III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

529th PLENARY SESSION OF THE EESC ON 18 AND 19 OCTOBER 2017

Opinion of the European Economic and Social Committee on the 'Compliance package

(a) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Action plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses'

(COM(2017) 255 final — SWD(2017) 210 final)

(b) 'Proposal for a Regulation of the European Parliament and of the Council on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012'

(COM(2017) 256 final — 2017/0086 (COD))

(c) 'Proposal for a Regulation of the European Parliament and of the Council setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas'

(COM(2017) 257 final — 2017/0087 (COD))

(2018/C 081/12)

Rapporteur: **Bernardo HERNÁNDEZ BATALLER**

Referral	(a) European Commission, 5.7.2017
	(b) European Parliament, 12.6.2017
	Council, 14.6.2017
	(c) European Parliament, 31.5.2017
	Council, 10.10.2017
Legal Basis	(a) Article 304 TFEU
	(b) Articles 21(2), 48 and 114(1) TFEU
	(c) Articles 43(2), 91, 100, 114, 192, 194(2) and 337 TFEU
Section responsible	Single Market, Production and Consumption
Adopted in section	4.10.2017

Adopted at plenary	18.10.2017
Plenary session No	529
Outcome of vote (for/against/abstentions)	184/0/5

1. **Conclusions and recommendations**

1.1. The EESC welcomes the European Commission's plans to create a culture of compliance and smart enforcement with regard to the single market, in that it offers many opportunities to individuals wishing to live and work in another Member State, as well as to businesses wishing to expand their markets.

1.2. The EESC supports the Commission's action plan to improve the quality and effectiveness of the SOLVIT network. Similarly, it recommends that the Commission, in close cooperation with all civil society organisations, raise awareness of the network to enable individuals and businesses to benefit more from SOLVIT's services, which should be used more by businesses within the context of the economic freedoms of the single market; for this reason, the tool should be strengthened.

1.3. The EESC supports the initiative set out in the proposal for a regulation on a single digital gateway, which would allow citizens and businesses to have easy access to comprehensive information. The Committee welcomes the fact that this portal includes access to information, procedures, and effective assistance and problem-solving services, on the basis of the 'only once' principle and the 'whole-of-government' approach.

1.4. There are differences of opinion among the various civil society organisations regarding the proposal for a regulation setting out the conditions and the procedure for requesting information, with some bodies welcoming it and others, such as those representing businesses, voicing serious concerns. In the event that the proposal for a regulation is adopted within the envisaged timeframe, the EESC requests that this tool be used by the Commission, exercising maximum proportionality, where necessary for cases with a strong cross-border dimension while at the same time ensuring respect for the fundamental rights of those concerned, especially as regards the protection of confidential information. In terms of information available to the EC to address Single Market barriers, there are already vast existing information channels which could be explored better and more systematically to identify obstacles in the Single Market including non-compliance with EU legislation. In any event, the EESC hopes there will be a mandatory assessment of the functioning of the Regulation within five years.

1.5. The EESC encourages the EU Member States to make more progress in the area of e-governance, particularly as regards the recognition of eID and foreign identity documents, as the services provided are not deemed to be sufficient.

1.6. The EESC calls on the Commission to involve civil society in this process, building on the latter's efforts and the results achieved, as a means of assessing the state of the EU single market. In any event, the organisations that make up the EESC have the experience, tools and ability to work together on SOLVIT, with a view to stepping up the activities set out in the proposal for a Single Digital Gateway aimed at increasing people's awareness of it and monitoring its quality. This should be carried out while continuing to contribute to any assessments that are deemed appropriate.

2. **The Commission proposals**

2.1. In the Joint Declaration on the EU's legislative priorities for 2017, issued on 13 December 2016, the European Parliament, the Council and the European Commission reiterated their commitment to promoting the proper enforcement of existing legislation. That same day, the Commission presented its Communication on EU law: Better results through better application, which sets out how the Commission intends to step up its efforts to ensure the enforcement of EU law for the benefit of all. In particular, the Commission's Single Market Strategy saw the establishment of its 10 priorities, aimed at creating a culture of compliance with the single market rules, with a special emphasis on strengthening SOLVIT.

2.2. Currently ([1]), SOLVIT exists as a network of centres set up by the Member States (and EEA countries) as part of their own national administrations, in order to provide a quick and informal means for resolving the problems that individuals and businesses encounter when exercising their rights in the single market.

2.2.1. A SOLVIT case can be any cross-border issue caused by the possible infringement by a public authority of Union law governing the single market, provided that the issue is not the subject of legal proceedings at either national or EU level.

