for the existing mutual recognition system for non-harmonised goods received a market access denial decision.

4. **Addressing the restrictions**

4.1. The measures referred to below would help unlock some of the potential economic gains derived from the single market.

4.2. *Using existing tools more effectively*

4.2.1. The EESC is of the view that draft national texts potentially hindering the internal market must be notified to the EC and must be commented upon and evaluated. Without a commitment from the Member States to notify and comment/evaluate, these procedures remain ineffective. Hence, more effective surveillance in support of the harmonisation of product market regulation across EU Member States is required. As an example, the retail sector has recently experienced a surge in national restrictions through authorisations and local content requirements. This runs counter to Articles 28 and 30 of the Treaty with national re-testing often applied on purchases of products, already lawfully placed on the single market. On services, the EESC is also of the view that the notification procedure under the Services Directive is not functioning as well as expected. Regarding the freedom of establishment, the EESC regrets to note that Member States have not reached a compromise on the proposal for a so-called Notification Directive. This text would have strengthened the obligation for Member States to notify the Commission of draft laws or regulations on authorisation schemes for services (and therefore for town planning) ([7]). The EESC also urges the EC and Members States to provide more detailed information on the justification and proportionality applied when Member States notify technical rules. It is also important to ensure that notified requirements receive the appropriate scrutiny regardless of which notification procedure is used ([8]). In order to address the problem at its core, the EESC believes a further legislative shift from minimum harmonisation towards maximum harmonisation would be needed.

4.2.2. Another area of concern is the application of measures which pre-empt planned EU regulation, such as national certification, applied with the express aim of providing some level of protection, particularly in the agrifood sector. In the EESC's view, such restrictions are outright protectionist, but when they are brought to light, the process leading to their withdrawal is often slow and burdensome, thus keeping such restrictions for retailers in place for far too long. To prevent this, the EESC believes that Member States could instead commit themselves towards less restrictive national measures via the 'reinforced cooperation' route, authorised by the Treaty. Also, the EESC refers to the Pan-European Personal Pension product as a standard framework to support the single market that could be applied in other areas.

([7]) 2016/0398(COD); https://eur-lex.europa.eu/procedure/FR/2016_398

([8]) Study on the proportionality assessment by the Member States when adopting the retail establishment related requirements pursuant to Directive 2006/123/EC.

4.2.3. The EESC is also of the view that the European Semester could be an effective tool to tackle such issues, notably via proportionate action on the part of the Commission if commitments to country specific recommendations (CSRs) are not adhered to, including potential suspension of EU funds. This is in line with the EC guide to Member States on the recovery and resilience plans, which emphasises the removal of regulatory and non-regulatory barriers to the internal market, as well as the conditions under which Member States must meet the requirements of the European Semester.

4.2.4. Finally, the EESC calls for an effective implementation and enforcement of directives already negotiated and voted upon. In this connection, the EC and Member States should commit themselves to implementing the Better Regulation package subject to high quality impact assessments.

4.3. *Unlocking the potential of the digital single market*

4.3.1. The EESC believes that the growing digital economy in Europe provides opportunities for economic growth, with the potential economic gains being realised through a greater integration of digital services across Member States.

4.3.2. In this light, the EESC believes that the Digital Services Act (DSA) and the Digital Markets Act (DMA) are a crucial step in achieving a level playing field across operators in digital markets. By focusing on specific services regardless of the location of the service provider or the law applicable to the provision of the service, the DSA and DMA address the issue of equal treatment between European and global online operators in a meaningful way. Furthermore, an absolute priority for the EESC is to prevent the multiplication of national legislation from further fragmenting the internal market.

4.3.3. Significant financial gains could also be made by increasing the use of online services and improving digital infrastructure within the EU. In this context, the EC recommends moving towards a fully functional e-procurement regime and e-invoicing. Impressively, estimates suggest that a full transition to e-procurement could generate EUR 50 to EUR 75 billion a year ([9]).

4.3.4. Finally, the EESC is of the view that free flow of data is vital for European innovation, for the growth of businesses of all sizes, for job creation, and for achieving a digital single market. The legislation in support of the free flow of data is already in place. However, any unjustified data localisation requirements should be avoided.

4.4. *Unblocking supply constraints*

4.4.1. The EESC notes that the 2018 Geo-blocking Regulations have helped facilitate commerce within the EU. However, European consumers are still subjected to geo-blocking of goods and services. In fact, the EESC highlights the existence of persistent TSCs which can materialise through different practices such as refusing to supply or threatening to stop supplying a particular distributor, limiting the quantities available for sale by Member States; inexplicable differences in product ranges and prices between Member States; or limiting language options for product packaging. The EESC underlines that TSCs are hampering the development of the single market and its potential benefits to consumers and calls on the Commission to address the anti-competitive effect of TSCs with a view to achieving a fully functioning single market.

4.4.2. The Russian invasion of Ukraine has brought to light formidable energy and food security risks requiring a unified strategic approach on the part of the EU. The EESC believes that a well-functioning single market can support this strategy as well as ease some of the pressures on prices that are rapidly eroding purchasing power across the EU. In this connection, the EESC welcomes efforts at EU level for cooperation on the joint purchase of gas (on a voluntary basis) in a bid to ease pressures on energy prices.

4.4.3. However, the EESC regrets that no coordinated approach between Member States has been attempted so far for other products affected by the crisis in Ukraine.

