COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.11.2007
SEC(2007) 1518

COMMISSION STAFF WORKING DOCUMENT

Instruments for a modernised single market policy

Accompanying document to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

A single market for 21st century Europe

{COM(2007) 724 final}
{SEC(2007) 1517}
{SEC(2007) 1519}
{SEC(2007) 1520}
{SEC(2007) 1521}

COMMISSION STAFF WORKING DOCUMENT

Instruments for a modernised single market policy

Accompanying document to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

A single market for 21st century Europe

Executive summary

The Commission's final report on the Single Market review calls for an improved 'governance' of the Single Market. In particular, Single Market policy should become

- More evidence-based and impact-driven
- More targeted and better enforced
- More decentralised and network-based
- More accessible and better communicated

The final report's conclusions are based on discussions amongst Commission services. The results of these discussions are reflected in Staff Working Papers attached to the final report. One staff working paper aims to give flesh to a more, evidence-based approach to Single Market policy. It presents the result of a first sector screening, based on a new methodology for product market and sector monitoring.

This staff working paper looks at the range of instruments available to shape and govern the Single Market, to learn from past experiences and assess how to best meet future challenges. Its conclusions can be summarised as follows:

First, Single Market should be a **truly 'inclusive' policy**, delivering effective benefits to all (and being seen to do so). To achieve this, it is proposed to:

- Ensure that Single Market policy effectively responds to the concerns of all – through a better monitoring of the effects of Single Market policies on market and non-market players;
- Build up more structured dialogues with non-business stakeholders on Single Market issues;
- Seek to achieve more synergy between Single Market and other policies, including policies developed at the national level – inter alia to address adjustment costs.

Second, Single Market policy should be impact-based and designed to make markets work better. This calls for the use of a **mix of instruments**, chosen on the basis of a proper understanding of markets and aiming not only at regulatory change but at addressing all barriers and patterns of restrictive behaviour in markets. In particular, it is proposed to:

- Choose a strategic mix of tools to tackle unjustified barriers to the Single Market, on the basis of a sound evidence-base;

- Where regulation is necessary, choose flexible tools that can be adapted over time and can accommodate, where necessary and appropriate, for regional differences;

- Consider the use of non-regulatory instruments – competition tools, non-binding instruments such as recommendations - as a complement or alternative to legislation;

- Develop a more coherent and consistent approach to the use of non-binding (so-called 'soft law') tools and work towards an appropriate involvement of the European Parliament;

- Put the message first – improve communication on policy initiatives and infringement action.

Third, to be fully **responsive to the global context**[1]**,** it is proposed that Single Market policy:

- Makes stronger and more expanded use of regulatory dialogues and other instruments to ensure regulatory convergence, where appropriate;

- Better monitors effects of open markets on consumers and end-users.

Finally, Single Market policy should work better on the ground and be more accessible to citizens. This calls for a **stronger ownership by and partnerships between authorities in charge of promoting, applying and enforcing Single Market rules**. To foster such ownership and partnership, it is proposed to:

- Engage in a systematic dialogue and exchanges of best practices with Member States on what it takes to make the Single Market work (transposition, implementation, information, enforcement and problem-solving, building administrative capacities and cooperation) with the view to achieving a common understanding and commitment on minimum requirements;

- Promote better coordination of and more political visibility for national efforts to make the Single Market work – e.g., through the establishment of Single Market centres;

- Develop resources (financial / human) to beef up administrative and judicial capacity – including at the national level;

- Create a single gateway to and streamline current information, assistance and problem-solving tools made available by the EU;

---

[1] A separate Staff working Paper focuses on the external dimension of the Single Market, in particular on what is needed to ensure that Single Market policy is well equipped to deal with the challenge of globalisation.

- Further improve administrative cooperation through developing IT-based solutions; map and achieve, where appropriate, more synergy between existing information exchange tools;

- Work to improve the independence of and cooperation between regulatory authorities – it being understood that precise arrangements must be decided on a sectoral basis;

- Develop closer contacts with national Commission representations (the 'Single Market ambassadors' project is an example to follow here).

1. INTRODUCTION

This staff working paper accompanies the Commission's final report on the Single Market review. It is the result of a review by Commission services of the range of instruments used to build and manage the Single Market, in order to learn from successes and failures and assess how to best meet the challenges of the future. The review did not aim at being exhaustive[2] but focused on those elements that seem of most importance for future Single Market policy.

Single Market policy is at the cross-roads. The Single Market brings benefits to citizens in the form of more choice, higher quality and lower prices. However, these benefits are not always acknowledged or, when acknowledged, attributed to the Single Market. Indeed, the results of public consultation indicate that many consider the Single Market still to be mainly an affair of 'big business'. But also for businesses the Single Market is not working as well as it could. Many barriers remain in important sectors. Even where markets are formally 'integrated', they do not work as well as they could. As a result, businesses – in particular smaller businesses and start ups – loose out.

The Single Market's conceptual underpinnings are still largely those of the 1985 White Paper, which led to the hugely successful 1992 programme. Yet times have changed and Single Market policy should change accordingly, to ensure that it responds to the needs of today's citizens.

In the past, Single Market policy was mainly about 'integration through law.' The aim was to remove legal barriers to cross-border trade. This was achieved through 'negative' integration measures (direct application of EC Treaty's four freedoms), and 'positive' integration measures (i.e. directives harmonising or coordinating national rules). The 1992 programme provided for about 300 pieces of legislation (in total, there are more than 1500 pieces of Single Market legislation). The four freedoms and implementing legislation were largely seen as an enabling framework – enabling businesses to exploit economies of scale in a larger, barrier-free internal market.

In today's context, legal integration can no longer be the Single Market's sole or primary ambition. As the Commission's interim and final reports on the Single Market Review set out, the Single Market should be a source of opportunity for all citizens. To this end, Single Market policy must be modernised.

In this context, this staff working paper looks at the ways in which the Singe Market is governed. Central question in this paper is how to ensure that the 'toolbox' available to build and manage Single Market policies is fit for the challenges in the 21st century. The paper explores in particular the following themes:

- As markets become more integrated and mature, there is a need to focus on making markets work better – i.e., making them effectively open and competitive, so as to generate opportunities for all market players. Economies of scale are no longer the sole key to success. Markets must offer conditions that are favourable to market entry, innovation and

[2] For instance, the report the instruments working group has not concentrated specifically on simplification or reducing administrative burdens. This is not to deny the importance of the better regulation package for the quality of the legislative environment. But as these tools are discussed extensively elsewhere, they need not to be rehearsed here.

a dynamic business environment. This calls for a more impact-driven policy. Action should be proposed where markets fail to deliver and where policies can achieve a maximum impact (to this end, a methodology for more systematic and integrated market and sector monitoring has been developed)[3]. And where it decides to act, the Commission should explore and use a flexible mix of instruments, chosen on the basis of a proper understanding of markets and aiming not only at regulatory change but at addressing all barriers and patterns of restrictive behaviour in markets.

- Single Market policies should be truly inclusive – they should work to the benefit of all citizens and be seen to be doing so. This is not just an issue of communication. It includes paying better attention to the consumer-side of policies, reaching out to all stakeholders, and a better assessment of the effects of Single Market policies on economies and societies as a whole (including those who may be adversely affected in the short term).

- Single Market policy cannot be developed in isolation but must take increasing account of the global context – it should be designed to offer business a springboard from which to conquer world markets. A separate staff working paper[4] discusses the external dimension of Single Market policy in more detail. This paper only looks (in a cursory manner) at specific instruments that can be used to better heed the global context.

- Finally, Single Market policies should work better on the ground and be rendered more 'accessible' to citizens. Consultation results and surveys indicate that there are many problems with the ways Single Market rules are implemented and enforced in Member States. In an ever larger European Union, Member States must act as genuine 'partners' – of each other and of the Commission – in making the Single Market work. Member States should invest in the necessary means and tools to make these partnerships work, with the support of the Commission. And at all levels of EU governance, there must be an investment in ensuring that citizens know, understand and are encouraged to seize the rights and opportunities created by the Single Market.

---

[3] Cf., the Commission staff working paper 'Implementing the new methodology for product market and sector monitoring: results of a first sector securing', also attached the Commission's final report on Single Market policy. See also the report entitled "Guiding principles for product market and sector monitoring", in European Economy, Occasional Papers n° 34, June 2007 http://ec.europa.eu/economy_finance/publications/occasional_papers/2007/occasionalpapers34_en.htm.

[4] Also attached the Commission's final report on the Single Market Review.

2. USING AN OPTIMAL MIX OF INSTRUMENTS TO SHAPE SINGLE MARKET POLICIES

2.1 Shaping policies to make markets work better for all: main principles

The 1992 programme yielded substantial benefits, in particular in the initial years of the Single Market. However, it has led to a tendency to see progress in terms of 'completing' the Single Market, i.e., overcoming regulatory differences through more legislation. In certain areas and sectors, targeted legislation will remain necessary (e.g., to achieve the Single European Payments Area, to open up markets to competition or to guarantee food safety and environmental quality standards).

But policies need to be rethought so as to ensure that markets are not only integrated but can function well – thereby improving consumer welfare and raising productivity.

There is a need for:

- building a case for intervention on the basis of a proper analysis of markets, including through a more systematic market and sector monitoring, taking account of the wider societal perspective[5];
- developing the message: communication about benefits and opportunities and addressing concerns should become part and parcel of any policy initiative from the outset (this also means beefing up communication on enforcement policy);
- making strategic use of a mix of tools best suited to removing unjustified barriers in certain areas or sectors (taking account of the level of integration and competition in and the structure and the maturity of the underlying markets);
- Where regulation is necessary, using flexible means, that can be easily adapted over time (to respond, *e.g.*, to technological change) and that can accommodate, where necessary, national or regional differences in an ever larger market;
- using non-regulatory instruments as a complement or alternative to regulation, where appropriate;
- developing more synergies between Single Market and other policies (competition, consumer, environmental, social, regional and R&D/innovation policies) to provide effective and well-balanced solutions to specific issues;
- ensuring coherence between the Single Market and national regulatory systems;
- organising the policy process in such a way that the Commission can deliver –together with other EU institutions, the Member States and stakeholders- in a timely and effective manner on the policies it is pursuing. Enhanced cooperation and best practices sharing with networks of national authorities are important in this context.

