

**A NEW STRATEGY FOR THE SINGLE MARKET**

*AT THE SERVICE OF  
EUROPE'S ECONOMY AND SOCIETY*

**Report to the  
President of the European Commission**

**José Manuel Barroso**

**by**

**Mario Monti**

**9 May 2010**

"Tous ceux qui ont essayé de régler les problèmes économiques que posait le traité de Rome en oubliant le côté politique de la chose sont allés à un échec et aussi longtemps qu'on examinera [ces] problèmes uniquement sur le plan économique et sans penser à la politique, je le crains, nous irons à des échecs répétés."

"All those who, in trying to meet the economic challenges set out by the treaty of Rome, neglected the political dimension have failed. As long as [those] challenges will be addressed exclusively in an economic perspective, disregarding their political angle, we will run – I am afraid – into repeated failures."

Paul-Henri Spaak  
*Discours à la Chambre des Représentants*  
14 June 1961

"Europe stands at the crossroads. We either go ahead – with resolution and determination – or we drop back into mediocrity. We can now either resolve to complete the integration of the economies of Europe; or, through a lack of political will to face the immense problems involved, we can simply allow Europe to develop into no more than a free trade area."

European Commission  
*"Completing the internal market"*  
*White Paper for the European Council*  
(Milan, 28-29 June 1985)

"What we need are strengths which we can only find together. [...] We must have the full benefit of a single large market"

Margaret Thatcher  
1986

## Mission letter from the President of the European Commission

*José Manuel Barroso*  
*President of the European Commission*

Bruxelles, 20 October 2009

Pres(2009)D/2250

Dear Professor,

*The Single Market has been, and remains, the cornerstone of Europe's integration and sustainable growth. But this major European project requires renewed political determination so that it can fulfill all its potential. As I have indicated in my political guidelines, the Commission intends to lead this process, fully engaging the Member States, the European Parliament and all stakeholders.*

*As we approach the twentieth anniversary of the symbolic date of 1992 which laid the ground for today's Single Market, the EU is confronted with three urgent challenges:*

- The recent crisis has shown that there remains a strong temptation, particularly when times are hard, to roll back the Single Market and seek refuge in forms of economic nationalism. The Commission has been, and will continue to be, a determined defender of the Single Market through the full use of its enforcement powers, particularly in the areas of the Internal Market and Competition policy, including State-aid control. But there is a need for a new awareness, in the public opinion as well as in political circles, of the dramatic consequences that would derive from undermining the Single Market. That would erode the basis for economic integration and growth and employment throughout the EU, at a time when the emergence of new global powers and of severe environmental challenges make a cohesive EU more necessary than ever, in the interest of European citizens as well as of an effective global governance.*

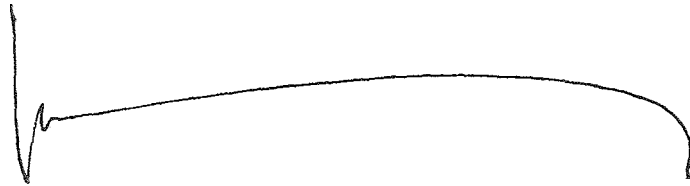
*The full potential of the Single Market has not yet been delivered. In many areas the Single Market is far from being completely in place. In addition, there are missing links which prevent a still fragmented market from acting as a powerful engine for growth and delivering the full benefits to consumers. The Commission intends to take a more systematic and integrated approach, with a view to both achieving a fully-fledged Single Market and monitoring it effectively.*

*Professor Mario MONTI*  
*Presidente*  
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- *The crisis has induced some critical reconsideration of the functioning of markets. It has also enhanced concerns about the social dimension. The Treaty of Lisbon, soon to enter into force, make it explicit for the first time - though the principle was already clearly set out in the preamble of the Treaty of Rome - that "the Union [...] shall work [...] for a highly competitive social market economy". All this calls for a fresh look at how the market and the social dimensions of an integrated European economy can be mutually strengthened.*

*In view of obtaining helpful and valuable inputs for an initiative to relaunch the Single Market as a key strategic objective of the new Commission, I would like to entrust you with the mission of preparing a report containing options and recommendations. Should you accept this mission, you will conduct it under your sole responsibility and you will report directly to me on progress and conclusions. You will be able to rely on the Commission's expertise and support. You may hold consultations, as appropriate, with the European Parliament, with the relevant Commissioners, with the competent authorities of Member States and with other stakeholders.*

*Yours sincerely,*

A handwritten signature in black ink, consisting of a vertical line on the left that curves into a long, sweeping horizontal line that ends in a small hook on the right.

*José Manuel BARROSO*

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## EXECUTIVE SUMMARY

### **A new Strategy for the single market**

In his "Political guidelines for the new Commission" President Barroso identified the single market as a key strategic objective for Europe, to be pursued with renewed political determination. Based on the mandate received from President Barroso, this report examines the challenges that an initiative to relaunch the single market faces today and outlines a comprehensive strategy to make such a relaunch politically successful and economically and socially viable.

The report highlights that today the single market is at a critical juncture, as it faces three challenges (chapter 1). The first challenge comes from the erosion of the political and social support for market integration in Europe. The single market is seen by many Europeans – citizens as well as political leaders – with suspicion, fear and sometimes open hostility. Two mutually reinforcing trends are at work: an "integration fatigue", eroding the appetite for more Europe and for a *single* market; and more recently, a "market fatigue", with a reduced confidence in the role of the *market*. The single market today is less popular than ever, while Europe needs it more than ever.

The second challenge comes from uneven policy attention given to the development of the various components of an effective and sustainable single market. Some of the difficulties encountered by the single market in recent years can be traced back not only to the incomplete "welding together" of the national markets into one European market, but also to the unfinished business on two other fronts: the expansion to new sectors to accompany a fast changing economy and the effort to ensure that the single market is a space of freedom and opportunity that works for all, citizens, consumers and SMEs.

A third challenge comes from a sense of complacency that gained strength in the past decade, as if the single market had been really completed and could thus be put to rest as a political priority. The single market was felt to be "yesterday's business", in need of regular maintenance but not of active promotion. The shift of attention away from the single market was further strengthened by the need to concentrate the EU's political energy on other challenging building blocks of the European construction: monetary union, enlargement and institutional reforms. With the entry into force of the Lisbon Treaty in January 2010, all the three major priorities have been achieved, and there is no reason to deflect attention away from the single market. On the contrary, the correct functioning of the monetary union and of enlargement call the single market back on stage.

There is now a window of opportunity to bring back the political focus on the single market. Exploiting such a window of opportunity requires awareness that both the objective and subjective conditions for a political initiative on the single market are much more complex than at the time of Jacques Delors' initiative of 1985.

The single market itself is today part of a context, which has dramatically changed. In turn, the actors to be involved in the initiative – Europe's policy makers and stakeholders – are more diverse and present a wider range of preferences and interests.

Based on a very extensive consultation process, the report draws a map of the expectations and concerns surrounding the single market. It identifies different concerns over time (before the economic crisis, during the crisis, following the crisis and in the long term), by areas of concern (consumers', citizens', social, environmental and business concerns) and by Member States. In this respect, the report describes the different approaches to the single market that can be identified in four clusters of Member States: continental social-market economy countries, Anglo-Saxon countries, Central and Eastern European countries, Nordic countries.

Reconciling these widespread and diverse positions around an agenda for the relaunch of the single market is both necessary and possible. It is necessary because achieving a deep and efficient single market is a key factor determining the EU's overall macroeconomic performance. It is particularly crucial for the solidity of the euro and for monetary union to deliver the promised economic benefits. It is possible, provided a substantial and proactive political investment is made, based on a carefully defined new strategy.

The report thus proposes a new strategy to safeguard the single market from the risk of economic nationalism, to extend it into new areas key for Europe's growth and to build an adequate degree of consensus around it.

Such a new strategy has to be comprehensive. Many policies traditionally not regarded as policies for the single market have to be integrated into a single market strategic objective. The comprehensive approach consists of three broad sets of initiatives:

1. Initiatives to build a *stronger* single market;
2. Initiatives to build *consensus* on a stronger single market;
3. Initiatives to *deliver* a stronger single market.

If consensus is not generated, it is unlikely that the initiatives to build a stronger single market could ever be adopted and implemented. Even if they were, their sustainability over time and their ability to withstand "bad weather" in economic or political conditions affecting the EU would be in doubt.

In turn, a stronger single market – which openly seeks the consensus necessary for its construction and rules out the option of acquiescing to discontent by softening enforcement – does need strengthened delivery, enforcement and governance.

Several initiatives to build a stronger single market are presented in chapter 2. These initiatives aim at removing the remaining bottlenecks and plugging the gaps and missing links that hamper innovation and dampen growth potential in the single market. They are grouped in clusters of recommendations concerning:

- ensuring better functioning of the single market in the perspective of citizens, consumers and SMEs;
- creating a digital single market;
- exploiting the potential of the single market to support green growth and Europe's transition to a low-carbon, resource efficient economy;
- reaping the full benefits of the single market for goods;
- fully exploiting the potential of the single market for services;
- ensuring geographical labour mobility in the single market.
- establishing the "physical" infrastructure for the single market;

Pointing to new initiatives is key to generate new momentum, but may be not sufficient to create the political climate for sustainable action. Chapter 3 presents the initiatives to address the concerns identified through the consultation and thus build consensus on a stronger single market. They are cast in the context of the reference in the Lisbon Treaty to "a highly competitive social market economy". These initiatives deal in particular with the following problems:

- the conciliation between economic freedoms in the single market and workers' rights, following the Viking, Laval and other rulings of the European Court of Justice;
- the place of social services within the single market;



- the integration of EU's policy goals in public procurement policy;
- how to use tax coordination to safeguard national tax sovereignty as market integration proceeds;
- the balancing of competitiveness and cohesion within the single market through regional development policies;
- the potential for an active industrial policy based on sound competition and state aid policies;
- how to ensure that the single market remains open, but not disarmed, vis-à-vis competitors at a global level.

In chapter 4, several recommendations are formulated to step up the tools needed to deliver the relaunch of the single market. Two aspects are discussed:

- ensuring light but effective regulation in the single market;
- reinforcing enforcement, by establishing a coherent system in which infringement actions, informal problem solving mechanisms and private enforcement form a seamless web of remedies against breaches of EU law.

The new comprehensive strategy outlined above should be seen as a "package deal", in which Member States with the different cultural traditions, concerns and political preferences could each find elements of appeal important enough to justify some concessions, relative to their past positions.

In particular, Member States with a tradition as social market economies could be more prepared to a new commitment on fully embracing competition and the single market, including a plan with deadlines on putting in place the single market in areas where it is still lacking, if Member States in the Anglo-saxon tradition show readiness to address some social concerns through targeted measures, including forms of tax coordination and cooperation, while there is no need to pursue tax harmonisation as such.

The new Member States, who definitely support a serious programme to strengthen the single market, including in the areas of infrastructure and cohesion, might in turn become more open on forms of tax coordination.

The report underlines that the economic, fiscal and social legacy of the crisis enhances the rationale for reinforcing the single market. Given the very limited

margins available for budgetary stimuli, making the single market more efficient is Europe's best endogenous source of growth and job creation.

Similarly, the need to cope with the growing priority assigned by public opinion to the issue of inequalities, in a context of fiscal crisis for many countries, may lead to more favour for a greater coordination of policies within the framework of the single market. Finally, the tensions occurred recently in the Euro-area demonstrate the need to make full use of the single market as a vector to enhance total factor productivity and competitiveness in Euro-area economies

For the new strategy to succeed it is also necessary to reconsider the place of the single market in the overall context of the EU policy making (chapter 5). In line with that, it also seems necessary to bring more unitary vision and greater consistency to the numerous and diverse policy areas that are relevant to promote and deliver a stronger single market. This may require some innovation in the way in which the Commission, the Parliament and the Council deal with those policies. Some recommendations are made to that effect.