2.2.2. SOLVIT is part of national administrations and operates purely on an informal basis. It cannot intervene in the following cases:

— issues between businesses;

— consumer rights;

— legal costs and damages;

— cases brought before the courts.

2.3. The Commission's Compliance package comprises the following documents:

2.4. Action plan on the Reinforcement of SOLVIT ([2]).

2.4.1. The Commission is committed to taking, together with the Member States, additional measures to **strengthen the strategic role of SOLVIT** with the aim of making the single market work better in practice for citizens and businesses.

2.4.2. It complements the objectives of the European Pillar of Social Rights and other related initiatives, reflecting the Commission's primary aim of promoting social justice and equal opportunities in the EU.

2.4.3. The aim of this Communication is to promote SOLVIT in three ways:

(i) improving its quality;

(ii) stepping up its activities in order to raise awareness of it, and;

(iii) boosting its role in enforcing EU law.

2.4.4. In general, promoting SOLVIT more strategically and developing more structured cooperation with intermediary organisations and relevant networks will **make it possible to enhance the role of SOLVIT in providing useful comments and evidence** on the functioning of the single market in practice: it will include a greater 'critical mass' of cases, involving a greater number of businesses.

2.4.5. In line with the eGovernment Action Plan, **the Commission will assess the viability of the 'once only' principle**. This would avoid the situation whereby citizens and businesses that wish to lodge a complaint with the Commission for the first time, having not received a solution to their case, must resubmit information that SOLVIT already possesses.

2.5. Proposal for a regulation on establishing a single digital gateway ([3]).

2.5.1. The Proposal for a regulation lays down rules for the establishment and operation of a single digital gateway to provide citizens and businesses with easy access to high quality, comprehensive information, effective assistance and problem solving services, and efficient procedures regarding EU and national rules applicable to citizens and businesses exercising or intending to exercise their rights derived from EU law in the area of the single market.

2.5.2. It also proposes facilitating the use of the procedures by users from other Member States, supports the implementation of the 'once only' principle, and lays down rules on reporting obstacles in the single market based on the collection of user feedback, notifications regarding the functioning of the single market, and statistics from the services covered by the gateway.

([1]) Commission Recommendation of 17.9.2013 (OJ L 249, 19.9.2013, p. 10).
([2]) COM(2017) 255 final.
([3]) COM(2017) 256 final.

2.5.3. The annexes to this proposal include a list of 13 basic procedures for citizens and businesses moving to another Member State, as well as a list of assistance and problem-solving services established by binding Union laws which can be accessed via the portal.

2.5.4. Areas of information linked to citizens: travel within the Union; work and retirement within the Union; vehicles in the Union; residence in another Member State; education or traineeship in another Member State; healthcare; cross-border family rights, obligations and rules; consumers in cross-border situations.

2.5.5. Areas of information linked to businesses: starting, running and closing a business; staff; taxes; goods; services; funding a business; public contracts; health and safety at work.

2.6. Proposal for a Regulation of the European Parliament and of the Council setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas ([4]).

2.6.1. The Proposal for a Regulation aims to help the Commission monitor and enforce single market rules by enabling it to obtain comprehensive and reliable quantitative and qualitative information from selected market players in good time, through narrowly targeted information requests.

2.6.2. The proposal, which excludes 'micro-enterprises' from its scope, does not create any additional administrative burden in that it sets out an exceptional, complementary procedure for obtaining the necessary information in cases where there may be obstacles impeding the functioning of the single market. The information tool created by virtue of this initiative serves as a last resort when other means for obtaining information have failed.

2.6.3. The proposal sets out the procedure to be followed in order to request information, the decision adopting it, how to protect confidential information and professional secrecy, as well as the possibility of imposing fines in cases of wilful failure to respond or of gross negligence on account of providing incorrect, incomplete or misleading information. In any event, powers of judicial review are regulated by the Court of Justice.

2.6.4. According to the proposal, having robust information on malfunctions in the single market will allow the Commission and the national authorities to ensure a higher degree of compliance with single market rules. According to the Commission, this would strengthen consumer trust in the single market and help to maximise its full potential.

3. **General Comments**

3.1. The Committee highlights the need to introduce some elements into the Compliance package proposed by the Commission in order to strengthen the legitimacy of its legislative proposal, meet the expectations of all institutions and bodies involved in implementing it in the future, and ensure it is implemented efficiently in all of the Member States concerned.

3.2. The main aim of this package, namely to strengthen SOLVIT, was called for both by the Member States, via explicit requests to the Commission issued by the Competitiveness Council, as well as by the European Parliament, thereby giving the legislative proposal in question a strong basis of democratic legitimacy.