[5] See a separate Staff Working Paper on market and sector screening and monitoring, also attached to the final report on the review of the Single Market.

2.2 Developing more flexible approaches to legislation

Where a legislative intervention at EU level is necessary, it should:

- Be principle-based: co-decision should be used for matters of principle, requiring a wide and transparent democratic debate;
- Involve national authorities and/or relevant sectors in deciding on regulatory detail, to ensure that regulation is designed as closely to the market as possible and accounts, where needed, for national diversity;
- Encourage cooperation between national authorities and regulatory / supervisory authorities, so as to facilitate mutual understanding, convergence of implementing practices and more efficient problem-solving.

The Lamfalussy process and the 'New Approach' are existing methods with proven merits in terms of flexibility, whilst leaving room for development (e.g., in terms of user involvement). These techniques could be applied more broadly.

Finally, the principle of mutual recognition -when working well- can offer a flexible alternative to legislation.

The Lamfalussy procedure was designed to speed up Community legislation on securities markets, make it more efficient and flexible, so that it can be agreed and adapted more quickly in response to innovation and technological change and financial markets' developments worldwide. It allows the European institutions to benefit from the technical and supervisory expertise of European securities supervisors and from better involvement of external stakeholders[6]. It has also led national regulators to work more together, and is starting to instil a sense of European regulatory identity and common purpose. The success of the Lamfalussy process is evidenced by the fact that it has been extended to the banking, insurance and pensions sectors.

Advantages:

- *Speed*: The average time taken to negotiate the first four framework Directives under the Lamfalussy process, from the proposal stage to adoption, was around 20 months.
- *Quality*: The process allows the EU institutions to benefit from the technical and regulatory expertise of European securities regulators and from better involvement of external stakeholders.
- *Transparency and consultation:* The Lamfalussy process has established a rigorous mechanism whereby the Commission seeks, *ex-ante*, the views of market participants and end-users by way of early, broad and systematic consultation.
- *Focus on implementation and enforcement*: A crucial part of Lamfalussy deals with ensuring convergent application of the rules throughout the EU and convergent supervision by regulators, including through peer pressure. It enables the Commission to exercise its role as 'guardian of the Treaties' in close cooperation with the national authorities concerned.

[6] This procedure takes the comitology rules as its basis, but fleshes this out through a four-level approach bringing together the Commission, Member States, the European Parliament and national supervisory authorities. It focuses both on policy-shaping and on the day-to-day implementation of rules.

Having said this, the Commission is currently evaluating the Lamfalussy process. For instance, whilst the process brings together national regulators and foresees the adoption of non-binding protocols/guidance by the latter to secure the proper implementation of EU law, this has not yet led to a truly shared 'regulatory culture' in Europe[7].

The **New Approach for goods** was designed (some 20 years ago) to address the issue of increasing EU diversity. Rather than laying down detailed technical specifications regarding the characteristics of products, compliance with which is prerequisite to placing on the market, the New Approach directives define only the relevant 'essential requirements' in the public interest (e.g. protection of health and safety) that goods must meet when they are marketed. European standards bodies then draw up corresponding technical specifications, compliance with which will create a presumption of conformity with the essential requirements.

> The New Approach offers the following advantages:
>
> - *Flexibility for manufacturers: Essential requirements define the results to be attained, or the hazards to be dealt with, but do not specify or predict the technical solutions for doing so. This flexibility in principle allows manufacturers to choose how to meet the requirements. However, New Approach directives establish different procedures for assessing conformity with the essential requirements, ranging from leaving the manufacture no choice at all to a limited selection of alternatives to complete freedom of choice.*
>
> - *Flexibility for the legislator: New Approach directives are easier to introduce and maintain than traditional harmonising legislation which typically comprised a specification-heavy basic directive and many subsequent adaptations to technical progress.*
>
> - *Innovation-friendly: Rigid pre-marketing specifications under harmonising rules dissuaded manufacturers from seeking new solutions. The New Approach allows manufacturers the freedom to innovate without fear of contravening EC law, the only constraints being the essential requirements laid down in the relevant directive. Relevant standards can also be quickly updated to reflect the state of the art.*
>
> One of the most striking examples of a standard that has now become integral to the daily life of millions of Europeans is that established by the private GSM consortium and the European Telecommunications Standards Institute in the field of mobile telephony. Another example is the standard developed by the Comité Européen de Normalisation for the contents of unleaded and diesel fuel, allowing motorists to cross Europe without fear of running dry, damaging themselves or their engines).

Having said this, the New Approach formula also has its drawbacks. In practice, standardisation processes can be long and unwieldy. They do not always keep pace with the increasing speed of technological development and innovation. This undermines the New Approach's potential for boosting innovation. Further, the representativity of the current EU standardisation bodies is sometimes called into question.

> The European Parliament and the Council are currently considering the new package of rules on the internal market for goods, proposed by the Commission on 14 February 2007. A new draft Decision would deal with many aspects common to the New Approach directives (for example, common definitions, obligations of economic operators, conformity of the product, notification of conformity

---

[7] DG MARKT has launched an evaluation of the Lamfalussy process, with a view to further improving it (cf., the first interim report monitoring the Lamfalussy process of March 2006 (http://ec.europa.eu/internal_market/finances/docs/committees/060322_first_interim_report_en.pdf). Results of the review will soon be available.

assessment bodies and safeguard procedures). Thus, in keeping with simplification principles, a large part of the *acquis* would be further streamlined by the package. A new draft Regulation sets out requirements for accreditation and market surveillance - establishing a transparent and reinforced accreditation system and bolstering confidence in the system, both at national and European levels.

Finally, it should be recalled that recourse to **mutual recognition-based solutions** also offers advantages in terms of flexibility. When operating as it should, mutual recognition obviates the need to set EU norms for a particular area or sector altogether – leaving it to Member States to set standards to protect public interest concerns, whilst avoiding that differential standards amount to barriers to trade.

In the goods area, a new draft Regulation deals with mutual recognition, aiming to ensure that businesses really can rely on the Treaty principle of the free movement of goods. It addresses the burden of proof (by setting out procedural requirements for denying a product access to the market and requiring the Member State of destination to justify in writing the precise technical or scientific reason for refusing access) and it entitles economic operators to put their case to the competent authorities.

2.3 Non-binding tools as a complement or alternative to legislation

Legislation remains important in some areas but may not always be necessary or proportionate. In some cases, better results can be achieved by using non-binding tools as a complement or alternative to legislation. Article 211 of the EC Treaty entitles the Commission to adopt a broad range of non-legislative measures – acting in its three-fold capacity under the EC Treaty: as initiator of legislation, as (part of the) EU executive, and as guardian of the Treaty[8]. In exercising its powers, the Commission must respect better regulation principles (choosing the instrument best equipped to produce the desired outcome) and respect the institutional balance (i.e., the balance of powers between the Community institutions). In particular, it cannot encroach on the competencies of the EU legislator[9].

The Commission's use of non-binding tools has come under criticism. In particular, the European Parliament has challenged the use of so-called 'soft law' by the Commission on grounds of institutional balance and democracy[10]. To address this criticism, a more consistent and coherent approach to the use of non-binding tools is necessary.

There is a variety of non-binding tools, each having a specific content and purpose. The way these measures are prepared and adopted – including the degree of involvement of other EU institutions (the European Parliament in particular) and stakeholders - depends on the nature of the soft law measure one considers adopting.

---

8 According to Article 211, "In order to ensure the proper functioning and development of the common market, the Commission shall: - ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied, - formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary,- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty, - exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter."

9 A breach of institutional balance may lead to a case before the Court of Justice, even at the initiation of the European Parliament.

10 Cf., the Medina report adopted by the European Parliament on 3 September 2007.

Non-binding (so-called 'soft law' tools) are important and valuable policy instruments. A consistent and coherent approach to the use of non-binding tools is required, however, to ensure transparency and legitimacy.

Four types of non-binding instruments can be distinguished:

(a) Measures aiming at preparing policy action (legislative or non-legislative), such as Green and White Papers, other consultation documents (e.g. those prepared for internet consultations) and Communications to gather views from stakeholders in preparation of initiatives;

(b) Measures aiming at clarifying the law and ensuring that EU rules are properly applied on the ground without changing the EU acquis (technical guidelines, technical handbooks, interpretative communications);

(c) Measures that contain normative elements, such as Recommendations – specifically referred to by the EC Treaty[11] and defined by the ECJ as 'measures adopted by EU institutions when they do not have powers under the Treaty to adopt binding measures or when they consider that it is not appropriate to adopt more mandatory rules'[12].

(d) Self-regulation and co-regulation instruments, such as Codes of Conduct, whereby the Commission asks industry to come up with solutions provided these do not contradict EU law and the Commission's policy objectives. Voluntary standard-setting (outside the New Approach framework, cf. supra) can also be comprised in this category.

The first two categories should have no new normative content -they prepare or explain the Single Market acquis. Therefore institutional balance issues should, in principle, not come into play. In practice however, the dividing line between clarifying rules and facilitating their implementation may sometimes be difficult to draw – hence the potential for litigation[13]. Having said this, there is a clear demand for more guidance and legal certainty – in many parts of Single Market law. A 'citizen-oriented' approach to the Single Market needs to respond to these demands, and therefore it is proposed that the Commission provide practical guidance where needed. This can take the form of vademecums, F.A.Q., or handbooks in either paper or electronic form. Given their practical content and the need for regular updating, there must be sufficient scope for adopting such guidance at staff working level.

Recommendations, for their part, require a different approach. Given their normative content, Commission services are well advised to inform and involve the European Parliament in the preparation thereof – although there is no legal obligation to do so. In fact, experience teaches

---

11 Cf., the general legal basis of Article 211 of the EC Treaty (quoted below) and specific legal bases in Articles 53 EC (sectoral services liberalisation), article 77(transport), and article 97 (recommendations on national measures likely to distort competition).