## **CHAPTER 1**

### **A MARKET IN SEARCH OF A STRATEGY**

## 1.1. Turning "yesterday's business" into a key political priority

"Nobody can fall in love with the single market", used to say Jacques Delors. That the single market is not loved, is normal and even reassuring. A market is an instrument, not an end in itself. When the market is regarded as a superior entity, as if it were always able to deliver efficiently and did not need appropriate regulation and rigorous supervision, dangers are likely to lie ahead, as shown by the financial crisis. It was forgotten by many that the market "is a good servant but a bad master".

Yet the single market is a crucial servant for the European Union. First, it is a necessary – though not sufficient - condition for a good performance of the European *economy*, just as well-functioning domestic markets are for national economies. Secondly, and even more importantly, a robust single market is key to the overall health of the European *Union*, because it represents the very foundation of the integration project.

But today the single market not only is not loved. It is seen by many Europeans – citizens as well as political leaders – with suspicion, fear and sometimes open hostility.

Two trends have been visible for a number of years: an "integration fatigue", eroding the appetite for a *single* market; and, more recently, a "market fatigue", with a reduced confidence in the role of the *market*. Reinforcing each other, these trends have been undermining the acceptance, in each of its two components, of the single market.

As this drift in public opinion was taking place, European and national policy-makers focused on other important priorities, such as institutional reform and the Lisbon strategy. "The internal market programme – warned Wim Kok in 2005 – is felt to be yesterday's business and does not receive the priority it should. This is a fatal policy error".

When the financial and then economic crisis erupted, the Barroso I Commission was able, withstanding considerable pressures, to ensure enforcement of the rules and to prevent fragmentation of the single market, while allowing a degree of flexibility in coping with emergency situations.

This proved once again, under unprecedented strains, the merits of an enforcement system which is solidly rooted in the community method and entrusted to the Commission as the guardian of the Treaties, under the control of the European Court of Justice. The enforcement system of the Stability and Growth Pact, more intergovernmental by nature, has not proven equally

effective, not only during the crisis – when some leeway may well have had acceptable macroeconomic justifications – but even before, in the "good" years.

After having made use of the Commission's single market enforcement powers to counter the risks of disintegration brought about by the crisis, President Barroso decided to go one step further. In his "Political guidelines for the new Commission" of September 2009, he identified the single market as a key strategic objective to be pursued with renewed political determination. He also stated his intention that the Commission should lead this process, fully engaging the Member States, the European Parliament and all stakeholders.

In view of obtaining inputs for such initiative, in October 2009 he commissioned this report. The report aims at identifying whether, and how, the single market may be turned from a perception of being "yesterday's business" into a key political priority, to meet the growing challenges of European integration.

## **1.2. The single market as a strategic objective: 1985 and 2010**

Exactly 25 years ago Jacques Delors, then President of the Commission, launched with Lord Cockfield, Vice President and Commissioner for the internal market, the single market project with the White Paper on "Completing the Internal Market" for the European Council of June 1985, held in Milan.<sup>1</sup> The Commission asked "the European Council to pledge itself to completion of a fully unified internal market by 1992 and to approve the necessary programme together with a realistic and binding timetable". The European Council did so.

A major effort was then undertaken by European institutions, Member States, economic agents and, by the end of 1992, much of what had been planned was actually adopted and to a large extent, though by no means completely, implemented. Getting ready for the advent of the single market proved a key driver for investment, restructuring and legislative modernization. More deeply, there was a change in attitude. Policy makers and economic agents alike felt the pressure to think and act in a wider framework, as regards both *time* (in 1985 they started to make plans for "1992", as the project was called) and *space* (they wanted to get ready for Europe-wide competition). They reacted to this

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<sup>1</sup> This report uses the expression "single market", except when quoting documents, which refer to the "internal market". From a conceptual and communication point of view, "single" seems more appropriate than "internal". Firstly, citizens of any EU country are likely to understand the term "internal market" as referring to their own domestic market, rather than the EU-wide market. Secondly, when used with non-European interlocutors, the expression European "internal market" may convey a flavour of closure, of "fortress Europe", that in general is far from reality and that it is not in the EU's interest to nurture. Thirdly, "single" is a more committing description. In fact, the market for any particular good or service within the EU is "internal" by definition, but requires actions by policy makers and market participants, if it is to be really "single", rather than fragmented.

challenge with enthusiasm. This helped the European economy to recover from the "eurosclerosis" of the previous years.

After 1992, the single market has certainly not been left unattended. In addition to a great number of specific initiatives to consolidate the achievements of "1992", and to apply the principles of the single market to newly emerging activities in different industries, there have been two broader policy initiatives, the "Single Market Action Plan", launched in June 1997, and the "Financial Services Action Plan", launched in May 1999. There has also been a continuous commitment of competition policy, to ensure that the market in the EU be not only single, but also working under conditions of vigorous competition.

Yet, towards the end of the Nineties the focus on the single market was not as strong as before. Two requirements for an effective and sustainable single market did not receive the attention they deserved.

First, the 1985 White Paper itself had clearly indicated that "the objective of completing the internal market has three aspects: [...] the welding together of the [...] markets of the Member States into one *single* market; [...] ensuring that this single market is also an *expanding* market; [...] ensuring that the market is *flexible*." The White Paper admitted that it was directed primarily to the first of the three objectives, but that achieving the other two was equally crucial. Indeed, some of the difficulties encountered by the single market in recent years can be traced not only to the still incomplete "welding together" of the national markets, but also to the unfinished business on the other two fronts of the "completion" in the full sense. In spite of some progress achieved, for example, as regards Trans-European Networks and the Lisbon strategy, substantial efforts remain to be done on these accompanying policies, which in reality are integral parts of putting in place a satisfactory single market.

Secondly, excessive reliance by some Member States on the self-regulating abilities of financial markets resulted in delays and inadequacies in designing and putting in place the appropriate regulatory and supervisory frameworks to accompany effectively the process of financial liberalization and of creation of the single market for financial services. This contributed to the fragility of this important component of the single market.

While the consequences of neglecting the two requirements above would have become visible only a few years later, there was, at the turn of the century, a sense of complacency, as if the single market had really been "completed" and could thus be put to rest, as a political priority. In addition, there was undoubtedly the need to concentrate the EU's political energy on other

challenging building blocks of the European construction: monetary union, enlargement, institutional reform.

With the entry into force of the Lisbon Treaty in January 2010, all three building blocks are finally in place. There is no reason that they should continue to deflect an overwhelming proportion of political attention away from the single market. In fact, two of them – monetary union and enlargement – seem rather to be calling the single market back on the stage.

The weaknesses in monetary union, exposed by the Greek crisis, have their immediate manifestations in the reactions of financial markets to public finance disequilibria. However, if we look at the underlying causes of such disequilibria, one of them is certainly the inadequate competitiveness of the real economy. In turn this is largely due to the fact that corporatism and rent-seeking, both in the public and private sectors, still keep the domestic economy partly sheltered from the full play of the single market and competition, thus preventing the needed improvements in overall productivity. This situation, by no means exclusive of Greece, calls for more single market, i.e. a strengthening of the economic leg of Economic and Monetary Union, if monetary union and the euro are to be solid and deliver the expected economic benefits.

Enlargement, too, calls – and, at the same time, allows – for a renewed focus on the single market.

First, both the new Member States and the EU as a whole have benefited from enlargement, also in economic terms. But should there be a widespread tendency towards renationalization of policies and business strategies, as was seen during the crisis, the economies of new Member States would be the first ones to suffer.

Secondly, an effort must be made to regain full confidence in an enlarged single market by the public opinions of old Member States, which had been inadequately prepared to cope with this major change.

Thirdly, most new Member States have a political orientation, which appears to be more strongly in favour of the single market and competition than it now seems to be the case for some of the Member States that had been at the forefront of economic integration in the past decades. For a strategy to relaunch the single market, it is crucial to make the most of the support and impulsion that can be provided by the newer members of the EU.

In view of the above circumstances, it might now become more possible than in the last twenty years to focus the minds and will of European policy makers on the challenges confronting the single market. But this will require awareness that

both the objective and subjective conditions for a strategic initiative on the single market are more complex than at the time of Jacques Delors' initiative of 1985.

The object of the initiative – the single market – is today part of a context, which has dramatically changed. In turn, the subjects to be involved in the initiative – Europe's policy makers and stakeholders – are themselves a vastly more articulated set of agents. No initiative could reasonably be launched without previously consulting them in depth, against the background of the new context.

The changes in the context are individually well known, but it is sometimes neglected how profoundly their combined action has changed the way of operating of the single market and what citizens and business expect from it. It will be sufficient to list the key changes, all of which intervened in the 25 years since the White Paper.

Some changes took place well beyond Europe:

- Globalization and the emergence of new economic powers;
- The technological revolution, triggered in particular by Information and Communication Technology;
- The growing importance of services in the economy;
- The growing awareness of environmental and climate-change challenges.

Besides having to respond to these global changes, Europe's single market has had to cope with a number of deep transformations, which were specific to Europe:

- The collapse of the Soviet block, hence of a threat that had been a key driver of integration;
- Enlargement, from 10 to 27 Member States;
- Much greater economic diversity, also linked to enlargement;
- Introduction of a single currency, now shared by 16 Member States;
- Increase in migrations and in cultural diversity;
- Open rejection of further (or even existing) EU integration, through referenda in several Member States;
- Explicit clarification of the limits of acceptability, by one Member State, of further EU integration in the future (ruling of the German Federal Constitutional Court of July 2009);
- Lisbon Treaty: "The Union [...] shall work for [...] sustainable development [and] a highly competitive social market economy" (article 3, Treaty on the Functioning of the European Union).



Each of these changes, let alone their combined play, has important institutional, economic and political implications on the nature and the functioning of the single market. No systematic review of policies for the single market, in the light of all these changes, has yet been undertaken. This report, while having policy objectives rather than analytical ambitions, will try to take these transformational changes well into consideration. If this were not done, there would be the risk of coming up with recommendations that might be appropriate for the single market of the past, not for the challenges of the future.

### **1.3. Listening to Europeans**

Before launching the single market project with the 1985 White Paper, Jacques Delors had prepared the initiative through a "tour des capitales" of the then 10 Member States, plus Spain and Portugal who were soon to join. Today the European Union is not only larger and more diverse, with its 27 Member States, but also more complex in its articulation, with a much broader involvement of stakeholders and civil society.

In line with the new landscape, the drafting of this report was preceded by a very extensive process of formal and informal consultations. Therefore, the analysis and recommendations herewith submitted to the President of the European Commission, while engaging the sole responsibility of the author, reflect the outcome of what can be considered an exploratory mission that he conducted at the request of the President.

The exploration, carried out between November 2009 and April 2010, has dealt with the perceptions on the single market, its strengths and shortcomings, the measures that could improve and deepen the single market while addressing the concerns surrounding it, the policy strategies that might facilitate the adoption of such measures. It has involved extensively the various stakeholders of the single market and groups in civil society, as well as representatives of political institutions.

At the top of EU institutions, the author had the privilege to draw on the views of the Presidents of the European Parliament Jerzy Buzek and of the European Council, Herman Van Rompuy. In addition, he had of course the benefit of several discussions with the President of the European Commission, José Manuel Barroso. He also benefitted from exchanges of views with the President of the European Central Bank Jean-Claude Trichet, the President of the European Investment Bank Philippe Maystadt and the European Ombudsman Nikiforos Diamandouros.