3.2.1. It would be useful to expand and clarify the rules and functions of the bodies and institutions responsible for overseeing the future application of the legal framework in question and, more specifically, the Regulation setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas.

3.2.2. In this respect, the EESC points to the need to refocus the Commission's proposal as, firstly, it does not include any reference to the role of the EESC in the implementation phase of the Regulation and, secondly, it appears that its main purpose is to strengthen the Commission's own role in the administrative phase prior to bringing an action for failure to fulfil obligations.

([4]) COM(2017) 257 final.

3.2.2.1. Firstly, the above proposal weakens the legitimacy of the EU's functionary subsidiarity by preventing the EESC from performing tasks it has been given specific powers to perform by the Treaties, and to which it has successfully devoted a significant part of his activity.

3.2.2.2. The EESC has the experience, tools and abilities to help raise awareness of how SOLVIT works. The Committee is also excluded from any form of cooperation on monitoring and assessing the implementation of the proposed regulations.

3.2.2.3. This approach in the proposal to the single digital gateway should be amended as the current version is not in line with the institutional dimension of the second paragraph of Article 11 TEU, limits the role of the Committee as a representative of the interests of organised civil society, and undermines the very principle of participatory democracy in its functional dimension, rendering the future application of the Regulation less efficient.

3.2.2.4. The single digital gateway should help accelerate the implementation of efficient and interoperable eGovernment that is accessible to all. The EESC supports the 'only once' principle and points to ([5]) the basis of the 'whole-of-government' approach, which involves collaboration between the various public bodies, extending beyond their respective areas of competence, with a view to providing applicants with an integrated proposal from a single body.

3.2.3. Secondly, point III of the Action Plan on strengthening of SOLVIT contains important measures to upgrade SOLVIT's role as an EU law enforcement tool, as a response to repeated calls from the Competitiveness Council and the European Parliament.

3.3. It is also necessary to make several remarks in order to make implementation of the draft communication as efficient as possible.

3.3.1. First of all, as regards the aim of promoting SOLVIT, there are two issues that need to be addressed which do not appear in the Commission's Action Plan.

3.3.2. Firstly, in light of the UK's withdrawal from the EU, expected in mid-2019, the 'market' concept as referred to in section II of this plan will be substantially reduced. If, in turn, the agreement governing the bilateral relationship between the UK and the EU has not been concluded by then, and the UK is not part of the European Economic Area, its administration will be automatically relieved of any obligation to implement the Plan, producing a negative impact on its nationals and those of the Member States in which the network of SOLVIT centres does operate.

3.3.3. Furthermore, since EU law and, more specifically, its fundamental economic freedoms have extra-territorial scope which confers benefits and obligations on the nationals of third states and on these countries' own administrations, in future consideration should if possible be given to setting up centres and applying SOLVIT in the territory of states with which the EU has established special ties through international agreements, such as those laid down in the first three sub-points of point (a) of the sixth paragraph of Article 218 TFEU. This would be of clear benefit to citizens and businesses, as well as to nationals of those third States, and would improve implementation of the rules governing the single market.

3.4. Secondly, it is necessary to create incentives for the public administrations of Member States that, as a result of the digital divide, or for other reasons, require more resources than others in order to implement the Regulation on establishing a single digital gateway.

3.4.1. The Commission could consider proposing that action aimed at strengthening economic, social and territorial cohesion be approved. This action also seems justified in order to incentivise the undertakings concerned in light of the data provided in point III of the Commission's Plan, which show some disproportionate differences in the number of cases per SOLVIT centre, differences which are not justified solely by the different demographic and economic weight of the states participating.

3.5. Finally, it is necessary to establish a commitment in all states where the SOLVIT network operates so that suitable and stable staff that hear applications submitted to the network are selected within the shortest possible timeframe by means of open and transparent competitions.

([5]) OJ C 487, 28.12.2016, p. 99.

4. **Specific comments**

4.1. **On SOLVIT**

4.1.1. The EESC supports the tangible efforts to improve the work of SOLVIT. SOLVIT has the potential to be a useful tool as it provides citizens and businesses with a platform for resolving a wide range of problems relating to the single market. The Commission should improve SOLVIT's overall visibility even further.