12 Case C-322/88, Grimaldi, judgment of 13 December 1989.

13 Cf., in Case C-57/95, French Republic v. Commission, Judgment of 20 March 1997, the Court of Justice struck down the pension fund communication on the grounds that it constituted an act intended to have legal effects of its own, distinct from those already provided by the Treaty'. [Cf. also the pending case lodged by Germany against the Communication explaining the application of public procurement law to contracts 'below the thresholds'

that much can be gained from maintaining an open dialogue with parliamentary Committees when preparing non-legislative initiatives.

Self-and co-regulation[14] mean that relevant industry players, not the Commission, edict norms. They may be quicker to adopt and may lead to more acceptable results for stakeholders, who produce the rules themselves and may even use them as a 'marketing tool'. Co-regulation may also be a means of accommodating national diversity – by allowing national co-regulation practices on the basis of general EU regulatory framework. But there are also potential drawbacks that must be managed, in particular the risk of anti-competitive collusion amongst industry members to the detriment of consumers, as well as the risk of non-respect. To overcome these drawbacks, self- and co-regulation should rest on following principles:

- Rules must be developed on the basis of a balanced involvement of all stakeholders (including consumers);
- Competition authorities must closely monitor the process (to avoid self-regulatory solutions being abused by incumbents or leading to collusive outcomes);
- Proper enforcement should be secured (in particular where large groups are called upon to comply)[15].

In addition, it may be necessary or useful to combine self-regulation with general legislative principles or provide for evaluation / monitoring systems[16].

> Self-regulation has been chosen to overcome barriers to market integration in the area of clearing and settlement. In only four months time, the industry has, under Commission guidance, elaborated a Code of Conduct which satisfies public authorities as well as the supply- and demand-side of the market concerned. If implementation is successful, this may be an example to follow.
>
> Labelling is also an area where self- and co-regulation may be successful[17]. Subject to further assessment, the use of these instruments in the labelling area could be envisaged in the future. Labelling plays a central role in communicating information to consumers. For business, labelling is a major commercial tool. Although what is considered as mandatory information should continue to be dealt with by legislation, other aspects can be developed by stakeholders through industry standards, monitored and controlled by public authorities (who in this way also help promoting best practice).

Finally, a particular form of non-binding intervention has developed in the direct taxation area. In this area, where the application of the unanimity principles makes it difficult to agree on legislation, Member States' commitment to so-called 'Codes of Conduct' has led to more transparency, co-operation, a common approach and less tax evasion within the EU.

---

14 Self-regulation refers to the creation of common guidelines by economic operators and/ other stakeholders; co-regulation refers to the situation whereby EU secondary law sets the objectives and entrusts certain parties (economic operators, social partners, or associations) with the attainment thereof.

15 Cf., practical suggestions in COM (2002) 412 on Environmental Agreements at Community level. Where implementation fails, the introduction of more binding norms (e.g., EU legislation) should be considered (e.g., failure by car industry to ensure compliance with CO_2 emission limits).

16 Cf., the results of a study commissioned and steered by DG ENTR on self-and co-regulatory practices in the EU.

17 Cf. consultation document 'Labelling: competitiveness, consumer information and better regulation for the EU'.

The most remarkable example of the successful self-commitment by public authorities is the agreement on the 'Code of Conduct on business taxation', which aims at eliminating harmful tax competition and was established by a resolution of the Ecofin Council on 1 December 1997.

Other examples are offered by the work of Joint Transfer Pricing Forum. This forum is composed of representatives of Member States' tax administrations and business tax experts, and meets to discuss and issue conclusions on how to better manage the tax problems arising, both for tax administrations and taxpayers, from cross-border intra-group trading. So far this has lead to the adoption of two codes of conduct (on the functioning of the Arbitration Convention and on a standardised set of EU transfer pricing documentation, respectively) which have been endorsed unanimously by Member States in the Council. Furthermore, best practices established by the Forum concerning dispute avoidance in the field of transfer pricing have recently been converted into EU guidelines on advance pricing agreements, which have been endorsed by all Member States.

2.4 Using competition tools in a synergetic manner

Synergies between Single Market and competition tools should be fully exploited:

- Competition and Single Market policies should be used in a complementary way to address market failures by sanctioning anti-competitive behaviour of either companies or Member States;

- The use of competition tools (such as sector inquiries) helps to establish a sound evidence-base for further action;

National competition authorities (operating within the European Competition Network) help by ensuring local enforcement vis-à-vis companies as well as advocacy.

Competition and Single Market policies are two sides of the same coin. Single Market rules provide the infrastructure and define the framework for competition. In general, Single Market rules foster competition by favouring entry of new firms and enabling firms to operate on the market most suited to its business.

Competition rules prohibit firm behaviour and State action that distort effective competition. When markets do not operate in an efficient way, this is rarely the result of a single cause. Therefore, the impact of our policies can be much more positive if Single Market and competition instruments are used in a tandem.

For example, the public procurement Directives aim to remove national preferences and to harmonise public tendering conditions to make them more transparent and more predictable for companies from other Member States. However, companies may wish to thwart market opening and engage in collusive practices. In such cases, only the additional use of competition policy instruments will ensure that the fruits of open and competitive procurement are reaped for the benefit of government and taxpayers.

Competition tools can be particularly effective in helping markets work better:

– **Competition enforcement** tools often rely on effective fact-finding tools (particularly in the area of antitrust and mergers)[18] extracting information from the market, and can be applied in a directly binding way through Commission decisions.

Examples of competition enforcement decisions that helped shaping markets:

- Cases concerning alliances between airlines, assessed under Article 81, resulted in accelerating the opening of air transport markets on both intra-EU and extra-EU routes.
- Applying Article 82 had the effect of opening up the market for ground handling services at Frankfurt Airport.
- Extensive structural and behavioural remedies obtained from the parties in the E.ON/MOL merger case ensured that competition is not significantly impeded in the gas and electricity wholesale and retail markets in Hungary. Importantly, it has been explicitly recognised by the Court of Justice that the Commission is entitled to pursue the competitive aims of Single Market directives through its merger control instrument[19].
- Parts of the liberalisation of telecommunications markets (e.g. telecommunications equipment) were the direct result of Article 86 Directives.
- The so-called "Transparency Directive"[20] has proven an effective tool to disclose in particular cross-subsidization into commercial activities which could foreclose access to certain markets by creating competitive disadvantages in particular to firms from other Member States.
- In the Alstom state aid case the French State agreed that the incumbent SNCF would no longer approve rolling stock of new entrants using French railway infrastructure and that it would move forward the implementation of the railway safety directive entailing positive implications for competitive entry. Further good examples are the German and French banking cases, in which the application of state aid rules allowed the dismantling of barriers to competition in the form of state guarantees to financial institutions.

– **Competition advocacy** effectively helps achieving that markets are more competitive through influencing regulatory processes. National competition authorities play an important role here.

For instance, in the area of liberal professions, national competition authorities have, with the support of the Commission, been able to promote a pro-competitive reform of the professional services sector at the national level. They did this (and continue to do so) by combining targeted enforcement with advocacy activities, i.e., activities directed at influencing regulatory change. Advocacy activities include analysis, giving adequate publicity to the findings of such analysis and seeking direct contacts with political players. Advocacy has led to impressive results – mostly also thanks to active Commission involvement. For instance, following a Commission visit to Spain, discussions started between the Government, the Spanish NCA and professional associations about abolishing the use of recommended tariffs and a Regional Bar Association did away voluntarily with providing recommended tariffs. The package of deregulation measures adopted in Italy in 2006 in professional services is a land mark development (based on the so-called "Bersani" decree) and shows the impact

---

18 In the area of antitrust and mergers, the Commission may i) require undertakings to provide information by simple request or by binding decision, and supplying incorrect or misleading information may be sanctioned by penalties; ii) require governments and competition authorities of the Member States to provide information by simple request; iii) interview any natural or legal person and iv) conduct (announced or not announced) inspections of undertakings.

19 Case T-85/07 EDP v Commission [2005] ECR II-3745, para. 96.

20 Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (OJ L 318, 17.11.2006, p. 17).

of the NCA's and Commission's work. The changes made eliminate certain serious restrictions to competition in a range of professions (pharmacists, architects, engineers, accountants and the legal professions), including State imposed minimum tariffs, advertising and business structure restrictions.

– Finally, **sector inquiries** (provided for under Article 17 of Regulation 1/2003) enable the Commission to gather a rich evidence base on the operation of markets, which can not only lead to enforcement action but also to an informed debate on the nature and scale of market problems and failures in a particular sector. It also assists in the detection of regulatory barriers – and hence may lead to the adoption of regulatory policies at EU level to overcome such barriers.

In January 2007 the Commission published its final report on the sector inquiry into the retail banking sector. The inquiry's purpose was to identify possible impediments to competition that could be tackled through EC competition law. However, the rich and extensive evidence base collected also gave the Commission and market participants a better understanding of market failures in retail banking and of the appropriate remedies to address them, including Single Market policy. For example, the inquiry identified access barriers in payment systems and credit registers which weakened competition and deterred entry in Europe's retail banking markets. The inquiry also found several barriers to customer mobility in the Member States arising from banks' conduct. Moreover, analysis of the market data showed that banks' profit margins tended to be higher where customers switched bank less frequently, in turn suggesting that barriers to customer mobility may allow banks to exercise market power. Taken together, these findings have helped to provide a solid evidence base for the Commission's work on card payments, bank accounts and customer mobility – for which a joined up approach, combining competition, consumer and Single Market tools will be necessary. Likewise, the sector inquiry in the energy sector (final report adopted in January 2007) has helped to inform concrete proposals on the electricity and gas markets.

2.5 Using infringement powers under Article 226 of the EC Treaty to further policy goals[21]

A more impact-based approach to Article 226 infringement procedures implies:

- Developing a more pro-active enforcement policy, by giving priority to infringement cases which present the greatest risks and widespread impact for citizens and businesses;
- Ensure a more speedy handling of infringement cases of which the likely (positive) impact is significant;
- Developing better communication on infringements – to demonstrate in every case what it means concretely for citizens and firms;
- Exploiting synergies with competition tools.