At the European Parliament, the consultation has involved separately the following political groups: European People's Party, Progressive Alliance of Socialists and Democrats, Alliance of Liberals and Democrats, Greens/European Free Alliance, European Conservatives and Reformists, European United Left-Nordic Green Left. There have also been hearings and debates with the Internal Market and Consumer Protection Committee, the Economic and Monetary Affairs Committee on the occasion of its meeting with National Parliaments, and the Special Committee on the Financial, Economic and Social Crisis. The Internal Market and Consumer Protection Committee has prepared an own-initiative report, intended as the Parliament's contribution to the present report. This initiative has been much appreciated and has contributed significantly to the preparation of the present report. A specific joint consultation was also held with all the rapporteurs of the Parliament on the package on financial supervision currently undergoing the legislative process.

With the Council, the consultation has taken the form of exchanges of views first, at the initiative of the Swedish Presidency, with the Ambassadors at the Committee of Permanent Representatives (Coreper); then, at the initiative of the Spanish Presidency, with the Ministers at the Ecofin Council and at the Competitiveness Council. A dialogue has been opened with the current Spanish Presidency as well as, in view of future initiatives on the single market, with the Presidencies that will follow in the next two years.

As regards Member States, the dialogue has involved all of them in the context of the Council, as described above. In addition there have been bilateral consultations, at their request, with governments of most Member States, either in their respective capitals or in Brussels. The interlocutors have been typically the Ministers who participate in the Ecofin and the Competitiveness Council. In a few cases, there were meetings also with Heads of States and Governments.

The author also had the benefit of exchanges of views with Felipe Gonzalez, Chairman, and the other fellow members of the Reflection group on the future of Europe, on which he served at the request of the European Council<sup>2</sup>. He also consulted a small number of personalities who, although currently not holding official positions in EU institutions or Member States, contributed significantly to the advancement of the European construction and in particular of economic integration, such as Giuliano Amato, Georges Berthoin<sup>3</sup>, Leon Brittan, Etienne Davignon, Jacques Delors, Joschka Fischer, Valéry Giscard d'Estaing, Wim Kok, Karl Lamers, Pascal Lamy, Tommaso Padoa-Schioppa, Chris Patten, Romano Prodi, Peter Sutherland and Antonio Vitorino.

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<sup>2</sup> There is full coherence between the approach taken on the single market in the Gonzalez Report and the one developed more extensively in the present report.

<sup>3</sup> Georges Berthoin held, amongst others, the position of Head of cabinet of Jean Monnet.

Great attention has been devoted to the consultation of the wide variety of stakeholders of the single market and groups in civil society which take an interest in the single market and more broadly in European integration. This has been done at the level of their respective European bodies in Brussels and at the national level on the occasion of visits to Member States.

In this context, numerous exchanges of views have taken place in particular with consumers associations, business organizations, trade-union bodies. In an effort to understand the converging positions, as well as the remaining divergences between the social partners on some critical issues, a joint meeting has also been organized with Business Europe and the European Trade Union Confederation.

Numerous submissions have been received. Many of them deal with sectoral issues, sometimes highly specific. It is in the nature of the single market to be the playing field for a great multitude of industries and activities. Each has its own problems and warrants specific policy attention. It is important that the European institutions should listen to, and work on, all the relevant sectoral dimensions. This report, however, aims at capturing the broad picture of the single market today and to suggest a comprehensive strategy for its relaunch. To do so, it was necessary to focus on a relatively small number of key issues. While some stakeholders may not see their submissions explicitly followed up, each has contributed to shaping the positions presented in this report. Similarly, each stakeholder stands to benefit if the single market at large is fortified and developed.

Other stakeholders that have been consulted include environmental groups, providers of services of general interest, organizations of regions and municipalities, associations working in the social field, family organizations and networks of non-governmental organizations.

Particular attention has been devoted to drawing on the expertise of think-tanks working on European policy issues, both in Brussels and elsewhere in Europe, and of individual academics. This has been done through bilateral meetings and through participation in conferences and workshops, some of them especially organized to elicit views on the topic of this report.

Although it is unlikely that any institution or person consulted would fully identify with each component of the strategy recommended in this report, the author is confident that the exploratory mission carried out at the request of President Barroso may have paved the way for a rather wide basis of consensus on a number of key points. It is hoped that such platform might facilitate the Commission's task of launching a promising strategic initiative.

#### **1.4. Less popular than ever, more needed than ever**

An uncomfortable feature of the single market today emerges prominently from the consultations, although it is seldom brought out explicitly: the single market is less popular than ever, yet it is more needed than ever. Highlighting this contrast will perhaps be considered political incorrect. But only by addressing it openly will it be possible to work for a genuine and sustainable relaunch of the single market.

In the extremely diverse prism of positions, three different groups may be identified.

##### ***a. Radical critics***

Some interlocutors confine themselves to the expression of concerns: they see the single market as a source of tensions, dislocations and fears. They do not want a relaunch of the single market. They would rather see less economic integration and perhaps a lesser role for markets in general in our societies.

##### ***b. Conditional supporters***

A vast majority of Member States, political groups and stakeholders, on the contrary, do regard – to different degrees - the single market as an important ingredient for the economic advancement of Europe. At the same time, they do have concerns, for one or both of the following reasons. They themselves consider the single market to be insufficiently mindful of other objectives (for example, social or environmental) and would support a relaunch only if accompanied by some reorientation. Even when they do not share those concerns, they recognize that they are widespread across Europe. Therefore, they believe that a relaunch of the single market is likely to meet serious opposition unless it addresses such concerns.

##### ***c. Unwavering supporters***

Finally, both among the Member States and the stakeholders, there is a small core of strong and unwavering advocates of the single market. They of course fully support the idea of a relaunch. Their support is a precious ingredient for a political initiative. At the same time, their advocacy risks being less effective than they would like, because they do not seem to be fully aware of the concerns that, in many other countries or contexts, have reduced the acceptance of the single market

In constructing, and then promoting, a new strategy for the single market it will be necessary to engage with each of these three positions.

The case for the single market needs to be made afresh, in a context that is profoundly different from the one in which the project was launched 25 years ago. Globalization was not created by the European single market. But the single market, if it is strengthened to resist nationalism and adjourned to be more consistent with other concerns and policy objectives, is the best response to globalization. With Economic Union, the economic, social and environmental welfare of European citizens can be defended better than with economic disintegration and purely national measures. This does not exclude that the external dimension of the single market – to keep it open, but not disarmed – may warrant further consideration, as will be done in this report.

Making the case for the single market in an updated and non-dogmatic way might induce some of the "radical critics" to a partial reconsideration. It should also reinforce the conviction in the "conditional supporters". Member States, political groups and stakeholders in the latter category – which is the largest, though considerably heterogeneous – are likely to enhance their support for a relaunch of the single market if they see it address their concerns.

The key political consideration will then be how to address these concerns in an explicit and focused way in order to make a relaunch of the single market more widely accepted, while not softening or diluting it.

Strategically, the question will be how to gain the support of the "conditional supporters" and yet retain the support of the "unwavering supporters". This requires that the latter be, first, made fully aware of the threats confronting the single market today, let alone its relaunch; then, persuaded that the "concessions" included in a comprehensive strategy to allow a relaunch to go through, are not such as to undermine the efficiency of the single market in support of a competitive European economy.

### **1.5. Does the single market really need consensus?**

Before proceeding, a legitimate question may be raised: is it really necessary to have consensus, and if so to what extent, in order to have a strong single market and to further develop it? Is not the single market an area of clear Community competence, with the Commission entrusted with the function of enforcing the rules and the powers to do it?

A distinction must be made between the enforcement of existing rules and the adoption of new rules or, more broadly, policy initiatives to relaunch and develop the single market.

As regards enforcement, the Commission is indeed entrusted with a set of instruments that it has the right, and the duty, to use as guardian of the Treaties, under the sole control of the European Court of Justice and with no need for consensus by anybody else.

It is important, however, that enforcement policies, as well as specific enforcement decisions, be conducted and presented in such a way as to generate wide understanding and even consensus. The more vigorous is enforcement, as is needed to ensure a competitive single market, the more it is necessary to explain it persuasively, so as to avoid backlashes against the EU generally and the single market specifically.

As for the adoption of new rules or other policy initiatives to relaunch the single market – including perhaps the granting of further and more effective enforcement powers – consensus will obviously be required. The degree of consensus necessary will depend on the decision-making rules foreseen by the Treaties for the different policy areas. Support by the European Parliament and by the Council will be essential. As far as the Council is concerned, unanimity may be required in some areas, while in others qualified majority will be sufficient.

Consensus building – fully engaging the European Parliament, Member States, the Council, stakeholders - will thus be a crucial component of a new strategy for the single market. The effort to generate consensus will have to show full awareness of the main concerns surrounding the single market today. These concerns are often shared, to some extent, even by those Member States, political groups and stakeholders who regard the single market as a key asset of Europe and would like to see it strengthened.

## **1.6. Identifying the concerns**

The concerns surrounding the single market may be examined under three different perspectives: over time, by areas of concern and across Member States. The analysis below, though by no means exhaustive, can be helpful in designing a politically realistic strategy for the single market.

## *a. Concerns over time*

### *a.1. Before the crisis*

Well before the crisis erupted in 2008, a certain "integration fatigue" had become visible. On one hand, economic and political establishments became reluctant to see the logic of the single market go deeper into the heart of economic power at the national level. Hence, for example, the difficult process - and modest result - as regards the introduction of the take-over directive; the resistance opposed to the enforcement of free movement of capital in the area of "golden shares" and other special rights; some attempts to block cross-border acquisitions.

On the other hand, in different segments of society, concerns emerged on some even more basic aspects of the single market, such as free movement of people or services. It was as if, all of a sudden, principles that had been introduced half a century before by the Treaty of Rome, and had been largely practiced ever since, had become sources of tensions and anxieties, in particular in the context of the accession of 12 new Member States in 2004 and 2007. In fact, that enlargement was prepared very effectively in all respects, except for the public opinions in the old Member States. The perception of an imminent new reality - a single market having within itself an unprecedented degree of diversity - created fears that had a role in alienating portions of public opinion, as shown most vividly by the outcome of the French and Dutch referenda of 2005.

### *a.2. During the crisis*

During the crisis, the single market came under risk for a different reason, the tendency to seek emergency solutions at the national level, which characterized many governments but also parts of the business community and, in particular, of the financial services industry under stress. The determined enforcement policy of the Commission, mentioned in paragraph 1 above, and a shared sense of responsibility among Member States allowed the single market to survive virtually unscathed. Yet, the years 2008 and 2009, provided a worrying reminder of the very serious problems into which the single market may run, in case of a severe and prolonged crisis. Although very solidly planted in the legal system and in the economy, the single market is not yet as rooted in mindsets – and as endowed with powers and mechanisms for crisis-management – as it would be necessary for it to be fully resilient and safely beyond the "point of no return" even in a worst-case scenario.

### ***a.3. Following the crisis***

Following the crisis, a certain "market fatigue" has intervened. Support for the market economy has become less broad and less deep than it had been since the Eighties. The limits to what the market can deliver have become more visible. The market is now seen by many as unfair, having generated unacceptable inequalities; and inefficient, having attracted massive resources into financial activities whose contribution to the economy is questioned. This "market fatigue" adds to the "integration fatigue" noted above. At the time of the 1985 White Paper, and for the following twenty years, it was those *opposing* the advances of the market, of competition, of integration, who were forced on the defensive. Now, and presumably for a number of years to come, it is rather those who want to *promote* more market, more competition, more integration, who will have to bear the "burden of the proof" in the public opinion and policy arenas. The "product" which is promoted – for example more single market, as in this report – will have to be more genuinely responsive to the concerns that the crisis has amplified. Equally, the way of promoting it will have to become much more convincing, as the advocacy has now to lean against the wind, not with the wind as until recently.