4.1.2. Better law enforcement benefits both citizens and businesses alike. Figures show that over the years the proportion of citizen cases submitted to SOLVIT has increased in comparison to business cases, particularly in the area of social security. On the other hand, at 80 % the rate of resolved business cases was below the network's average of 89 %. The Commission should adopt appropriate measures to enable all users to avail of what the network has to offer. It is important to strengthen the tool, and the EESC hopes that the aims set out in the Roadmap to strengthening SOLVIT2 will be achieved, particularly concerning the introduction of an appeal procedure for companies for matters regarding the mutual recognition of goods, as well as more direct and effective legal support for the network using improved arrangements for providing informal legal advice and interactive training tools, with the possibility of managing divergent opinions.

4.2. **On the proposal for a regulation on the single digital gateway**

4.2.1. The Committee approves the initiative for a single digital gateway contained in the proposal for a regulation. The portal should provide citizens and businesses with all the information and assistance they need to operate throughout the single market. If well designed, this tool could help both citizens living and working in another EU country as well as businesses wishing to avail of any of the economic freedoms in another Member State, particularly SMEs and start-ups.

4.2.2. Often, citizens and businesses are not fully aware of their rights and opportunities within the single market. The single digital gateway should improve and connect the existing tools and help businesses to complete the administrative procedures and formalities that are most frequently used online. The portal should make the single market more transparent, as well as more secure and reliable.

4.2.3. It is essential that the Single Digital Gateway provides all the information and assistance that businesses need in order to do business across borders more easily. This includes high-quality and up-to-date information on the market, problem-solving, dispute settlement mechanisms, and electronic procedures for businesses wishing to engage in cross-border activities.

4.3. **On the proposal for a regulation on a Single Market Information Tool (SMIT)**

4.3.1. There is a divergence in the position of the various civil society organisations, particularly employers' organisations, that make up the EESC concerning the proposal for a regulation setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the single market and related areas.

4.3.2. Organisations representing businesses are calling the proposal into question on the grounds that it is largely targeted at business, while it is the Member States that are responsible for persisting barriers to the single market:

(a) Better enforcement of the agreed rules is essential in order for the Single Market to function more effectively. This starts with guiding and supporting the Member States in transposing and implementing the rules. The Commission should play a greater role in the enforcement process ensuring that all economic operators comply with the rules not hesitating to launch pilot projects or infringement proceedings for non-compliance.

(b) In terms of information available to the EC to address Single Market barriers, there are already vast existing information channels such as the Enterprise Europe Network, the ODR platform, TRIS, the IMI-system and the REFIT platform. These channels could be explored better and more systematically to identify obstacles and segmentations in the Single Market including non-compliance with EU legislation.

(c) Business worry and fear concerning increasing administrative burden of new obligation to provide the confidential commercial information and sensitive data of companies (pricing policy, business strategy) at the risk of fines and penalties.

4.3.3. Organisations representing civil society bodies on the other hand welcome the proposed regulation on the grounds that it is important:

(a) to ensure timely access to reliable data because, as well as increasing transparency, this will improve the functioning of the single market by providing access to relevant, useful, coherent information that is particularly significant for the adoption of certain measures by the Commission;

(b) to obtain comprehensive and reliable quantitative and qualitative information in good time from selected market players, through narrowly targeted information requests, and

(c) to help the Commission ensure that the single market rights of citizens and businesses are respected, and strengthen cooperation with the Member States.

4.3.4. Consequently, in the event that the proposal for a regulation is adopted within the envisaged timeframe, the EESC requests that this tool be used by the Commission, exercising maximum proportionality, for cases with a strong cross-border dimension, where necessary and while at the same time ensuring respect for the fundamental rights of those concerned, especially as regards the protection of confidential information.

4.3.4.1. In addition, the proposal to carry out an evaluation referred to in the explanatory text of the proposal should be moved to the regulatory text, in order to make it a binding rule. This assessment will have to be carried out within five years of the Regulation being adopted, in order to analyse the functioning of these supervisory activities.

5. **The EESC's role in the process**

5.1. The completion of the EU single market and the proper enforcement of its rules are among the EESC's main priorities.

5.2. Citizens and businesses are often not fully aware of the rights and opportunities the single market offers. The single digital gateway should improve and connect the existing tools and help businesses to complete the administrative procedures and formalities that are most frequently used online. The portal should make the single market more transparent, as well as more secure and reliable.

5.3. The EESC is prepared to contribute to this initiative, as a representative of civil society organisations. To that end, it offers to help monitor and assess the implementation of the Regulation on the single digital gateway.

5.4. The EESC calls on the Commission to cooperate with it closely, in order to take advantage of the knowledge and experience of its members, who are drawn from all 28 Member States.

Brussels, 18 October 2017.

The President
of the European Economic and Social Committee
Georges DASSIS