A more pro-active infringement policy, based on priority-setting. A more pro-active enforcement policy is intrinsically linked to market knowledge: Economic data enable to identify where priority action is necessary. Pro-active infringement policy also means that going beyond the individual complaint and look for 'root causes', i.e., the reasons why specific problems occur. Understanding root causes may lead to new infringement procedures (started at the Commission's initiative) but may also require us to intervene in a different manner (e.g., guidance).

[21] Cf. also the recent Commission Communication 'A Europe of results – applying Community law' - COM(2007) 502.

Setting priorities does not mean 'selectivity' – it rather means pursuing some cases as a matter of priority whilst finding suitable solutions to others (including securing a resolution via alternative means, e.g., the use of SOLVIT).

One priority could be to promote in a more pro-active manner compliance with Court rulings.

> For instance, following the Alcatel ruling of the Court of Justice (which provides for a stand-still period between the rejection of a tender and the conclusion of the public contract, so as to enable rejected bidders to seek remedies) Commission services sent out pre-226 letters to all Member States. In some cases, this has been followed by formal infringement proceedings. Much has been resolved at the national level in this way (yet not all: the proposed revision of the Remedies Directives is also designed to give further flesh to the Alcatel ruling).

Improving communication. Before launching action under Article 226 of the EC Treaty, the Commission should consider the likely outcome of it -in real, not only legal terms- and communicate on it in clear, non-technical terms. Infringement action needs to be presented in a way that enables citizens to understand why pursuing a breach of the Treaty freedoms matters, why an EU intervention is necessary, and what concrete benefits such action yields for them. Where possible, such benefits should be described and quantified clearly and concretely. In controversial cases, the help and advice of Commission representations in the Member States in presenting the case to the national press and the public should be sought. Infringement and communication policies should be closely aligned. This will require investment in terms of resources and expertise in the Commission services and in representations.

Infringement policy also tends to be known too little, even amongst the legal profession. More transparency and better communication can also help here. The Commission's recent Communication on applying Community law[22] announces a series of initiatives to strengthen dialogue and transparency. In addition, annual reports on the application of Single Market rules (as are currently being done in the competition sector)[23] might be prepared or regular newsletters produced. Such reports could also include national court cases that are particularly significant. They could also be used to demonstrate the effectiveness of pre-226 letters in certain cases.

Exploiting synergy with competition policy. Again, combining enforcement of Single Market rules with competition enforcement may yield good results in certain cases. For instance, the Commission has fought with success instances of 'national protectionism', such as the unlawful imposition of conditions on take-overs, by acting in parallel under Article 21 of the Merger Regulation and under Article 226 of the EC Treaty.

> For instance, in relation to EON's bid over Endesa, the Commission has been challenging at the same time a general measure adopted by the Spanish government to increase the powers of the national energy regulator in case of acquisition of energy companies (under the internal market rules), and the way this measure was applied. In particular, it attacked under the merger control rules the conditions imposed by the Spanish regulator on the acquisition of Endesa by EON.

It should be noted that **Article 86 of the EC Treaty** could also be used to challenge infringements to Single Market provisions such as the EC Treaty's fundamental freedoms, in case these are abridged through the grant of exclusive rights (cf., Commission's decision

---

22 Adopted on 5 September 2007 - COM(2007) 502.

23 There are of course the annual reports on the application of Community law – but these tend to be very general.

fighting the Flemish television monopoly[24] and a monopoly in a niche postal services market)[25].

3. MORE INCLUSIVE POLICY-SHAPING

3.1 Bridging the gap with citizens

The ultimate objective of all economic activity is to provide the goods and services that citizens require in the most efficient manner. As one of the core policies of the European Union in the economic field, the Single Market therefore should be of benefit to citizens either directly through the end products that they purchase or indirectly through those that are consumed up-stream from the final user. Citizens as consumers are clearly central to the Single Market. Citizens also benefit from the Single Market through the free movement of workers, through their rights to live and to vote in certain elections throughout the Union, through the protection that social security systems provide to migrant workers, through their ability to cross borders without let or hindrance, particularly within the Schengen passport-free zone.

However, one of the lessons learned from the public consultation and the public hearing on future Single Market policy is that the Single Market is seen by some as the affair of 'big business' only. Consumer organisations, trade unions, the voluntary sector, smaller enterprises and local governments often feel insufficiently involved in EU decision-making on Single Market policy or feel that their concerns are not sufficiently being taken into account.

To some extent, these are problems of perception that do not stand the test of factual analysis. Benefits are either not acknowledged or not attributed to the Single Market, such as the ease with which we can cross internal borders, or with which citizens receive medical treatment abroad. And, contrary to some public perception, the yearly reports evaluating the performance of network industries indicate that, on balance, market opening in those industries has led to more and better quality services for users whilst not leading to net job losses.

Having said this, the perception that the Single Market was designed for big business may have been nourished by the fact that certain markets were liberalised first for large enterprises, then smaller enterprises and for individual consumers at the end. While there were sound regulatory reasons for this sequencing, it had the unwelcome implication that citizens were the last to benefit as consumers from market opening while as employees they could encounter the impact of restructuring rather early. In other cases, markets remain insufficiently competitive to the detriment of consumers. The competition sector inquiries on energy and retail banking revealed the unsatisfactory functioning of some of these markets.

The perception that the Single Market programme has not delivered the same benefits to all is to be taken seriously. The distributional impact of the Single Market also needs to be addressed - by appropriate regulatory and flanking policies so that everyone benefits. Adjustment to greater competition as a result of market liberalisation imposes costs on certain individuals, for instance as a result of restructuring. The best response is the ability to find another job quickly, and in dynamic economies with much growth creation and efficiently

---

[24] Commission decision of 26 June 1997 (OJ L 244/1997, p. 18).

[25] Commission decision of 21 December 2000 (OJ L 63/2001, p. 59).

functioning labour markets, adjustment takes place in a supportive environment. The Single Market depends therefore to a considerable degree on the capacity of the EU and national authorities to put in place stable, growth oriented policies – and should contribute itself to this by ensuring a dynamic and innovation-friendly environment.

A 'citizen-oriented' Single Market policy does not just mean that citizens are adequately 'protected' against possible adverse affects of market opening, or against anticompetitive practices preventing them from getting their fair share of the pie. It also means taking the dynamic potential of the consumer side of the economy more seriously. Consumers can boost Europe's innovative capacity, by driving demand for new goods and services. There is a need to further empower European consumers - to drive the Single Market forward and to enable them to fully take advantage of the benefits it offers.

A more inclusive policy implies:

- Addressing the needs and concerns of all, through assessing the effects of our policies on citizens, as well as their social effects (are there downsides of our policies; what adjustments are required?);

- Ensuring the involvement of a wider group of stakeholders – in particular those not represented in the larger trade associations – through identifying and reaching out to categories of stakeholders that do not respond spontaneously to open consultations;

- Develop stronger synergies between Single Market and other policies, such as consumer and cohesion policies (both regional and social), as well as policies falling within the Member States' remit of competence (e.g., labour market reforms, social security, taxation of cross-border commuter workers).

3.2 Broadening the 'evidence base' of Single Market policy-making

Single Market policies affect us all. Various initiatives have been taken to assess the effects of Single Market policies – in general and per sector (e.g., studies assessing the effect of market reforms on consumer prices). More recently, sector inquiries have brought out detailed information on how markets work and who benefits. Building on this, the Commission should strive to build up its 'evidence base' even further, by developing a stronger methodology and further tools to assess the effects of Single Market policy – in particular on non-business players such as consumers, and society at large (including its more vulnerable members).

It is proposed to:

- Launch regular 'Citizen studies', i.e., studies assessing the benefits and costs for EU citizens of Single Market policies;

- **Develop a 'Consumer Markets Scoreboard'**, aimed at putting in place regular monitoring of how the Single Market is working for consumers. The Scoreboard should in time provide a tool to identify which parts of the Single Market are not performing in terms of economic and social outcomes for consumers, and where intervention may be needed. The Scoreboard will look at five top-level indicators – complaints, prices, satisfaction, switching and safety – which will allow identification of malfunctioning consumer markets that need further analysis. The Scoreboard will also look at the EU retail market as a whole and at national retail markets, by tracking progress in retail market integration and

consumer confidence and providing general benchmarks for national markets. In sectors identified as not working for consumers, the aim is in time to carry out deeper, market specific analysis, to address the reasons behind failure and suggest appropriate measures. Much of the data needed for this screening and analysis is currently missing and new data sources, for example on consumer prices, will need to be developed over time by the Commission, the Member States and interested stakeholders.

3.3 Broadening stakeholder involvement

Over the past years, many initiatives have been taken to enhance consumer involvement in policy-making:

> For example, the establishment of the European Consumer Consultative Group[26] (ECCG), work towards an enhanced representation of consumer interests in sector-specific Commission committees, the organisation of 'Consumer Days' to discuss how competition policy can work to the benefit of consumers, the establishment of the ECC-net (European Consumer Centres) (which seeks to address cross-border consumer protection problems and regularly reports on problems consumers face in the Single Market).
>
> In financial services policy-making, consumer involvement is ensured through: (i) the publication of the 'Fin-focus newsletter', which provides information in a jargon-free language and is translated in 20 languages; (ii) the set-up of FIN-USE (an expert group composed mainly of representatives of consumers and small businesses) and (iii) the establishment of a working group on financial services within the ECCG[27].

Efforts have also been taken to draw SME's closer to EU policy-making, such as the establishment of the European Business Test Panel[28] and on-line consultation tools such as IPM, and the inclusion of users in advisory panels (e.g., FIN-USE).

Social partners are consulted through the cross-industry Social Dialogue, consisting in meetings of social dialogue committees, working groups and seminars, negotiations and social dialogue summits. The results and standards reached through the cross-industry social dialogue apply to business and workers across the Single Market. Outside this remit, social partners are consulted on issues relating to specific Single Market policies (e.g., regular meetings are held with Uni-Europa Fin to discuss forthcoming initiatives in the field of financial services or through the European Sectoral Dialogue Committees (SSDC)).

> To note also that, in the frame of its 'Healthy democracy' initiative, DG SANCO is establishing a 'Stakeholder Dialogue group', i.e., an expert group called upon to advise on DG SANCO's processes of consulting stakeholders, so as to better ensure that we reach out to all[29].