Good-faith cooperation between Member States and European institutions will be particularly important, so as to avoid that a third fatigue which has emerged since several years - the "reform fatigue" generated by structural reforms - is also imputed by public opinions to the EU and its single market, whereas the reforms are first and foremost in each country's interest.

### ***a.4. In the longer-term***

Also in the longer-term, even when the crisis and its cultural impact will have been absorbed, it is likely that the ground for more market-based integration will be less fertile than it has been since the beginning of European integration. This topic goes well beyond the scope of the present report. But the future of the single market, and of integration more broadly, will have to reckon with the trend – visible in many old and new Member States alike – of more fragmented electoral landscapes, with a relative decline of the larger parties that have been traditionally supporting European integration, the emergence on the right as well as on the left of the political spectrum of smaller but growing parties which have in common a very critical stance on integration, be it global or European. Even the larger pro-EU parties find it increasingly difficult, in competing for the electorates, to stick to their vision and often are induced to take less forwarding positions on the benefits of integration.



The single market can be the first victim of this upcoming political scenario, if it is seen as the "blind aggressor" of localism and its traditional values. But it can also become - if properly reconfigured so as to bring real, visible, material and non-material benefits to citizens, while addressing the concerns and fears that they often associate with the market – a key component in a broader political project aimed at reconciling citizens with Europe.

## ***b. Concerns by area***

### ***b.1. Rent-seekers' concerns***

To the extent that the single market brings openness and competition, it obviously raises the concern, and often the vigorous opposition, of those who see their situation of rent eroded by it. This is inevitable and even an indication that the process is helpful for economic growth, through greater efficiency, and often for social progress as well. Elimination of protections for insiders allows the rest of society not to be "taxed" by the rent-seekers and permits outsiders, often the younger and the less privileged, to get better chances economically and socially. There is, however, the question of how to minimize the hijacking of public opinion and politicians by these special-interests groups against the single market and, more broadly, the EU as a vector of competition and change.

### ***b.2 Consumers' concerns***

Consumers are great beneficiaries of the single market. There are, however, many cases where benefits are late to materialize because the single market has been introduced but there is still insufficient competition, or because access to the single market is precluded or difficult, or because there is inadequate consumer protection. Like for other concerns listed below, in this paragraph the concerns are mentioned concisely, so as to allow the overall picture to emerge. They will be examined more closely in subsequent chapters, where proposals are made to tackle them.

### ***b.3. Citizens' concerns***

The freedoms that are brought, in principle, by the single market have also non-economic dimensions, that citizens of the EU want to be able to enjoy. But the exercise of these rights is often very problematic, sometimes simply precluded. Besides causing justified frustration, these situations put the single market in a bad light. Citizens may see here a confirmation of their often held – no matter whether unfounded – conviction that the single market cannot really be actively used by them, whereas they feel that they are passively subject to the threats it brings with it.

#### ***b.4. Social concerns***

This is a very diverse set of concerns. Some have to do specifically with labour issues, others with dissatisfaction concerning inequalities. Although the single market has significantly contributed over time both to job-creation and to improving the absolute and relative conditions of the less advanced Member States and regions, there is a widespread – though normally misplaced – perception that restructurings and delocalisation of companies are in some way related to insufficient protection granted by the EU vis-à-vis the rest of the world or to the actual inducement to intra-EU relocations as an effect of the single market.

Also, some fear that others – in an enlarged EU with still vastly diverging standards of living – may, through free movement of labour or services or through posted workers, threaten their own position in the labour market and even some fundamental workers' rights.

Finally, it is undeniable that the single market, by fostering economic integration, does contribute to creating, at least temporarily, winners and losers, in the context of a positive overall process of growth and job-creation. Member States, through their social policies, try in various ways to compensate the losers financially and to retrain them for active participation in the process. But the budgetary means to enact redistribution policies may be eroded by some pronounced forms of tax competition, which in addition tilt the tax burden to the advantage of the more mobile tax bases, like capital income or very high professional incomes, and to the disadvantage of less mobile bases, like labour income, unskilled labour income in particular.

Hence some tensions between market integration and social objectives. These are even more vividly exposed, now that the Lisbon Treaty has introduced, even formally, the objective of achieving a "highly competitive social market economy". If the *market* and the *social* components do not find an appropriate reconciliation, something has to give in. Following the crisis, with the declining appetite for the market and the increasing concern about inequalities, it is by no means clear that it would be the market, i.e. the single market, to prevail.

A distinct category of social concerns has to do with services of general economic interest and the real or perceived threats posed to them by the single market.

### ***b.5. Environmental concerns***

These concerns pertain to the broad question of whether the single market, as currently legislated and implemented, can provide adequate responses to the policy objectives of the EU in terms of environment, fight against climate change and resource efficiency. This is again an interface, between sustainability and the single market, that is highlighted by the Lisbon Treaty. Relative to the social concerns surrounding the single market, environmental concerns are of course more recent but are making rapid inroads in the policy debate. While the objective of green growth involves a wide spectrum of EU and Member States' policies, there is certainly a specific dimension regarding the structure and way of functioning of the single market. Intellectually and politically, this is a relatively new ground, warranting serious investment.

### ***b.6. Business concerns***

Business, which has always tended to be the strongest promoter and engine of the single market, still keeps a keen interest in its further development. But also the business community has its concerns. Naturally enough, they tend to differ by industry and size of companies. The consultation preparing this report has allowed consideration of numerous different perspectives, many of which have to some extent informed the views presented in the subsequent chapters (as has been the case for the consultations held with other stakeholders). For the purpose of mapping the concerns at this big-picture level, three broad concerns can be singled out.

Across industry lines, business is unhappy with the many remaining obstacles in terms of fragmentation and bottlenecks. There is a strong demand for more effective level playing field, for prompter enforcement, for resolute advances in areas, like the digital economy, where the single market does not yet exist.

There is also, in particular with the SMEs but not only, a demand for simplification and less burdensome regulation, although the progress made in these respects is not denied.

At the other end of the spectrum, among large companies acting globally there tends to be a concern about the external dimension of the single market, with the EU being seen as not sufficiently forceful in pressing for market access in some key countries and to some extent penalizing its own companies as a consequence of a heavier regulatory environment – including state aid control – than is common elsewhere.

It is also worth mentioning that the main business organizations, although of course promoting the business community's vision of the single market, show increasing awareness of the need to address the concerns of other stakeholders, as summarized above, if the single market is to be able to withstand the temptations of economic nationalism and to sustainably achieve the strong advances that are deemed necessary.

### ***c. Concerns across Member States***

The concerns outlined above, though rather widespread, are not uniformly distributed across Member States. In view of identifying a space for a potential forward-looking deal, it may be interesting to see how the perspectives diverge among groups of Member States which to some extent have a shared vision of the single market, resulting from their cultural traditions, even more than from the political majority currently in power. Needless to say, this exercise must be taken for what it is, i.e. a first - but perhaps not unhelpful - approximation.

#### ***c.1. Continental social-market economy countries***

In these countries there tends to be a less central role attributed to the consumer as the intended primary beneficiary of the single market, than is the case for example in the Anglo-saxon countries. The position of the worker and of the entrepreneur tend to be seen as deserving a perhaps higher priority. Manufacturing, more than services, is regarded as a particularly important component of the productive structure. Greater attention is given to social concerns in relation to the effects of market processes. Services of general economic interest are considered to be a key sphere for broad social policy, at the national, regional and local level.

Competition policy and particularly state-aid control have often been viewed more critically than in Member States attributable to the other groups. Similarly, enforcement of single market rules has not always been welcomed.

Whereas these Member States had long been the engines of market integration in Europe, that role was subsequently taken by the Anglo-saxon countries. The less enthusiastic stance on the single market and competition by the social-market economy countries has been determined to some extent by their social concerns. Attempts to temper the social effects of single market integration, for example through some coordination of tax policies, met with the resistance in particular of the Anglo-saxon countries.

### *c.2. Anglo-saxon countries*

The approach of the Anglo-saxon Member States has traditionally been rather specular to the one described above for the continental social market economies. Consumer welfare as guiding principle of economic policy; strong favour for market opening and vigorous competition policy; acceptance of market-driven changes in the structure of the economy without concern for the shift from manufacturing to services, financial services in particular; indifference, in most cases, for the transfer of control of companies in foreign hands, have been features observed over the last two decades in Anglo-saxon countries. Social concerns have of course not been absent, but have been catered to a large extent via policies aimed at enhancing employability coupled with reliance on market-based growth.

Consistently with this approach, when it comes to shaping EU policies the Anglo-saxon Member States have been a driving force for the single market, competition policy, encouragement of economic reforms at Member States' level, light regulation; while they have not been sympathetic to the idea that the EU might become more active in terms of social policies, tax coordination, industrial policy or protection of services of general economic interest.

### *c.3. New Member States*

The political culture prevailing in the new Member States and the need to make up for decades of inefficient management of the economy tend to make them strong advocates of the market and competition, giving priority to growth over heavy social protection. Being new and, in most cases, not large Member States, they greatly value the vigorous enforcement of single market and competition rules done by the European Commission, as a guarantee of equal treatment relative to the larger and economically more powerful old Member States. Their appetite for all the above makes of the new Member States a remarkable potential political engine of further development of the single market, at a time when, on the one hand, some of the Continental social market economies have become less enthusiastic about it and, on the other hand, the financial crisis has made the Anglo-saxon countries less persuasive, at least for a while, in their market advocacy.

The new Member States have their own specific priorities for the improvement of the single market, as in the areas of free movement of labour and of services, infrastructures for a genuine "physical" single market, cohesion policies. They have also practiced, in many cases, bold policies of tax competition. While insisting on their merits in early stages of membership of the EU, some of them seem to be open to now view those policies in a broader perspective. The current

budgetary difficulties following the crisis and the possibility of obtaining a more satisfactory single market and cohesion context if some moderation is exercised in the tax area, may offer ground for some policy reorientation.

#### ***c.4. Nordic countries***

Nordic countries, in recent years, have seen their economic and social model often praised by observers from other countries and international organizations. In fact, they combine rather effectively market opening and competition, on one hand, and social protection based more on safety nets for individual workers than on the preservation of specific jobs made obsolete by technological and economic change (*flexi-curity*), on the other.

At the same time, they provide an illustration that, while tax consideration obviously play a role in determining an economy's competitiveness and ability to attract investments, they are by no means the exclusive or indeed the main factor. What the public sector does with tax revenues, especially in terms of providing good education and supporting research and development, plays an equally, if not more important, role.

If the single market – through the new strategy that this report aims at developing – is at the same time strengthened in terms of openness and competition and made more reassuring as regards the social and environmental dimensions, then the gap between the Nordic countries and other parts of the EU would be somewhat reduced.

### **1.7. Addressing the concerns**

Given the widespread and diverse concerns surrounding the single market – which are more likely to increase rather than decrease in the longer term - two alternative responses can be conceived, a defensive option and a proactive option.

#### ***a. Defensive option***

The defensive option would consist in, first of all, not discussing the concerns too openly, for fear that this might itself contribute to eroding confidence in the single market.

Secondly, enforcement of the existing rules should of course go on. To the extent that highly sensitive cases arise, enforcement policies should try to balance the required vigour with the need to avoid too harsh confrontations with Member States.

Thirdly, bold initiatives to relaunch and extend the single market would be viewed with some caution, in view of the likely oppositions fed by the widespread concerns identified above and in order not to exacerbate them.

### ***b. Proactive option***

The proactive option would seek to achieve a substantial strengthening of the single market, through: an even more robust enforcement system to cope with threats of economic nationalism that are unlikely to disappear and with distortions of competition caused by governments and companies; an extension of the single market to areas where it is insufficiently developed; a deeper leveraging on the single market as a key condition for Economic and Monetary Union to be sustainable and deliver the promised benefits.