([9]) https://www.rand.org/blog/2017/11/why-the-eu-single-market-has-still-not-reached-its.html

4.5. *Enhancing cross-border mobility of workers and professionals*

4.5.1. Cross-border mobility of workers and professionals across the EU remains a challenge limiting supply and causing mismatches in sectors such as IT and high tech industry notwithstanding EU policies aimed at facilitating free movement of persons. European and national data suggest that the level of mobility both between and within countries remains low also by international comparison.

4.5.2. Specifically, the EESC recommends more effective national policy measures providing mobility incentives with an emphasis on active labour market policies such as in-work benefits for EU and third country workers with refugee status. In this connection, the EESC believes that host countries offering jobseekers financial incentives to take up a job in another Member State or another region would further encourage mobility. In addition, further efforts to improve information regarding jobs in other EU countries as well as relocation assistance to support the logistics involved in moving country — e.g. finding accommodation, registering for tax purposes, finding a school for your children, possibly assistance in finding a job for partners, etc. The EESC cautions, however, that labour mobility in the EU has been the victim of the piecemeal approach adopted so far. Further disjointed policies particularly at national level need to be avoided.

4.5.3. The recognition of diplomas and qualifications, which is essential to fill vacancies where labour shortages persist, remains an issue across the EU. The EESC is of the view that the existing system still relies too heavily on individual governments, with Member States free to apply their own rules. The Commission should ensure that a more harmonised approach to recognising diplomas and other qualifications is applied across Member States.

4.5.4. Finally, enhancing the mobility of EU workers and professionals can only happen if there is better enforcement of existing provisions, access to information and cooperation between Member States. The EESC notes that individual Member States may be reticent about more single market reforms because of the fear this might lead to potential short-term job losses and sectoral losses, particularly in those countries that are already lagging behind, as well as low-productivity countries/sectors. In theory, the free movement of labour would help address this issue, but from a national perspective this could lead to a loss of resources and potential brain/skills drain in the interim.

4.6. *Enhancing capital flows and financial services across the EU*

4.6.1. The same argument holds in the case of the EU's capital markets. The EESC acknowledges that the Capital Markets Union (CMU) is a complex project which aims to deepen and further integrate the capital markets of EU Member States. It requires the adoption of measures and regulatory amendments in a wide variety of areas and entails responsibilities not only at the EU level, but also at the level of each Member State. The EESC notes that completing the CMU is still a distant goal in 2022. Despite some progress, particularly with the EU Capital Markets Recovery Package, the EU still has 27 capital markets which do not work as one. European finance is still sharply segmented along national lines, with savers and investors depending heavily on national environments. This also true for financial services in general, including retail financial services and domestic savings.

4.6.2. This, the EESC believes, is limiting both economic recovery and the smooth functioning of the single market. The economic benefits of CMU are clear, but completing the CMU requires both political buy-in from individual Member States, as well as effective adoption of EC-led initiatives including those aimed at strengthening the international role of the Euro. Furthermore, the role of digitalisation in facilitating the CMU cannot be understated.

4.7. *A much stronger political will to remove single market restrictions*

4.7.1. At this time of great uncertainty, the EESC would like to see a competition policy that is particularly geared towards delivering the transitions embarked on by the EU itself. These transitions will require ambitious trade and investment policies, extraordinary public and private investments, innovation, further social, economic and environmental progress, and a well-functioning single market. All this needs to be supported by a legal and financial framework that ensures a level playing field in the market for all stakeholders, all regions and citizens across the EU. The integrity of our internal market and its non-fragmentation are crucial here. A well-functioning single market and competition policy that enable businesses and consumers to access a vast market competition on a level playing field are paramount, thereby stimulating efficiency and innovation, and providing an environment in which successful business can grow.

4.7.2. In our view, harmonisation and the removal of obstacles to free movement on the territory allow for the development of competition, innovation and productivity gains. Any form of commercial, social, regulatory, fiscal or environmental dumping that distorts competition must not be allowed. The EESC expects all Member States to respect this and demand that our external partners respect our core fundamental values and rights, be they in the social, business and environmental fields.

4.7.3. The EESC cautions that the single market should no longer be regarded as a glorified version of a global trade agreement whose properties could be adjusted in negotiation. The single market is much more than that. It is also about improving welfare through social and economic convergence aimed at reducing inequality and ensuring that worsening social imbalances and the general increase in poverty do not end up becoming serious obstacles to European integration. To this end, the EESC emphasises the fundamental social and worker rights to decent wages and working conditions, not only in their interaction with economic freedoms, but also in relation to the internal and labour market, competition and any other Union policy measure, including but not limited to fields such as economic governance, trade, digitalisation and the environment. It also aims to safeguard and strengthen the autonomy of social partners, establishing a clear link with the respect and promotion of collective social rights. Ensuring that fundamental rights are fully protected and safeguarded in the Treaties is also key.

4.7.4. The EESC acknowledges that the single market needs to respond continuously to changes in technology, globalisation, developments in education, labour and capital markets, and not least global crisis and conflicts. As things stand, there is no space for business-as-usual proposals — the current crisis situation and the changed circumstances must be factored in when proposing legislation.

4.7.5. The EESC is also of the view that 'open strategic autonomy' should be adopted, especially in key sectors. This would help build resilience through openness, an ambitious trade agenda, cooperation with like-minded partners, diversification, and the avoidance of protectionism.

4.7.6. Finally, the EESC regrets to note that on the eve of the 30th anniversary of the European single market, the internal market remains incomplete.

Brussels, 13 July 2022.

The President
of the European Economic and Social Committee
Christa SCHWENG