Nevertheless, more action is needed to broaden the involvement of stakeholders in Single Market policy – in particular those economic players that are not represented by the large trade associations (e.g., SMEs, NGOs who employ almost 5% of the economically active population, and local government).

---

26 See information on: http://ec.europa.eu/consumers/cons_org/associations/committ/index_en.htm

27 See information on : http://ec.europa.eu/internal_market/finservices-retail/fscg/index_en.htm

28 The EBPT is a tool whereby about 3000 businesses over various sectors and Member States are consulted directly on specific issues of particular interest to them (e.g., to test whether new initiatives / existing rules impose administrative burdens). The EBPT has now existed for 5 years. An evaluation of EBPT is planned for the first half of 2008.

29 Cf., Conclusions of the Peer Review Group on stakeholder involvement and the report of the Stakeholder involvement conference organised on 23 May 2007.

Consultations on future Single Market policy have shown a need for:

- Organising a structured, on-going dialogue with 'non-business' stakeholders on Single Market issues: Consumer associations, unions, NGOs tend to be engaged in policies of specific concern to them (consumer protection, social policies, employment policies etc), but less involved in shaping Single Market policy as a whole. This can be improved.

- Making consultations more accessible and user-friendly: Consultations should follow one structure & format, and be accessible via one main portal. They should start with a one-page, simple and non-technological introduction explaining the aim of the consultation and who is affected by it, so as to make it easier for stakeholders to judge its relevance for them. Questions should be more specific and address concrete issues. Greater use could be made of 10-minute on-line consultations. The Commission should also pay more attention to post-consultation feedback. It should explain why and how it has taken on board certain views and discarded others.

- More regular consultation of the European Consumer Consultative Group (ECCG), in particular at the early stage of initiatives, in certain consumer-sensitive sectors, which would assist the Commission in preparing initiatives for these sectors. Data should be provided (e.g. results of Eurobarometers, focus groups, citizens juries) in advance as a contribution for the ECCG discussions. This would allow consumer representatives to give a concrete input into the policy-making process.

3.4 Developing stronger synergies with other EU and national policies, among others to address adjustment costs

Single Market policy often implies market reforms which result in change and the need to adjust. As mentioned, whilst Single Market policies work to the overall benefit of citizens, some may lose out in the shorter run.

As labour and social issues remain mainly within the remit of the Member States themselves, Member States have to design national measures to overcome adjustment problems. At the level of the EU, adjustment costs can be addressed primarily through instruments such as structural funds, the Globalisation Fund and measures to accompany labour market reforms (via the Open Method of Coordination).

It is however important to fully evaluate the social implications of proposed Single Market policies and encourage all actors (including Member States) to take the necessary measures to address them. This means:

- Taking better account of the social implications -including adjustment costs- at the impact assessment stage;

- Communicate better and more openly on the adjustment costs that further market reform may bring. Potentially sensitive reforms ought to be accompanied by well-prepared communication strategies. It is important to present the effects of policies in a 'neutral' way and to offer an honest answer to all concerns expressed;

- Where appropriate, work with Member States on a shared strategy designed to overcome adjustment costs via national action (e.g., via the OMC).

4. MAKING SINGLE MARKET POLICY MORE RESPONSIVE TO THE GLOBAL CONTEXT

A separate staff working paper focuses on the external aspects of the Single Market – and in particular on what must be done to meet the challenges of globalisation. Accordingly, this paper only focuses on specific tools designed to take better account of the global context.

The Single Market is a valuable asset in meeting the challenges of globalisation. It serves as platform for European companies to enter global markets and gives consumers access to cheaper goods which respect minimum standards. It also enables the European Union to strongly influence rules and standards worldwide, facilitating European exports and ensuring that imports meet necessary standards, thereby effectively protecting European citizens. To facilitate this, the Commission is developing a new international approach focusing on regulatory cooperation, convergence of standards and equivalence of rules. This approach should be further developed in the mutual interests of the EU and its partners. It can go a long way in fostering 'convergence to the top' rather than a 'slide to the bottom'.

There is a need to further develop our toolkit to meet three aims:

- First, expanding the competitive space for European firms beyond the physical boundaries of the Single Market, opening up other markets through multilateral and bilateral liberalisation, as well as active enforcement of our market access rights. Building on the platform created by the WTO, the Commission has launched negotiations for 'deep' Free Trade Agreements aiming at better market access for EU companies and a large degree of regulatory convergence.

- Second, expanding the regulatory space of the Single Market, by projecting our norms and values abroad and by enabling European regulations to benefit from best practice everywhere, thus making European norms the reference for global standards. In addition to multilateral work, the Commission has initiated regulatory dialogues with the EU's most important trading partners in certain priority areas, such as financial services, procurement, veterinary and sanitary issues and product safety. Multilaterally, the Commission should seek convergence of competition rules in international venues such as the International Competition Network or the OECD, which provides a useful forum to spread best practices and to foster cross-border convergence and co-operation.

- Third, actively ensuring that European citizens fully reap the benefits of this openness, through better standards, lower prices and greater choice. Price reductions due to multilateral liberalisation of textiles or the globalisation of production of IT-components do not always reach the end consumer. With this in mind, the Commission is developing new market monitoring tools and firmly enforcing competition rules. Where appropriate, it will also consider regulatory action to improve market functioning.

5. MAKING WHAT WE HAVE WORK BETTER FOR CITIZENS

5.1 Bridging the gap between a Single Market on paper and a well-functioning Single Market: a challenge shared by Member States and the Commission

The Single Market cannot be managed out of Brussels alone. Under Article 10 of the EC Treaty, Member States must implement, apply and enforce Single Market rules and to that effect cooperate with each other and the Commission. The Commission must assist and

oversee these efforts of Member States – amongst others as 'guardian of the Treaty' (under Article 211 of the EC Treaty).

There is ample evidence that the Single Market does not work as well as it should – and that, as a result, citizens lose out.

- **Internal Market Scoreboard.** The February 2007 Scoreboard indicates that most Member States reach the 1,5 % transposition deficit target, which constitutes a clear improvement. However, four Member states still do not reach the target. In addition, no Member State has managed to reduce infringement proceedings.

- **Consultation results.** The 2006 public consultation clearly identified better implementation and enforcement as a key priority for Single Market policy. Many examples were given of cases where rules are not applied, or applied incorrectly – a pervasive problem affecting many sectors. Whilst stakeholders (in particular the business community) say that most problems exist at national level (including regional and local levels), they clearly expect the Commission to take a lead role, by offering guidance, practical tools and help, and by keeping up the discipline.

- **Reactions of Member States**. In a recent survey amongst members of the Internal Market Advisory Committee, many Member States called for more attention to 'governance' issues – in particular more structured debate and exchanges of best practice on how to improve implementation and enforcement records. A lack of coordination at national level, of political visibility, of adequate training and information (in particular at local level), and a lack of communication between authorities are identified as key challenges needing to be addressed.

- **Business reactions.** Reacting to the public consultation on future Single Market policy, business stressed the need to improve records at national level with implementation and enforcement. They also see a need for better information, in particular for SMEs. In particular, they denounce frequent cases of non-transposition or incorrect transposition[30]. The set-up of Internal Market task forces and one stop shops for information is promoted.

- **Feedback received from information, assistance and problem-solving tools** managed by the Commission and the Member States. Tools such as SOLVIT and Citizen's Signpost offer a good insight in how and why Single Market is (mis)applied in Member States. Where problems occur, these are most frequently due to a lack of knowledge about Single Market rules, inefficient procedures, uncertainty as to how to apply Single Market rules, a lack of communication between authorities – but also unwillingness of some ministries / authorities (in particular those not widely involved in EU matters) to give precedence to EU rules[31].

The success of future Single Market policy depends on the combined capacity of Member States and of the Commission to improve the functioning of the Single Market. As markets become more integrated (as a result of regulatory reform in many areas) and as the geographical scope of the Single Market widens, priority should shift from policy shaping to ensuring that the necessary administrative capacity, means and tools exist to make the Single

---

30 For instance in a recent contribution on 'Enforcement in the EU' (May 2007)', Businesseurope formulates a series of practical proposals designed to enhance Member States' performances when it comes to implementation and enforcement.

31 Cf., the 2007 SOLVIT report - SEC(2007) 585, 30.4.2007 - which states that 'SOLVIT centres were also asked about the openness (or lack of it) of public authorities to reconsider their decisions in the light EU law. About half of all SOLVIT centres state that authorities are generally willing to take a pro-EU attitude, but the other half concludes that it is very often difficult to persuade other parts of the public administration that EU law prevails over national law. Many suggest that more information, education and legal training of national officials regarding EU law is urgently needed to develop a stronger 'EU law reflex'.

Market work better. This capacity is required at all levels of government – European, national, regional and local.

Below, this paper looks at the various tasks that must be performed to make the Single Market work:

- Transposing Single Market rules in national legal systems;
- Applying Single Market law (including the Treaty provisions);
- Supervising the application of Single Market law;
- Solving problems / granting redress in case of non-application of or non-compliance with Single Market rules;
- Informing citizens and businesses about their rights and opportunities under the Single Market.

For each of these tasks, the Commission's working group identified best practices and specific recommendations (see sections 5.2 up to 5.6). Some of these recommendations are also reflected in the Commission's recent Communication 'a Europe of results – applying Community law.' The conclusions of that Communication fully apply, of course, to the Single Market area – but since they have been set out elsewhere, they will not be rehearsed here[32]. The report will conclude with some more comprehensive suggestions and proposals to improve partnerships to make the Single Market function (section 5.7).

5.2 Improving transposition

There is a tendency to view transposition as a static, one-off affair: national parliaments adapt their statute books and notify the Commission, who checks the outcome to some degree. In practice, however, transposition is only successful if it leads to real and lasting change in national legal systems and the way they function.

In 2004, the Commission adopted a Recommendation on the transposition into national law of Directives affecting the internal market[33]. The Recommendation was prepared in close co-operation with Member States (through discussions in the Internal Market Committee or IMAC) and is based on best practice examples of Member States (such practices include, for instance, closer co-operation with national parliaments, designating a senior member of government, at Minister or Secretary of State level, as being responsible for monitoring the transposition of all Single Market Directives etc.).