The pursuit of such a proactive option would require substantial political investment, in particular in terms of relentless advocacy of the merits of market integration and vigorous competition, as well as a number of focused policy initiatives to address the most serious concerns and points of tension between the single market and other policy objectives.

This report recommends the proactive option, which seems to be fully in line with the political initiative undertaken by President Barroso.

## **1.8. A new strategy**

The rest of the report tries to develop a new strategy for the single market. Such strategy appears necessary, if the proactive option recommended above is to have any chance of success. The challenge is nothing less than bringing forward European integration – overcoming visible risks of disintegration - in a society that appears to be less disposed to integration than was the case in 1957, at the time of the Rome Treaty, or in 1985, at the time of the Delors White Paper.

### **a. A comprehensive approach**

The new strategy has to be comprehensive. Many policies traditionally not regarded as policies for the single market have to be integrated into a single market strategic objective. They include not only competition policy, traditionally seen as a powerful instrument to integrate markets and to make them competitive, but also, amongst others, industrial, consumer, energy, transport, digital, social, environment, climate change, trade, tax and regional policies, but also policies that seem more remote from economic aspects, such as justice and citizenship. In turn, achieving a deep and efficient single market is a key factor determining the EU's overall macroeconomic performance. It is

particularly crucial for the solidity of the euro and for monetary union to deliver the promised economic benefits.

The comprehensive approach, deploying the range of policies mentioned above, needs to consist of three broad sets of initiatives:

1. Initiatives to build a stronger single market;
2. Initiatives to build consensus on a stronger single market;
3. Initiatives to deliver a stronger single market.

If consensus is not built, it is unlikely that the initiatives to build a stronger single market could ever be adopted and implemented. Even if they were, their sustainability over time and their ability to withstand "bad weather" in economic or political conditions affecting the EU, would be in doubt.

In turn, a stronger single market – which openly seeks the consensus necessary for its construction and rules out the option of acquiescing to discontent by softening enforcement – does need strengthened delivery, enforcement and governance.

## **b. Building a stronger single market**

The initiatives to build a stronger single market are presented in chapter 2.

These initiatives - which also address the call by President Barroso, endorsed by the European Council, to tackle the issues of bottlenecks and missing links in the single market (paragraph 2.1) - are grouped in clusters of recommendations concerning:

- a better functioning of the single market in the perspective of citizens, consumers and SMEs ( 2.2);
- the digital single market (2.3);
- the single market and green growth: energy, climate change and environment (2.4);
- the single market for goods (2.5);
- the single market for services (2.6);



- workers in the single market (2.7);
- the single market for capital and financial services (2.8);
- The physical infrastructure of the single market: meeting the investment challenge (2.9).

### **c. Building consensus on a stronger single market**

The initiatives to build consensus on a stronger single market are presented in chapter 3. They are cast in the context of the reference in the Lisbon Treaty to "a highly competitive social market economy" (paragraph 3.1). They seek to address the concerns identified through the consultation and described above in paragraph 1.6. At the same time, they are mindful of the need of not undermining the central objective of strengthening the single market.

These initiatives deal in particular with the following problems:

- the conciliation between economic freedoms in the single market and workers' rights, a sensitive issue following the Viking, Laval and other rulings of the European Court of Justice (3.2);
- social services and the single market (3.3);
- harnessing public procurement for the EU's policy goals (3.4);
- the tax dimension of the single market: tax coordination to safeguard tax sovereignty as market integration proceeds (3.5);
- competitiveness and cohesion: the regional dimension of the single market (3.6);
- industrial policy in the single market (3.7);
- the external dimension of the single market: open, but not disarmed (3.8).

### **d. Delivering a stronger single market**

The initiatives to deliver a stronger single market are presented in chapter 4.

Several recommendations are formulated, dealing with two key aspects:

- regulation in the single market (4.1);

- reinforcing enforcement (4.2).

### **e. A package deal**

The new comprehensive strategy outlined above should be substantiated in a package deal, in which Member States with the different cultural traditions, political preferences and concerns analysed above could each find elements of appeal important enough to justify some concessions, relative to their past positions.

In particular, Member States with a tradition as social market economies could be more prepared to a new commitment on fully embracing competition and the single market, including a plan with deadlines on putting in place the single market in areas where it is still lacking, if Member States in the Anglo-saxon tradition show readiness to address some social concerns through targeted measures, including limited forms of tax coordination.

The Member States of Central and Eastern Europe, who would be happy to see a serious programme to strengthen the single market, including in the areas of infrastructure and cohesion, might in turn become more open on forms of tax coordination.

A fresh approach to these sensitive topics should be pursued, leveraging on circumstances that have occurred recently and should facilitate a greater sense of belonging to a common project, leaving behind entrenched positions of the past. One such circumstance is certainly the economic, fiscal and social legacy of the crisis, which should allow everyone to see the value, greater than ever before, of extracting more growth and job creation from making the single market more efficient, given the very limited margins available for budgetary stimuli. Similarly, the need to cope with the growing priority assigned by public opinion to the issue of inequalities, in a context of fiscal crisis for many countries, may lead to more favour for a more cooperative approach as regard tax policies.

More profoundly, the crisis has upset many consolidated views on hierarchies of economic models and brought about a more pragmatic and modest attitude, as well as some more predisposition to economic policy coordination.

Finally, tensions which have occurred recently in the Eurozone provide for greater evidence than ever before of the need to make full use of the single market as a vector to enhance total factor productivity and competitiveness in Eurozone economies.

The key ingredients for a package deal will now be systematically explored in chapters 2-4.

Chapter 5 will bring together these ingredients and recommend a political initiative to strengthen the single market, as well as Economic and Monetary Union.

## **CHAPTER 2**

### **BUILDING A STRONGER SINGLE MARKET**

## **2.1. Bottlenecks, missing links and new frontiers**

The Single Market is Europe's original idea and unfinished business. In his Political guidelines for this Commission, President Barroso pointed to the gaps and "missing links" that hamper the functioning of the Single Market. Echoing this orientation, the European Council of 26 March 2010 has agreed that the new Europe2020 strategy should address "the main bottlenecks...related to the working of the internal market and infrastructure".

"Missing links" and "bottlenecks" mean that, in many areas, the Single Market exists in the books, but, in practice, multiple barriers and regulatory obstacles fragment intra-EU trade and hamper economic initiative and innovation. In others, the potential for greater economic gains is frustrated by lack of physical and legal infrastructure or by absence of dialogue between administrative systems. The ITC revolution and rapid technological development add a third category to the list of missing pieces in the single market : sectors that did not exist when the single market was initially conceived, such as e-commerce, innovative services and eco-industries. These are the sectors which hold the largest growth and employment dividends for the future. They represent the new frontiers of the single market.

Relaunching the single market requires tackling the different challenges posed by missing links, bottlenecks and new frontiers. In some sectors, such as in the single market for goods, market integration reached a mature stage. Policy action can focus on "market maintenance" through market monitoring, targeted regulatory intervention, simplification and reduction of compliance costs. In others, as in the case of services, Europe is still in a phase of "market construction" that requires breaking down barriers to cross-border activity, cutting the dead wood of national administrative and technical barriers and overcoming corporatist resistances. In the new frontiers, Europe should harness the full range of single market tools to drive forward the construction of a digital and low-carbon resource efficient economy. The marginal gains from action in this area are the greatest. Turning the attention to the new frontiers is key to generate new momentum for and confidence in the single market as a priority for tomorrow's Europe.

However, no project to relaunch the single market will have the necessary political energy to succeed, if it fails to show citizens, consumers and SMEs that it works first and foremost for them. The Report thus will start from there.

## 2.2. Making the single market work for citizens, consumers and SMEs

The single market and its four freedoms embodies an ideal: that of a space across national boundaries within which citizens can move, work, do research or start up a business without any discrimination. As the single market grew in scope and size, it was felt that this was not always the case. Market opening would widen the horizons for big business, but would not work for the many and the small : citizens, consumers, or SMEs.

Surveys show that attitudes towards the single market today range from lack of interest to open rejection. In part, economic integration and its benefits have become business as usual and thus undervalued. Much of the disillusionment however comes from frustration with remaining barriers or the feeling of disempowerment that citizens experience when dealing with the single market. Relaunching the single market serves to re-activate Europe's engine of growth and employment, and ultimately serves to expand opportunities for citizens. The first challenge is thus to empower citizens, whether consumers or entrepreneurs, to become full actors within the single market. There are many ways in which the single market benefits them horizontally across policy areas, through widening the choice of providers, services and products or expanding mobility options and ensuring safety of traded products. Some specific actions should nevertheless be undertaken to enable citizens, consumers and SMEs to actively exploit this widened range of opportunities.

### *The citizen in the single market*

The 2008 Lamassoure report on "The citizen and the application of Community law" brought into sharp relief the link between mobility and citizens' rights within the single market. The pace at which this citizen dimension of the single market progressed has fallen behind the evolution of social and economic trends. Whereas intra-EU mobility may still be limited when benchmarked against the USA, it concerns more than 11.3 million Europeans. Around 350 000 Europeans per year engage in an international marriage with a national of another Member State. Every year 180 000 European students move to another Member State for the Erasmus programme or to attend a post graduate degree. Often, they stay on seeking employment.

Yet, the single market is not an easy playing field for them. There is a significant gap between what is in the law books and what happens in practice. The patchwork of barriers and hurdles to overcome is such that in his Report Alain Lamassoure concluded that "creating a single space for citizens is still at the stage before the Single European Act of 1986: the barriers may have been abolished, the countless regulatory obstacles still make it difficult to achieve an

harmonious life inside this common space"<sup>4</sup>.

Progress in this area has been slow. The measures required fall under civil, commercial and even family law, areas close to the sovereignty of Member States. Moreover, national legal systems often present divergent solutions. The unanimity requirement for measures linked to the establishment of an area of justice, security and freedom has also been a factor in slowing down change.

There are several areas where policy action should be taken to untangle citizens' mobility from red tape and regulatory hurdles. The new provisions in the Lisbon Treaty now offer a concrete opportunity to move forward in all those dimensions of citizenship linked to the establishment of an area of justice, security and freedom.

#### *Improving access to the right to move and reside in another Member States*

The right of citizens to move and reside freely in another Member State should be made as easy as possible. In this context, the regime set out by the Directive 2004/38/EC is now starting to function after a slow and somewhat difficult start. In order to go even further, steps should be taken to ensure the free circulation of official documents. Too many citizens' complaints concern requests to produce a translation of documents or new certificates made by national administrators reluctant to recognise EU rights. A system providing for mutual recognition of official documents, such as authentic acts or civil status documents issued by national administrations, would greatly facilitate mobility. In the same vein, a step change in favour of mobility would come from the creation of a European Free Movement Card that would contain in a single document all the information a European citizen may require in another Member State in addition to identity and nationality: work permit status, social status and right to social security. This would extend to all the information needed for communicating with national administrations the model that already exists for health and social security information included in the European Health Card.

The recent initiative to launch an enhanced cooperation on a regulation on the applicable law, jurisdiction and enforcement of judgments covering matrimonial property regimes provides a solution to the some 145 000 cases of international divorce every year. Progress would also be important in the equally critical area of cross border wills and successions.

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<sup>4</sup> Alain Lamassoure, Report on "The citizen and the application of Community Law", 2008, page 12.