Combined with efforts at EU level – to guide and assist Member States when transposing rules – and an effective system of 'naming and shaming' through the Internal Market Scoreboards (and similar instruments, such as the Lamfalussy league table) this has led to a significant improvement of transposition records (the deficit rate has decreased from 7% to 1.5 %).

Better transposition results could be obtained through:

[32] COM(2007) 502.
[33] COM(2002) 725, 11.12.2002.

- Developing risk-based transposition plans in targeted areas – which should provide for continued dialogue and peer review tools;
- Where appropriate, giving preference to Regulations over Directives (to avoid transposition altogether);
- Keeping up 'peer pressure' – e.g., by giving a more prominent place to transposition in the Lisbon context.

So far, successful steps taken at EU level to facilitate transposition include the following:

- The development of more guidance on transposition – 'best practice' examples include, in this respect, the Handbook on the implementation of the Services Directive, issued by DG MARKT in July 2007, and the 'questions and answers' database to accompany the transposition of MiFiD;
- The organisation of transposition workshops. Such workshops bring together national experts and allow for an exchange of best practice and day-to-day guidance. For example, the Commission has established an Expert Working Group composed by national representatives to accompany the transposition of the Unfair Commercial Practices (UCP) Directive (Directive 2005/29/EC). The group meets regularly to discuss transposition challenges and share best practices. In addition, there are bilateral contacts between the Commission and Member States to provide assistance and discuss preliminary draft transpositions. To this end, designated civil servants act as 'contact points' for specific Member States. Replies to the consultation on future Single Market policy refer to the transposition guidance offered under the UCP as an example to follow (but there are other examples of this 'good practice' as well);
- Bilateral 'package' meetings to discuss transposition (and enforcement) help obtaining an insight in national 'particularities' and forging personal links between national and EU administrators. The organisation of package meetings can also create a spur on Member States (in particular where complex state structures exist) to get organised internally and speak with one voice;
- In the General Product Safety Directive (Directive 2001/95), a European network of national market surveillance has been set up to exchange information on risk assessment, dangerous products and scientific developments, and to develop joint surveillance projects for specific products.

In addition to these best practice experiences, the Commission should also consider developing the following tools:

– It is important to improve the design of Single Market legislation and target efforts to monitor Member States' transpositions. As the recent Communication on applying Community law[34] recommends, the Commission must assess possible implementation difficulties at an early stage and design laws so as to prevent implementation and enforcement difficulties from arising. It should also develop a more rigorous 'risk-based' approach to monitoring transposition, i.e., an approach that starts from an analysis of the risks and costs of non-compliance, and that seeks to intervene as a matter of priority where risks are highest;

– Where appropriate, giving priority to Regulations over Directives: Regulations reduce the scope for national divergence and the creation of additional burdens (gold plating) through transposition.

[34] Supra.

For example, in response to April 2006 consultation, industry denounces the frequent practice of 'gold plating' at the national level. Member States frequently add product-related requirements to European standards, with the view to meeting additional environmental and social concerns.

– Where appropriate, impose obligations on Member States to screen legislative and administrative systems in order to see whether these are fully compatible with EU rules. The Services Directive could provide a good example here:

> The Services Directive does not just provide substantive provisions that must be reflected in national law. It also sets up a framework for Member states to cooperate amongst themselves (cf. infra) and, of relevance here, also contains screening and evaluation obligations, which will lead to a process of simplifying and modernising national rules. In particular, the Services Directive requires the Member States to screen their national rules to detect requirements that, although non-discriminatory, could severely restrict access to an activity or the exercise thereof under the right of establishment. Member States must report on such screening to other Member States and the Commission, who can submit comments. Such 'mutual evaluation' will create a dynamic process whereby national restrictions to trade are reduced to the minimum necessary.
>
> To note also that the 'Notification Directive' (Directive 98/34) has proved to be a useful instrument to secure an ongoing dialogue on the compatibility of national rules with EU rules. It requires Member States to notify the Commission drafts of new rules and regulations in certain fields (goods in non-harmonised areas, information society services), giving the Commission and other Member States the opportunity to comment. It has helped securing a correct and timely transposition of the E-commerce Directive to the Commission.

– Develop a best practice whereby Member States notify all draft implementation measures to the Commission, in advance of the official adoption thereof (e.g., by national parliaments), accompanied by 'correlation tables'[35].

5.3 Improving the application of Single Market law through stronger administrative co-operation

For the Single Market to work, authorities at national, regional and local level must administer rights and entitlements under Single Market law (for instance by granting authorisations) and supervise compliance with rules (i.e., market surveillance).

Better administrative cooperation is likely to yield positive benefits:

- It ensures that citizens have a better and faster access to their rights.
- It fosters consistency in the application of Single Market rules.
- It helps national administrators to 'think European' and act in defence of the European interest even if means overstepping local interests.
- It has a preventive effect, reducing problems of misapplication of rules.
- It facilitates the exchange of information and best practice between Member States, thus fostering a better understanding of how markets function and on how to improve the quality of the regulatory and administrative framework.

---

[35] In the Communication on the application of Community law (supra), the Commission announces it will systematically include an obligation for a correlation table to be communicated in each new proposal for a directive.

- It builds confidence between national authorities.

The Commission facilitates the exchange of information between such authorities by making available IT-based networks: examples are the Internal Market Information System or IMI (which supports the implementation of the Services Directive and the Professional Qualifications Directive), the network created by the Regulation on Consumer Protection Cooperation (which seeks to improve enforcement via cooperation)[36], the RAPEX system (Rapid Exchange and Alert system for dangerous products), ANIMO (in the veterinary area) and various systems facilitating cooperation in the field of customs and taxation.

More generally, the Commission and Member States should fully seize the advantages of the new electronic technologies to facilitate cooperation between authorities and between authorities and the public. In this context, further work to facilitate e-government and e-signature solutions is crucial to ensure a better functioning Single Market.

Cooperation networks between administrative authorities should be developed and expanded – by creating the right means and incentives, imposing legal obligations where necessary and support networks through advice and assistance.

This includes:

– Mapping the various network-building exercises, to ensure that networks are interoperable (where feasible), that best practices developed in one area are followed elsewhere and that unnecessary duplication is avoided;

– Provide for administrative cooperation in secondary legislation. When revising legislative frameworks, the Commission should think about including obligations for authorities to cooperate and exchange information, and make available the necessary facilities helping the authorities to do so;

– Creating incentives for Member States to invest in networks for administrative cooperation. For instance, by building networks which work not only in a cross-border context but also facilitate domestic (information) exchanges. The possibility to co-fund the management of network systems should also be considered (limited funding is already provided under the IDABC programme);

– Promote personal contacts between the members of the network (through meetings and workshops, or through exchanges of national officials – as is foreseen for example in the Regulation on Consumer Protection Cooperation).

> For instance, SOLVIT workshops have proven to be an excellent instrument to promote a 'team-spirit' amongst SOLVIT centre staff leading to greater efficiency in problem-solving.

– To enhance co-operation in broader regions, recommend the use of the European Grouping of Territorial Co-operation (EGTC)[37]. Concerning particular challenges faced by EU border regions, a new governance tool, the EGTC, may offer key opportunities to help make the single market more responsive and accessible to the citizen in border regions.

---

[36] Regulation (EC) No 2006/2004.

[37] Regulation (EC) No 1082/2006 (OJ L 210, 31.7.2006, p. 19).

Such a grouping could bring together in a single legal body the different partners competent for a given aspect of the single market (consumer protection, health care, cross-border labour market etc.).

5.4 The role of regulators

Strong, independent and adequately resourced regulators are very important for ensuring the opening up the Single Market and fair competition, particularly in network industries (energy sector, financial services, telecommunications). There is, however, **no one-size-fits-all model** for regulatory structures. Different industries require different set-ups, which may change over time. Having said this, regulatory models face, today, similar challenges:

First, as markets open and sectors become more international, **national regulators need to cooperate** to achieve the goals of the Single Market. Ideally, they should be able to take collective decisions. In response, we need to foster stronger networks and co-operation between regulators, on an EU-wide or regional basis. Again, steps towards achieving more co-operation may differ from sector to sector:

In the financial sector, the Lamfalussy method calls upon national supervisors (gathered in so-called 'level 3' committees) to contribute to consistent and convergent implementation of EU directives by cooperating with each other and converging supervisory practices. In the Communication on the Review of the Lamfalussy process (to be adopted soon) the Commission identifies some areas where there is scope for achieving greater convergence of regulatory and supervisory solutions across Member States and puts forward practical improvements to functioning of the Level 3 (e.g. reinforcing the legal base of the Level 3 committees; enhancing their political accountability; streamlining their decision-making processes).

In the electronic communications sector, the Commission established the European Regulators Group (ERG) to advice and assist the Commission in consolidating the internal market for electronic communications networks and services. Composed of the heads of the relevant authorities, it provides a mechanism for encouraging cooperation and coordination between national regulatory authorities and the Commission to promote the development of the internal market, and to seek to achieve consistent application, in all Member States, of the EU regulatory framework.

In the electricity and gas sectors, current EU rules already require Member States to have a regulator and, since the 2nd energy markets package in 2003, a European Group of Regulators for Electricity and Gas (ERGEG) has worked towards the development of the internal market. Nevertheless experience showed that its powers needed to be formalised in order to take decisions when national regulators cannot agree. As a result, in its recent 3rd energy markets package[38], the Commission proposed creating a new Agency for the Cooperation of Energy regulators. This will not replace national regulators, but monitor and enhance cooperation between them, as well as having the power to act when pipelines and electricity lines are transboundary.

Second, regulators should also **be operationally independent**, i.e. they should be able to perform their core tasks without being improperly influenced or overruled by those that are being supervised, by third parties, or by governments and parliaments. Regulators should be able to maintain an arm's-length relationship vis-à-vis 'the outside' – but this should be balanced by proper accountability arrangements and transparency of the regulatory and supervisory process, consistent with confidentiality requirements. In fact, operational independence and accountability are mutually reinforcing: regulators that are 'accountable' can more effectively operate in an 'independent' manner. To date, ensuring a stronger independence of regulators is a common concern affecting various sectors; however, possible solutions proposed may, again, differ from one to another.

---

38 COM(2007) 530.

The Commission noted in its 12th report on European electronic communications regulation and markets[39] that there are concerns about the lack of independence of regulators in some countries, due to political influence over day-to-day regulatory decisions.

Likewise, in the financial sector, regulatory authorities do not yet enjoy full operational independence. Following the review of the Lamfalussy process, the Commission intends to raise Member States' awareness of the undesirable situation and urge them to adopt basic principles to ensure the operational independence of their national supervisors. It also intends to actively monitor progress made towards operational independence. Finally, if significant progress is not achieved in the short term, regulatory action may offer a solution.

The new Energy package proposals oblige Member States to ensure that regulatory authorities are 'distinct and functionally independent of any other public or private entity', that 'its staff and any member of its decision-making body act independently of any market interest and neither seek nor take instruction from any government or other public or private entity.' To this end, Member States are asked to ensure that their regulatory authorities have legal personality, budgetary autonomy, appropriate human and financial resources and independent management.

Finally, regulators should also be **sufficiently powerful** to ensure that citizens and businesses can reap the benefits of market opening.

In the 3rd energy markets package for instance, the Commission has proposed giving stronger and better defined powers to regulators. This will allow them to issue binding decisions to companies and even to impose penalties to companies that do not comply with their legal obligations or the regulator's decisions. The proposals will also allow regulators to ensure market access for new entrants by forcing incumbents to release part of their portfolios to competitors.

5.5 Strengthening national enforcement and problem-solving tools

5.5.1 Monitoring better what works and what does not

The public consultation and hearing on future Single Market policy gave a clear message: citizens and firms want easier and quicker solutions when access to their Single Market rights is denied. There is still much work to be done here.

Many stakeholders consider that EU infringement procedures are too slow and inefficient. The recent Communication on applying Community law[40] sets out how the Commission intends to better manage the infringement process. In practice, however, infringement proceedings are capable of addressing only the tip of the iceberg. More can be gained from preventing problems from arising – or when they do arise, solving them at the national level. But stakeholders express scepticism as regards the capacity of national courts to secure a proper application of Single Market rules.

This is corroborated, to some extent, by studies in the area of public procurement, which also revealed that much remains to be done to provide for effective redress at the national level[41]. In addition, a DG COMP led study indicates that there is a great diversity in national approaches when it comes to

---

39 Include reference.

40 Supra.

41 In preparation of the proposed review of the Remedies Directives in the field of public procurement, the Commission has launched some consultation and commissioned some studies to learn more about current enforcement practices. An overview of lessons learned can be found in the impact assessment that accompanies the Commission's proposal for a new Directive in the area of public procurement: http://ec.europa.eu/internal_market/publicprocurement/docs/remedies/sec_2006_557_en.pdf

ensuring that private parties can claim damages for breaches of competition law, and that, as a general matter, the possibility to start actions for damages remains underdeveloped[42].

The public consultation shows that much hope is vested in informal problem-solving mechanisms such as SOLVIT. But here as well, a lot can be improved. Recent Eurobarometer surveys indicate that businesses and citizens are insufficiently aware of their rights and of where to seek redress (for instance, according to a recent Eurobarometer study, less then 2% of European citizens knew about SOLVIT).

A better understanding of the role of national courts and of problem-solving mechanisms in the field of Single Market law needs to be developed. To help mapping the situation, Commission services launched a questionnaire within the Internal Market Advisory Committee ('IMAC')[43] inquiring about national enforcement and problem-solving practices.

First results indicate that

- Member States themselves have little knowledge about the results of their enforcement and problem-solving mechanisms – in particular, information about national court systems is scarce;
- Many recognise that training of judges is an issue requiring attention;
- To the extent out-of-court problem-solving tools exist they are usually of a European origin. National experience with these systems seems generally satisfactory, but also seems to confirm these systems are still under-used.

5.5.2 Strengthening out-of-court problem-solving mechanisms

Consultations clearly point to the need to further develop an accessible, user-friendly and effective problem-solving system. Important steps have been taken here already, such as the creation of SOLVIT.

SOLVIT is a network of Single Market experts available to help citizens and businesses facing problems due to incorrect application of EU rules by national authorities. Since its creation in July 2002, the network of national SOLVIT centres and the Commission SOLVIT team has resolved more than 1500 problems, sometimes leading to substantial amendments to national legislation. Around 80% of problems encountered are resolved, without having to involve the judiciary, most of them within the deadline of ten weeks (for instance, cross-border problems with recognition of professional qualifications, residence rights, employment rights, social security, market access for products and services). As more people are made aware of the service SOLVIT can offer, more cases are submitted every day. Having said this, SOLVIT is still too little known, and SOLVIT centres are under-staffed in many Member States[44].

SOLVIT largely addresses problems between citizens and authorities, and is usefully complemented by ECC-Net (European Consumer Centres Network) and Fin-net (Consumers Complaints Network for Financial Services), which handle complaints lodged by consumers

---

42 http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/index_en.html

43 IMAC is a consultative committee composed of representatives of the EU Member States and EEA members, in charge of assisting the Commission in the development of Single Market policy.

44 See further http://ec.europa.eu/solvit.

against businesses[45]. The number of problems handled through these systems remains very low– not the least because citizens fail to find their way to them.

It is proposed to:

- Map the existing problem-solving networks, to improve synergies and cooperation, fill in gaps and avoid potential overlaps – to provide a better service to the public;
- Seek to widen the scope of problem-solving systems (e.g., SOLVIT currently does not apply in a purely domestic situation);
- Ensure that these networks have appropriate resources and means to offer redress to everyone and get themselves known: co-funding should be considered here;
- Make these systems better known (e.g., via a better signposting of these networks on websites and other publications, via press releases, etc.).

5.5.3 Strengthening the national court system

National courts should play an important role in making the Single Market a reality for citizens. They can grant injunctive relief and provide damages in case of breaches of Single Market rules. National courts have, in addition, helped the EU legal order take decisive turns (e.g., the *Van Gend & Loos* case). However, consultation results indicate that national judges are not sufficiently aware of Single Market rights and/or disinclined to enforce them.

It is proposed to:

- improve communication on (successful) national court cases;
- foster more regular contacts between national courts and EU institutions and provide training;
- ensure that national procedural systems provide effective remedies in case of breach of Single Market rules.

This could be achieved by

– Building stronger contacts between national judges, the Court of Justice and the Commission, in which problems of enforcement and, possibly, of interpretation, are discussed.

> The Court of Justice invites national judges on a two-yearly basis, selecting however each time a number of Member States to send judges. In addition, it organises seminars for national judges at the request of national governments. These measures are however not sufficient in themselves to create a real 'judicial network'.

– Communicate better on the results of national judgments applying Single Market rules. For instance, in the area of competition law, Regulation 1/2003 requires the Member States to

[45] FIN-NET offers a specific problem-solving system in the financial services area.

forward to the Commission a copy of any written judgment issued by a national court deciding on the application of Articles 81 and 82. Likewise, the European Court of Justice holds a registry of national court cases applying EU rules sent to them by the Member States, and publishes bulletins on main developments in the application of EU law by national courts (not specifically Single Market–related). The Commission could include a section on important national cases applying Single Market rules in annual reports on enforcement policy in the area of Single Market law (which it is suggested starting, *supra*).

– Provide more training for national judges (for instance, in 2006, the Commission financed 15 training projects in the area of EU competition law).

– Making the most of the Member States' obligation to grant effective redress, where necessary even through injunctive relief (cf., the *Francovich / Factortame* line of cases). Member States could be invited to explain how they put these principles into practice – for instance, by describing in which cases of non-compliance with Single Market rules can injunctive relief be sought, and how.

– Create obligations in secondary legislation: In some sectors, EU legislation specifically requires Member States to grant effective redress or to make available particular forms of redress.

> For instance, in procurement law, once a contract is signed, it can normally no longer be called into question. To overcome this, the proposed revision of the 'Remedies Directive' provides that Member States should ensure that contracts awarded without a prior call for tender (in case there is an obligation to do so) can be set aside[46]. The Directive on Unfair Commercial Practices also creates obligations for Member States to grant specific forms of redress to citizens (e.g., by enabling consumers or consumer organisations to ask for an injunction against a certain practice, without prior proof of loss or damage)[47].

– In specific sectors, imposing an obligation on member States to provide for criminal sanctions in case of non-compliance with EU rules may also be considered.

5.6 Reaching out better to SMEs and citizens

For the Single Market to function well, citizens must understand, know and be able to make effective use of their rights. To this end, it is proposed to:

- Create one-stop-shops for citizens and entrepreneurs at the national level – giving them an easy access to information and enabling them to easily complete formalities when operating abroad;

- Communicate better – amongst others through the Commission representations. In this context, these representations should build up capacity (e.g., via temporary secondments of Commission officials).

---

[46] Commission proposal for a Directive amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts - COM(2006) 195.

[47] Articles 11 to 13 of Directive 2005/29/EC.

5.6.1 Creating one-stop-shops for entrepreneurs

Entrepreneurs – in particular SME's – are often reluctant to operate cross-border because they lack information on requirements applying abroad or need to comply with a multitude of administrative requirements. This problem may be overcome through the creation of 'one stop shops' – clearly identifiable points of contact where entrepreneurs can obtain all information relevant to their operation and complete the necessary procedures and formalities:

> For instance, Article 6 of the Services Directive requires Member States to ensure that service providers wishing to establish in a Member State or to provide cross-border services can complete all procedures and formalities relating to the access and the exercise of their activity through 'Points of Single Contact'. Member States are free to organise these contact points as they wish and may have more than one contact point per territory as long as the given contacts points constitute effective 'one-stop shops' for the entrepreneur, who must be able to gather all relevant information and complete all formalities through a single contact point. Further, recipients of services must be able to get all relevant information on requirements, redress and assistance. Besides other practical issues linked to its implementation, the setting-up of Points of Single Contact is currently discussed with Member States in the context of the expert group on the implementation of the Services Directive.
>
> In order to facilitate the free movement of goods in non-harmonised areas, the Commission has proposed the creation of Product Contact points that must provide information on applicable requirements and on competent authorities[48].
>
> In the VAT area, DG TAXUD is developing an electronic procedure enabling firms trading in more than one Member State to fulfil all their VAT obligations in a single place of compliance (i.e., the Member State of establishment or of first VAT identification).
>
> Access to assistance for SMEs will be greatly improved through the creation of a new network for 'business and innovation', which will cover the entire territory of the EU and provide information and service to businesses, notably SMEs. It will integrate the current Euro Info Centre and Innovation Relay centre networks.
>
> Finally, to note that EURES (a system managed at the EU level) provides access to information on national labour markets and workers' rights, and provides access to job vacancies throughout the EU – amongst others via a network of qualified advisors.