### *Facilitating the solution of cross-border of commercial and civil law disputes*

The rising number of cross-border commercial and civil disputes calls for a serious assessment of ways and means to facilitate the circulation of judgments and the recovery of cross border debts. This implies the abolition of the exequatur process. This procedural requirement imposes the assistance of a lawyer and results in a cost that can reach 2000 euro for what is often a pure formality. At a time in which SMEs and service providers struggle to keep their books in order, it is important to remove obstacles to cross-border debt recovery. This means prohibiting debtors' from moving funds from a bank account in one Member State to an account in another Member State simply to avoid paying a bill. To reduce to a minimum the number of unrecovered debts - today standing at 37% of cross border debts - a targeted legislative initiative would be warranted. A wider use of the recently introduced European Small Claims procedure - which applies to claims below 2000 euro and allow for a treatment of cases in a standard user-friendly format that does not require lawyers assistance - would also increase citizens and business trust in cross-border transactions. In the context of the current crisis, the possibility of reviewing the regulation on cross-border insolvency should be examined. More efficient and faster insolvency proceedings - notably when cross-border groups of companies are involved - would be in the interest of both debtors and creditors. Enhancing administrative cooperation through the support of the E-justice portal could also bring practical benefits in the short term.

### *A single market for car drivers...*

Finally, administrative obstacles and legal uncertainty characterise the experience of Europeans that move with their cars throughout the single market. It is not possible for instance to move a car from one country to another without having to re-register the car and paying the relevant tax. This exposes citizens to double taxation, complicated administrative procedures, extra costs and time waste but is also a problem for business. Car rental companies, in fact lack the flexibility needed to manage their fleets across Member States depending on the seasonal variation of demand. Likewise, this fragmentation prevents the car industry from fully exploiting economies of scale, as they have to adjust technical specifications to the requirements of various national markets. Past attempts to regulate this area have not produced results, but there is some scope to reassess the issue in the light of its cost for citizens and business. Legal uncertainty affects the citizens that are victim of one of the 500 000 cross-border accidents that happen every year in Europe.



While the rules on the applicable law have been clarified, the terms and time limits to file insurance claims still give cause for confusion. An initiative to harmonise the terms and conditions for file insurance claims could give both insurances and citizens greater legal certainty.

*Key Recommendations:*

- ⇒ Ensure the free circulation and recognition of official acts;
- ⇒ Introduce a European Free Movement Card ;
- ⇒ Make progress in the mutual recognition of civil acts relating to international marriages and to successions and wills;
- ⇒ Ensure easier cross-border debt recovery, including a wider use of the European Small Claim portal;
- ⇒ Abolish double taxation of registration for cars.

*Empowering consumers*

Consumers and consumer welfare should be at the centre of the next stage of the single market. A stronger consumer focus would mean a renewed attention to market integration and competition, an enhanced corpus of rights, protections and means of redress and a greater access to basic services.

A number of actions discussed elsewhere in this Report contributes to consumer welfare in the single market, such as access to services of general interest, energy consumption through smart metering, integration of consumers concern in market monitoring exercises, enhanced ADR and better enforcement. Consumer protection should be a horizontal concern when developing the single market in new areas, such as the digital economy or e-commerce. As a starting point, the legislator should find without delay an agreement on the draft directive on consumer rights, in order to ensure a high level of protection for consumers in an integrated retail market.

The wider choice of products and services and sharper competition that the single market provides should work for consumers through improved market transparency and comparability. Progress should be made in the regulation of independent intermediaries, such as price comparison websites and products test, to ensure that consumers identify the best quality and prices across the EU from among a vast choice of products and providers. Informed consumer choice is a vehicle for rewarding and promoting the most innovative and efficient companies.

### *An EU mechanism for collective redress*

As mass consumer markets are expanding cross-border, groups of consumers are increasingly harmed by the same illegal behaviour of a trader who is often located in a different Member State. Today, cross-border claims represents 20% of mass claims and they are likely to increase even more in the future. Traditional litigation is not practical or cost-efficient for consumers and businesses in these cases. Bundling similar individual cases in a single procedure would allow savings through economies of scales for both consumers and businesses and increase the efficiency of national courts. Europe should thus move forward in the creation of its own model of collective redress mechanism, while at the same time avoiding the US style class action model. Action at EU level to promote both in-court and out-of court resolution (ADR) of mass claims, would increase the confidence of consumers in the single market, increase cross-border transactions and stimulate competition between businesses. This should be introduced as a priority for electronic commerce.

### *Greater integration in the retail banking sector*

Further action to accelerate integration of retail banking services would allow consumers to reap the full benefits of the integration of the European financial sector. Measures should be taken to improve the transparency of bank fees, to ensure the availability of standardised and comparable information for retail financial products and to facilitate customer mobility. Ultimately, switching bank accounts should be no more cumbersome than switching between mobile telephone operators.

#### *Key recommendations:*

- ⇒ Adopt EU legislation on collective redress
- ⇒ Improve the transparency of bank fees, ensure the availability of standardised and comparable information for retail financial products and facilitate bank customer mobility.

### *Creating a favourable business environment for SMEs*

The typical European firm is an SME, nine times out of ten consisting of a micro-enterprise with less than 10 employees. The 20 million EU medium, small and micro-enterprises are the backbone of the European economy, generating an increasing share of value added and giving a crucial contribution to employment generation. The single market is an important factor for their growth but, unfortunately, it is not always a friendly environment for them. Only 8% of

SMEs engage in cross-border trade and only about 5% have set up subsidiaries or joint ventures abroad.

There a number areas in which this Report recommends action in order to create a business environment which is more tailored to SMEs needs: facilitating e-commerce, extending the new Approach to other goods areas, better enforcing EU rules, providing clearer and more effective information on opportunities provided by EU law and faster problem solving structures, greater access to public procurement, simpler e-invoicing rules, better regulation and simplification, simpler and faster standardisation processes.

This does not require changing current policies, as the Small Business Act (SBA) adopted by the Commission in 2008 is the best avenue to promote SMEs competitiveness within the Single Market and beyond. The pace of progress in implementing it and the approaches chosen by Member States are still considerably different. To ensure a level playing field for all SMEs operating in the single market, Member States should do more to fully implement the principles and actions set out in the SBA. Measures should be taken to ensure that SMEs are able to fully take part in the development of standards and have adequate access to them. More efforts should be made to simplify and speed up bankruptcy procedures in case of non-fraudulent bankruptcy.

#### *A Statute for a European Private Company*

Greater progress should be made towards the adoption of the Statute for a European Private Company, which would allow entrepreneurs to set up their company in the same form, irrespective of whether they do business in their own Member State or in another.

*Key recommendations:*

- ⇒ Speed up implementation of the Small Business Act;
- ⇒ Adopt the Statute for a European Private Company.

### 2.3. Shaping Europe's digital single market

Digital technologies are radically transforming the way we live, work and interact. The propagation of digital technology is a spontaneous process of innovation and transformation. Yet, regulatory and social conditions influence the speed and extent of the uptake of new technologies and the spread of the benefits of a digital economy. Europe is moving at a slower speed than the US. A number of obstacles reduce the capacity of industry in Europe to innovate and generate value added in the digital sphere: the fragmentation of online markets, ill-adapted intellectual property legislation, the lack of trust and interoperability, the lack of high-speed transmission infrastructure and the lack of digital skills. Many of these obstacles point to a simple cause: a lack of a Digital single market.

The cost of non-digital Europe is significant: According to a recent study<sup>5</sup> the EU could gain 4 % of GDP by stimulating the fast development of the digital single market by 2020. This corresponds to a gain of almost € 500 billion and means that the digital single market alone could have an impact similar to the 1992 internal market programme.

In its Europe2020 strategy the Commission has recognised the huge opportunities of digital Europe. Urgent action is necessary to remove a number of bottlenecks that are currently still hampering the rapid development of the digital single market. The online single market must become the main driver of a European digital agenda and of Europe's transformation into a digital economy.

#### *A seamless regulatory space for telecommunications services and infrastructures*

Telecommunications services and infrastructures in the EU are currently still highly fragmented along national borders. The existing regulatory framework at EU level has been instrumental in market opening but has not yet created a single regulatory space for electronic communications. Market fragmentation leads to numerous negative effects: it facilitates the creation of market power, it prevents operators from achieving economies of scale, it slows down investment in new infrastructures and services, it reduces growth potential and hinders the emergence of European champions to the detriment of Europe's global competitiveness.

The swift and full implementation of the new EU regulatory framework and the vigorous application of the competition and state aid rules remain a priority in

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<sup>5</sup> Copenhagen Economics, The Economic Impact of a European Digital Single Market, Final Report, March 2010.

the immediate term. However, more needs to be done to overcome market fragmentation and to remove regulatory barriers in the internal market. In order to create a seamless regulatory space for telecommunications services and infrastructures a more coherent framework is required which includes: strengthening the regulatory oversight at European level, the introduction of a pan-European licensing system and the management and allocation of radiofrequencies at European level. The Commission should launch a comprehensive review of the telecommunications sector with a view to presenting the proposals required for creating an integrated European-wide market for electronic communications.

#### *E-commerce: a pan European online retail market*

The importance of E-commerce is rapidly increasing as the number of individuals in the EU27 who order goods or services over the Internet is steadily rising. The percentage of consumers in the EU who had been buying goods or services via the Internet during the previous 12 months has increased from 20% in 2004 to 37% in 2009.<sup>6</sup> Nevertheless, an important potential remains untapped because the markets are fragmented and a number of obstacles for cross border e-commerce persist.

In many cases, consumers make the experience that online traders refuse to accept orders from consumers from another country. Consumers are also uncertain about the confidentiality of their data, the security of the transaction and their rights in case of a problem. For retailers, the main regulatory barriers to cross-border e-commerce result from differences in consumer protection rules and other rules, such as rules on VAT, recycling fees and levies. These differences create a complex and unpredictable environment for businesses and lead to a reluctance of traders, in particular SMEs, to consider selling cross-border. The EU should urgently address the remaining obstacles to create a pan European online retail market by 2012.

#### *A single market for online digital content*

The European markets for online digital content are still underdeveloped as the complexity and lack of transparency of the copyright regime creates an unfavourable business environment. It is urgent to simplify copyright clearance and management by facilitating pan-European content licensing, by developing EU-wide copy-right rules, including a framework for digital rights management. The regulatory regime should also ensure the conditions for developing the digital content and broadcasting markets by addressing licensing and copyright

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<sup>6</sup> European Commission, Consumer Market Scoreboard, SEC(2010) 385, 29.3.2010

levies. A clear and predictable EU framework for orphan works would unleash an important untapped potential.

To maintain the trust of right-holders and users and facilitate cross-border licensing, the governance and transparency of collective rights management needs to improve and adapt to technological progress. Easier, more uniform and technologically neutral solutions for cross-border and pan-European licensing in the audiovisual sector will stimulate creativity and help the content producers and broadcasters, to the benefit of European citizens. Such solutions should preserve the contractual freedom of right holders to restrict their licenses to certain territories and to contractually set the level of licenses fees.

Additional measures should also be examined to take into account the specificities of all the different forms of on-line content, such as further harmonisation of copyright, creation of an EU copyright title, considering that cross-border online transactions take place at the location of supply and extended collective licensing.

#### *Key recommendations*

##### *Telecommunications services and infrastructures*

⇒ Review of the sector to prepare proposals for creating a seamless regulatory space for electronic communications, including proposals to reinforce EU level regulatory oversight, to introduce pan-European licensing and EU level frequency allocation and administration.

##### *E-commerce*

⇒ Present proposals to end the fragmentation of EU consumer legislation and introduce in particular harmonised rules for delivery, warranty and dispute resolution.

⇒ Present proposals to simplify the business environment for cross-border retail transactions, including VAT rules, the cross border management of recycling rules and of copyright levies on blank media and equipment.

##### *Online digital Content*

⇒ proposals for an EU copyright law, including an EU framework for copyright clearance and management

⇒ proposals for a legal framework for EU-wide online broadcasting.