The idea is not to foster a proliferation of new Single Market bodies at the national level – when promoting one-stop shops, the Commission should also promote the gathering of many national 'Single Market' functions into one body (cf., *infra*)

5.6.2 Making better use of Commission representations

The potential of the Commission's representations in the Member States, in terms of communication and information, is under-used. Representations could have a bigger role in steering and coordinating national information campaigns (as for instance the representation in Poland now aims to do).

Closer contacts between Commission officials in Brussels and the representations should be fostered – for instance by sending officials to the representation to help promote certain events as 'Single Market ambassadors.'

---

[48] Cf., Draft Directive on free movement of goods in the EU (in the non-harmonise area) laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC.

5.7 The way forward: transversal initiatives to improve partnerships for a better functioning Single Market

The specific measures discussed above should be combined with a number of more transversal, cross-sectoral actions, designed to further improve the functioning of the Single Market.

In particular it is proposed to:

- Engage in more systematic debates and exchanges of best practice with Member States on how to ensure that the Single Market works well on the ground, with the aim of defining a common understanding of and commitment to minimum requirements;
- Encourage further coordination of tasks at the national level, including through the setting up of 'Single Market Centres', in charge of coordinating and managing tasks to make the Single Market work - and benefiting from sufficient political support and visibility;
- Streamline and improve the quality of current information, assistance and problem-solving tools coordinated at EU level, and create a single point of entry;
- Consider strengthening financial & administrative resources devoted to the application and enforcement of Single Market rules, thus reinforcing capacity.

5.7.1 Towards a common understanding of what it takes to make 'partnerships' work

There is a wide agreement that more 'partnership' and 'ownership' is required to make the Single Market work – and a clear need to do more in this area (*supra*, section 5.1). In response, the Commission has taken several initiatives (e.g., it has developed tools for administrative cooperation). Member States, for their part, have also taken a number of interesting steps to make the Single Market work better.

> E.g., the Swedish Board of Trade has started an ambitious training / education programme; the Dutch authorities have created the 'pianoO' network for promoting information and best practices in the field of public procurement.

In general however, Member States still do not sufficiently see the Single Market as a 'joint venture' in which they have a shared stake. This problem is exacerbated by the fact that responsibilities for Single Market issues are dispersed over various national and regional ministries, and by the lack of a real 'network' at the EU level (in contrast, for instance, to the European Competition Network – a network composed of the Member States' competition authorities and the Commission).

To bundle current, fragmented efforts together into a genuine 'partnership' approach, it is proposed to engage in a more structured dialogue with Member States on what it requires to make the Single Market work – to learn from experience, identify 'best practices', and develop stronger synergies (e.g., tools to enhance administrative co-operation in one sector may also yield positive results when applied to other sectors). Issues to be covered by this dialogue would include transposition, implementation, information, enforcement and problem-solving, and administrative capacity and cooperation.

The dialogue could lead to a 'Deed of partnership' setting out minimum requirements. A useful precedent, in this respect, is the 2004 Recommendation on transposition (*cf. supra*).

The **advantages** of engaging in a dialogue on shared partnerships include the following:

- It would clarify the respective roles of the Commission and Member States, and their shared responsibilities, for making the Single Market work;

- It would help achieve better co-ordination and synergies between the various initiatives developed within the Commission and help identify 'best practice' – on the basis of practical feedback from Member State officials;

- It would give more transparency and political visibility to good initiatives developed by Member States and enable national officials to team up;

- Last but not least, it would respond to repeated calls of Member States for more clarity, more exchanges of best practice and more assistance - to help them better implement and enforce Single Market rules.

To make it a success, any agreement should not only identify what Member States are required to do, it should also reflect a firm and concrete commitment from the Commission to guide and assist Member States.

In sum, it is proposed to engage in discussions with Member States with a view to:

- Clarifying the respective roles of the Commission and the Member States in making the Single Market work;

- Identifying best practice examples and, on that basis;

- Setting minimum requirements of good performance (allowing to accommodate for national / sectoral differences);

- If possible and appropriate, establishing benchmarks for monitoring performance.

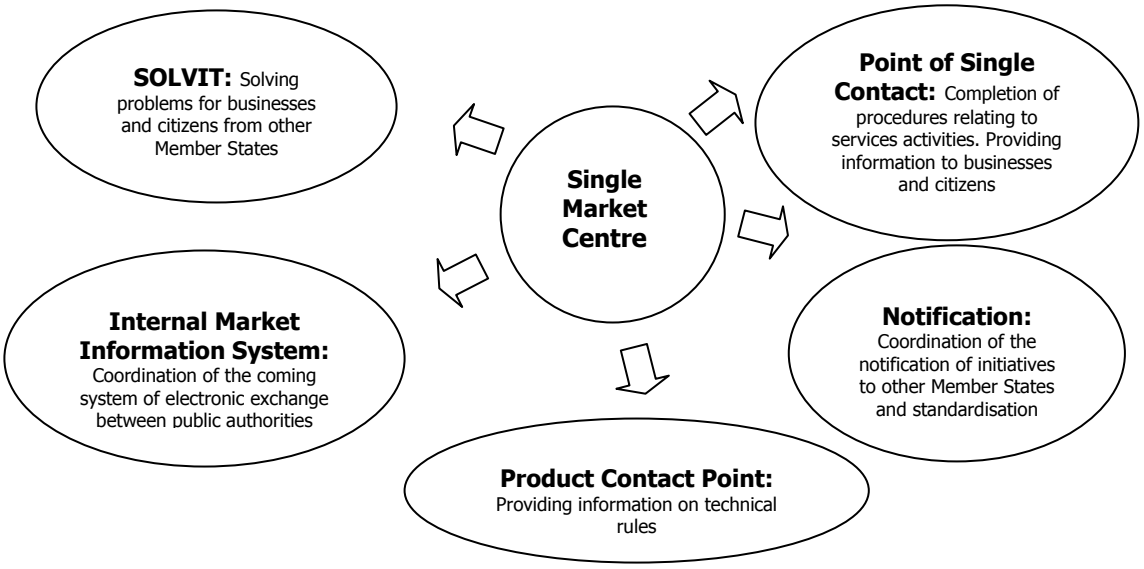
The Internal Market Advisory Committee ('IMAC')[49] could be used as a forum for such discussions.

5.7.2 Promoting the set-up or development of 'Single Market centres'

The dialogue with Member States could be an important forum for discussion of the merits of creating or further developing national 'centres' in charge of the Single Market.

> For instance, Denmark has created a Single Market Centre, in which it has centralised various functions and responsibilities, such as SOLVIT, but also the management of various 'points of contact' required under the Services Directive and the proposed goods package.

[49] A consultative committee of national representatives set up to assist the Commission in its development of Single Market policy.



In Sweden, a similar development is taking place (through a restructuring of the National Board of Trade).

Feedback from consultations indicates a marked need to improve coordination within Member States on Single Market issues – and to raise the political profile of those national authorities in charge. Engaging in a more systematic dialogue with Member States may help improve coordination at the national level, including through the **creation of 'Single Market centres' in Member States** – which would merge new and old functions of Member States in connection with the Single Market.

To foster such 'bundling of efforts', the Commission should consider suggesting to Member States to use existing bodies when developing new functions (e.g., when imposing an obligation to create Product Contact Points, the Commission refers explicitly to the possibility to grant such competencies to existing SOLVIT–centres)[50].

Further, a wider use of package meetings may also help fostering an internal coordination between various authorities responsible for the Single Market.

5.7.3 Creating a single gateway to current information, assistance and problem-solving systems offered by the EU

In recent years, the Commission has launched a large number of services to enable citizens and businesses to make better use of the possibilities of the Single Market. These services are typically managed at the European level, but often work on a decentralised basis, in cooperation with national authorities (including Europe direct, Your Europe, Citizens Signpost Service, Eures, Eurojus, SOLVIT, European Consumer Centres, Euro info Centres). Citizens and business do not sufficiently know these systems, and find it difficult to decide

[50] Recital 20 of the Proposal for a Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC reads that: Member States should be able to entrust the role of Product Contact Point, not only to existing services within the public administration, but also to chambers of commerce, professional organisations or private bodies, in order not to increase the administrative costs for enterprises and competent authorities alike.

which of the many available services is best suited to address their requests for information, advice or assistance. As a result, they may be sent from one door to the next which can lead to frustration about the services on offer. Furthermore, the services can operate more efficiently if they get to handle less queries that are not within their remit.

It is proposed to reinforce cooperation between the various information, assistance and problem-solving systems made available at the EU level and to achieve a more streamlined, user friendly presentation of what is on offer. Citizens and businesses should get a virtual one-stop-shop access point for all their questions and queries relating to the Single Market.

A Commission staff working paper will be adopted before the end of 2007 to outline the concrete actions intended to bring about a more integrated approach to providing single market assistance services to the public.

5.7.4 Administrative capacity

To achieve partnerships that work, there is a need to build up administrative capacity – at EU and national level. This means more training, better communication, more networking (inter alia, through promoting exchanges and personal contacts), more 'education' of citizens on their rights under the Single Market and better IT infrastructures.

This requires an investment at national level, but also at the EU level, and in both financial and human resources. It is therefore proposed to review the current financial and administrative resources available and to consider whether they suffice to support a modern Single Market policy - that focuses less on making legislation and more on making rules work on the ground.