## **2.4. The single market and green growth: energy, climate change, environment**

The energy sector is one of the late arrivals in the single market. At the same time, it is the sector on which the highest expectations are placed today. 2012 will not be the 20<sup>th</sup> anniversary of the single market for energy. Rather it will just mark the beginning of the consolidation of a common energy market. There is no time to waste, however. For electricity and gas, Europe needs the new regulatory architecture created under the third Internal Energy Market Package (Agency for the Cooperation of Energy Regulators (ACER), European Network of Transmission System Operator organisations (ENTSOs), framework guidelines and network codes, 10 Years Network Development Plans, etc.) fully in place by that date. The single market sits at the nexus of all Europe's energy policy objectives: competitiveness, security of supply, and sustainability. Europe needs a functioning single market for energy to ensure secure and affordable supplies for its consumers and business. It has to harness its potential to turn its political leadership on climate change in a concrete chance for its innovative industries.

### *Enhancing consumers' welfare*

A fully functioning single market for energy benefits consumers with wider choice and lower prices. Since 2007, in almost all Member States, consumers have had the right freely to choose their electricity and gas supplier, while the third Internal Energy Market package recognises the existing public service requirements. More should be done to enable all consumers, especially vulnerable ones to benefit fully from competition and fair prices, starting by strengthening the common minimum standards. The ongoing work on improving the provision of information and ease of contact to consumers must also be actively pursued. The development of smart metering - enabling energy consumers to be completely aware of their consumption patterns and the associated costs- requires further regulatory action to ensure the quick uptake of new technologies and greater efficiency through competition in energy services. In order to ensure transparent pricing, a European regulatory framework needs to be developed for energy wholesale markets, avoiding the risk of diverging national regulatory initiatives.

### *Interconnecting Europe's energy markets, guaranteeing security of supply*

Well integrated markets are crucially important for Europe's security of supply. They allow Member States to share resources, getting the most out of the diversity of national energy supplies, flexibility of demand and spare capacity. Interconnections and network flexibility make Europe better equipped to

withstand supply crises and add leverage to the EU position towards its international partners. There is still much work to do to interconnect Member States capacity and construct new infrastructure, particularly across borders. All the EU's new regulatory and investment planning tools should be used to mobilise the highest level of private investments. One way to speed up work on major cross-border infrastructure projects - which are often delayed by complex and controversial authorisation procedures - would be to explore the possibility for an EU level consensus building/arbitration mechanism to facilitate the process. Innovative solutions for incentive setting and facilitation at the EU level would help break deadlocks and accelerate the implementation of projects.

### *Greater uptake of low carbon products and technologies*

Global markets for eco-friendly and low-carbon products, services and technologies are growing at a rate unparalleled by any other markets. The global market is currently estimated at €1 trillion annually and is projected to reach €3 trillion world-wide by 2020. The EU industry is one of the most competitive—with market shares ranging from 30% to 50% - and is fast growing. It generates already a turnover of €300 billion and provides nearly 3.5 million jobs<sup>7</sup>. However, competitors are moving fast and Europe's prime mover advantage could be rapidly lost. A single energy market is Europe's best asset to promote the shift to the low carbon, resource efficient growth outlined by the Europe2020 Strategy and reap the benefits of the expected growth in eco-industries. Only a single market for energy offers the scale necessary for accelerating the uptake of new and young low carbon technologies along the whole energy value chain. There is a need to use the full potential of the single market for energy to lower the costs and speed up the roll-out of such technologies in the EU. This requires delivering a stable regulatory framework for large scale infrastructure products and proactive use of standardisation to promote innovative green products and technologies, exploring the application of the New Approach model in this area. Competition policy should also be used proactively to create the right environment for new technologies to mature and enter the market.

Lead markets must be single markets from the outset. There is a risk that the effort sharing approach on renewable energy, which leaves the choice of policy instruments up to Member States results in the "renationalisation" of energy policy. Renewables support policies will have to become an integral part of the internal energy market in order to avoid market distortion which can lead to wrong pricing signals to investors. Requirements for other low-carbon related technologies and products should continue to be defined at EU level, avoiding

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<sup>7</sup> European Commission, EU Manufacturing Industry: What are the Challenges and Opportunities for the Coming Years?, paper presented at the 2<sup>nd</sup> High level Conference on Industrial Competitiveness, 26 April 2010.



proliferation of national approaches. Likewise, the introduction at national level of "green" product labels should be avoided, as this risks fragmenting the market.

*Meeting a €50 billion investment challenge: stepping up EU funding*

€50 billion in additional public and private investment is needed over the next ten years to implement the necessary energy technologies that will enhance energy security and tackle climate change. As the energy sector is one that requires long lead times for investments and substantial capital investment to ensure returns in the medium to long term, for future investment decisions the competitive energy market needs to send reliable price signals at the wholesale level. At the same time, there is a case for considering the contribution that EU level funding could bring in addition to what the market is already providing.

Consistent and targeted EU funding can make the difference in terms of accelerating the build-up of critical interconnection capacity, realising critical back-up capacities for security of supply reasons and shortening lead times for bringing new low carbon technologies into the market. Part of the discussion on investment should cover the issue of support measures for renewable energy technologies across the Member States.

*Key recommendations:*

- ⇒ Establish new EU regulatory frameworks for the large scale deployment of renewable sources, smart metering, smart grids and transparent wholesale energy markets;
- ⇒ Establish a single market for green products, by developing EU-wide standards for measuring and auditing carbon footprints and for energy efficient products, including trade certificates for renewable energy products;
- ⇒ Step up targeted EU funding for energy infrastructure.

## **2.5. The single market for goods: reaping the full benefits**

The single market for goods is today a mature construction. The 2007 single market review concluded that all technical barriers for goods had been lifted. For many citizens, single market means first of all a wide variety of choice in the products available in their domestic markets. The trade in goods is a major driver of growth in EU manufacturing industries. Some 25% of the EU-27 GDP is generated by the goods sector. Intra-EU trade of goods represents 75% of intra-EU trade flows. It has increased at an annual rate of 7.6% between 1999 and 2007.

It would be a mistake to conclude that the job is done. Firstly, goods manufacture is an ever-changing business, as it responds to innovation, changing consumer tastes and new technologies. Policies and regulatory frameworks need to be regularly updated if they are to remain relevant, based, where appropriate, on market monitoring exercises. There are creeping obstacles constantly generated by licensing practices and new technical and administrative rules at national level. The stakeholders' submissions during the consultation phase revealed a long list of small scale bottlenecks. Third, when benchmarked against the US, the Single Market for goods reveals a substantial untapped potential. The ratio of intra-US exports to GDP, is still around 70% higher than the ratio of intra-EU 15 exports to GDP. Fourth, new challenges emerge, as not only goods but also markets evolve. Examples of this are the acceleration of products cycles or the globalisation of supply chains. Fifth, e-commerce is on the rise and presents its own set of challenges, that are examined in the Report's section on the digital Single Market.

Maintaining a dynamic and expanding single market for goods requires building on the full implementation of the goods package approved in 2008, particularly with regard to the mutual recognition principle and market surveillance. The application of the principles of the New legislative framework should also be extended to other areas of product legislation and the new Approach should be expanded to new areas across the board.

The full potential of the single market for goods cannot be released without the support of a modern standardisation process, a seamless and efficient logistics and transport system and an effective and accessible regime for the protection of intellectual property.

### *Reforming the standardisation process*

Standardisation is key for the governance of the single market. Europe needs today faster and more efficient setting of interoperable and market-relevant

standards, based on internationally accepted models. It is necessary to review the European standards process, maintaining the benefits of the current system while striking the right balance between European and national dimension. Special attention should be paid to enhancing private sector access to the standardisation process and to making standards cheaper and easier to use for SMEs.

### *A seamless, flexible and efficient logistics and transport system*

Reaping the full benefits of a single market for goods depends on the existence of a seamless, flexible and efficient logistics and transport system. Yet, EU transport policy took off late compared to its initial recognition in the Treaty and has developed unevenly across transport modes. The resulting fragmentation is increasingly perceived as an obstacle to free movement. Administrative and technical barriers results in "bottlenecks" to mobility within Europe. There is simply no single market for maritime transport, as customs formalities for ships travelling between two European ports remain subject to custom formalities identical to the ones foreseen for international maritime transport. In the rail sector, track gauges, energy supply and signalling systems differ from one Member State to another as an inheritance from the times in which railways were still national monopolies. This hinders cross-border circulation of trains and increases the cost of rolling stock used in international operations, which has to be equipped with multiple systems. Furthermore, the market for rail freight services is still not yet functioning due to incorrect or incomplete transposition of Community law by Member States. In road transport, national markets have only recently opened to "cabotage". Europe needs a step change towards multi-modal transport, but legal, administrative and technical barriers are multiplied. There is no single transport document, but different modes of transport require different documentation. Liability rules also differ. A single transport document (hopefully electronic) and a single liability system would increase legal certainty and decrease significantly costs for business and citizens. The creation of a modern single market requires tackling the lack of interoperability and the infrastructure gaps that reduce the efficiency and weaken the global competitiveness of the EU logistics industry.

### *Breaking the deadlock on the European Patent*

Failure to agree on EU patent is one the most serious missing links in the single market. The legal basis now offered by Art 118 of the Lisbon Treaty and the Europe2020 strategy bring new momentum to the search for an agreement. It is key to capitalise on this momentum and break the deadlock on the issue of the translation regime applicable to an EU patent. A European patent is the test ground on which to measure the seriousness of the commitment to a re-launch of

the single market. Business and innovators need a single patent regime – and a single jurisdiction system – across Europe, which is attractive and cost effective for users. For SMEs low-cost and legally secure protection of intellectual property rights is of great importance. The Commission should not reduce its level of ambition in this area.

*Key recommendations:*

- ⇒ Assess the effects of the 2008 package on the functioning of the internal market for goods and identify possible further steps
- ⇒ Review the EU standard setting system striking the right balance between EU and national levels;
- ⇒ Adopt new measures to deal with remaining technical and administrative barriers which prevent the establishment of a single market for rail;
- ⇒ Establish a single transport document and liability regime for multimodal transport;
- ⇒ Adopt the EU patent and a single patent jurisdiction as a matter of urgency.

## **2.6. The single market for services: the powerhouse of the European economy**

The services sectors are crucially important for our economies. They account for 70% of GDP, they are the most important source of foreign direct investment, and they are the only sector of net job creation in the EU. Nevertheless, services markets remain strongly fragmented with only 20% of the services provided in the EU having a cross-border dimension. As a result, the productivity gap between the US and the Euro area remains much wider than acceptable (about 30%).

The Services Directive brings significant improvements for the functioning of the single market for services. Administration and supervision by national authorities are made simpler and more modern. The rights of users and consumers are strengthened. It has been estimated that the potential economic gains from the implementation of the services directive range between €60bn and 140bn, which represents a growth potential of between 0,6 and 1,5 % GDP.

### *Committing to a rapid implementation of the Services Directive*

The implementation of the Services Directive requires an unprecedented effort from Member States. They have to make important administrative and legislative changes, which include a thorough review of the regulatory framework applicable to a wide range of economic activities at national, regional and local level.

The results so far are encouraging but there is no reason to be complacent. Member States must fully implement the Services Directive as soon as possible. Priority should be given to the following areas: The Member States that have not finalised the screening of legislation should do so as a matter of urgency; The adoption of the remaining implementing legislation should be given a high political priority in all Member states concerned; The Member States that risk to incurring significant delays in completing all required changes should make an utmost effort to speed up the process; Member States that have not yet set up points of single contacts or have established points of single contacts that are insufficient should rapidly take the necessary steps to comply with the relevant requirements of the Directive. Furthermore, Member States should ensure that national authorities make effective use of the Internal Market Information System (IMI) to comply with their cooperation obligations.

The Commission should take all the necessary enforcement measures and maintain the pressure on Member States that are lagging behind to ensure a rapid full implementation of the Directive. The Commission should also keep the European Parliament, the Council and stakeholders informed of the state of implementation of the Directive. At the same time, the Commission should

continue to work with the Member States in order to further improve the administrative procedures and administrative cooperation mechanisms. The points of single contact should ultimately develop into comprehensive e-government centres which could extend to areas and procedures not covered by the directive such as taxation.

In addition, the Member States and the Commission should take an ambitious approach to the mutual evaluation process foreseen by the Directive for 2010. The results of this evaluation should be used to steer further and targeted action.

### *Industrial services*

European industry must move further into the provision of services in order to remain competitive at the global level. Companies operating in industry sectors and manufacturing need to develop new business opportunities by spurring related services such as maintenance, support, training and financing. In general, the growth potential of these services is much higher than that of the product business itself. The EU should strengthen the single market for industrial and business services by removing the remaining obstacles to the free movement of such services, by improving the EU-level framework for service standardization and by promoting innovative services

### *Removing barriers to cross-border health-care provision*

Services markets extend beyond the sectors covered by the Directive. In this context the Commission should in particular consider further steps to be taken regarding the numerous types of services that are currently not, or not fully, covered by the Directive.

An area not covered by the Services Directive that should be given particular attention is the health care sector. The proposed directive on cross-border healthcare aims at ensuring a clear and transparent framework for the provision of safe, high quality and efficient cross-border healthcare within the EU, for those occasions where patients seek care in a Member State other than in their home country. According to the proposed rules, patients would be reimbursed up to the amount that would have been paid had they obtained that treatment at home, but they bear the financial risk of any additional costs arising. The proposal dating from 2008 should now urgently be adopted.

In addition, a number of supporting actions should be taken in order to foster market integration in the health sector. The Commission should launch, together with the Member States a detailed benchmarking of health systems across the European Union. It should develop and spread knowledge on best technologies in the health care sector, building on the health technology pilot project. The use of e-health technologies to support decision-making within health systems should be encouraged in order to systematise the uptake of identified best

practices. Targeted rules to further facilitate the free movement of patients in the EU should be developed.

*Key recommendations:*

- ⇒ Examine which initiatives are required regarding the services sectors that are not or not fully covered by the services directive and make any necessary proposals
- ⇒ Adopt the proposed cross-border health care directive and take supporting actions, in particular launch a benchmarking of the healthcare systems in the Member States.

## **2.7. Workers in the single market: old problems and new challenges**

Transnational labour mobility matters for Europe. It underpins the broader mobility, occupational – between jobs and sectors, and social – between social groups, that is widely seen as the pre-condition for Europe's success in the economy that will emerge from the global recession. Closed national labour markets or job sectors shielded from competition, will deliver neither greater employment nor faster growth. Labour mobility is also key to absorb asymmetric shocks and respond to local restructuring processes within the euro-area, where exchange rate and monetary policy are tools no longer available to national authorities. Yet, Europe still lacks the labour mobility it needs to enhance labour markets efficiency and to ensure a correct functioning of its monetary union.

Labour mobility between Member States is made harder by a number of de facto barriers created by linguistic or cultural factors, family patterns and housing market structure. A number of legal and administrative barriers still remain, but overall freedom of movement of workers is a success from a legal point of view. However, from an economic and political angle, it is still fraught by two paradoxes.

First, freedom of movement of workers is the most contested and at the same time the least used of the four freedoms. A large proportion of the European public - as shown by the debates on enlargement and on the ratification of the Constitutional and Lisbon Treaties - are concerned that labour migration drives down wages, takes jobs away from local workers and becomes a burden on the social security system. In stark contrast, Europe is an area of low mobility. Today only 2,3% of Europeans live in a Member State different from that of their nationality. In a federal system and a unified economy as the United States, the proportion of US citizens changing States in the same year is about three times higher. The stock of people working in another Member State remained stable over time. Since 2001, the number of EU-citizens living in another Member State has increased by around 4 million. Migration from non-EU countries is by comparison a much more significant phenomenon for the Member States' labour markets. The number of non-EU nationals in the EU amounted in 2008 to 19.5 million, or 3.9% of the overall population. Moreover, Eurobarometer surveys show that the majority of Europeans are not interested or see too many obstacles in working elsewhere in the EU. This cold attitude to mobility does not vary substantially between old and new Member States.

The second paradox is that freedom of movement of workers faces a lower number of legal obstacles than the other three economic freedoms, but these obstacles are the most momentous and the hardest to overcome. Updating the



regulations on coordination of social security systems required 11 years of negotiation.

The economic downturn has shown that even in times of crisis there are jobs which are unfulfilled in the EU. Achieving Europe 2020 objectives require Europe to face these paradoxes and encourage more mobility and more use of free movement rights. Rising unemployment levels, persisting income and wage differentials between various European regions will not automatically deliver greater mobility and certainly do not deliver the type of mobility from which Europe can gain.

Europe can reap the greatest benefits from mobility of highly skilled workers in new and innovative sectors, through adapting to new dynamic types of mobility and by encouraging forms of intra-EU circular mobility that compensates brain drains with brain gains. This does not mean re-thinking settled policies. Rather, it is necessary to hit harder at some well-identified old legal and administrative obstacles and explore how to address the new challenges posed by new and more diversified types of mobile workers.

*Ensuring the coordination of social security rights and the portability of pensions rights for all*

A key pre-condition for the free movement of workers is that the person moving within the EU does not see his/her social security status adversely affected. The package on coordination of social security systems adopted in July 2009, after lengthy negotiations, modernised Community provisions dating back to the fifties. It marks a significant progress but things have already moved forward since then. The existing rules are designed to address the problems and needs of the type of labour migration that characterised labour markets in the past. There is scope to further adapt them to the situation of new and more diversified type of mobile workers and to take into account the specific situations of commuting workers and of workers not insured in their home country.

A specific problem is posed by the portability of supplementary pensions and health insurance rights. The current regulatory framework does cover social security entitlements but cannot avoid losses for non-statutory forms of social protections. This puts highly mobile workers in a particular disadvantage, as they will often change system several times in their life careers while also changing employment status and type of assignment. A Commission proposal in this area has been stuck in Council since 2008 despite strong support from the European Parliament.

The Commission should prioritise the issue of obstacles to transnational labour mobility in its forthcoming consultation on the pensions systems in Europe. In this context, an option to explore would be to develop a 28<sup>th</sup> regime for supplementary pension rights. This would be a regime entirely set by EU rules but existing in parallel to national rules, and thus optional for companies and workers. A worker opting for this regime would be subject to the same rules for its non statutory benefits wherever it goes in Europe. To makes things easier, a sub-option would be to limit the possibility to opt in this regime only to workers taking up their first work contract. This would serve as an incentive for the mobility of certain young workers, who are the keenest on international mobility.

Some attention should also be given to removing tax obstacles to cross-border work. Differences in tax rates between Member States makes it impossible to achieve a fully neutral treatment of cross-border economic activities. This is an area where progress was left to ECJ case law. There is scope perhaps for policy action in order to ensure tax neutrality for instance on the taxes levied on the parts of the income that depends from expatriation allowances.

#### *Making recognition of professional qualifications faster and easier*

A second major obstacle standing in the way of enhanced cross-border labour mobility is the complexity of international recognition of professional qualifications. Automatic recognition of qualifications applies only to seven out of more than 800 professions. In the other cases, administrative (mal)practices, delays in recognition processes and corporatist resistances at national level add to the cost and difficulty of exercising abroad and effectively increase barriers to entry into regulated professions. The current legal framework set out in the Directive 2005/36/EC to facilitate mutual recognition of professional qualifications between Member States should therefore be clarified and strengthened. There is now scope to raise the bar in this area. The Treaty for European Union replaces unanimity in the Council of Ministers by qualified majority. Moreover, there is a greater awareness that despite the Bologna process training contents across Member States are not converging to a degree that makes further action superfluous. To make recognition of professional qualifications easier, the *acquis* in this area, should be modernised. The scope for automatic recognition of qualifications to new professions should be expanded to new sectors in addition to the seven professions today, targeting in particular new professions required for green and digital industries to facilitate the mobility of highly skilled workers.

It is of equally fundamental importance to develop the European Skills and Competences Taxonomy. This system will ensure that skills and competences of

job seekers or the requirement of a job formulated in a job vacancy are understood in the same way everywhere in Europe and are easily transferable.

*Better matching skills with vacancies across the single market*

A third order of obstacles to free movement of workers concerns the efficient matching of skills with cross-border vacancies. Action is necessary both at EU and national level, on various fronts. The EURES network is a success story. It manages today 1 000 000 job vacancies and plays a key role in giving comprehensive advice to cross border job seekers and companies looking to recruit, linking together the public employment services of all Member States. Over time, it has expanded its tasks, graduating from a simple EU-wide database into a platform for international job placement in Europe. This process should be continued by developing EURES links with Public employment services, social partners and private employment agencies and strengthening its skills matching capacity and coverage of all phases of mobility. It should also develop links with information and problem solving networks, such as SOLVIT, to respond to all concerns and issues raised by citizens when using their mobility rights. Greater attention should be devoted also to the provision of information, advice and incentives to workers who want to return to their home countries after a work experience abroad. Return to the country of origin falls under the free movement of workers and cooperation between EU institutions and national PES should ensure that mobility brings value added to home countries as well.

National public employment services and national policies, together with social partners at national level, also have a key contribution to make in order to shape a more mobile- friendly environment in Europe and to monitor the correct implementation of rights and obligations of workers and companies. The EU structural funds, and in particular the European Social Fund, should support and facilitate actions to encourage intra-EU mobility and strengthen information and advisory services on mobility-related rights.

*Key recommendations:*

- ⇒ Coordinate social security systems for highly mobile individuals, and in particular for researchers;
- ⇒ Introduce a 28<sup>th</sup> regime for supplementary pension rights for cross-border workers;
- ⇒ Remove tax obstacles to cross-border work;
- ⇒ Extend automatic recognition of qualifications;
- ⇒ Strengthen the transparency and recognition of qualifications and skills, developing national qualifications systems and establishing the ESCT system;
- ⇒ Strengthen the EURES system transforming it into a fully fledged platform on placement within the single market.

## **2.8. The single market for capital and financial services**

*Supervision for a single market, not fragmentation of the market through supervision*

The single market for capital and the closely interrelated single market for financial services are critical for the efficient allocation of resources – a key driver of growth and employment – and for the stability of the economy. In the Seventies and Eighties, particularly in Europe, a tight system of restrictions to competition and constraints on allocation in the financial services industry, often designed to favour the financing of public sector deficits, had negative implications for investments and growth. The subsequent phase of financial liberalization since the Nineties, not accompanied – particularly in the United States - by corresponding improvements in prudential regulation and supervision, was a key determinant of the financial crisis.

The European Union, also in the context of the G20, is currently engaged in an ambitious programme with the objective of putting in place an adequate supervisory system. The programme was triggered by the De Larosière Report, commissioned by the European Commission.

In this area, the policy process is being pursued as a matter of priority by the EU institutions. It does not appear necessary for the present report to review such ongoing work (1).

What does appear necessary, however, is to stress the critical importance that, in the forthcoming legislative decisions to be made by Parliament and Council, the implications on the single market for financial services be given central consideration. The supervisory structures that will be put in place following those decisions are likely to mark the EU's financial landscape for a long time. It would be a serious strategic mistake if the Council, under the pressure of Member States giving priority to a natural tendency to protect national supervisory competences, were to favour timid solutions. These would present the risk of leading to a fragmented and more vulnerable single market.

*Supporting the single market and financial integration, through the issuance of E-bonds*

The EU needs a modern and developed financial system, built around a liquid risk-free asset class, which - being the benchmark for pricing other assets - would provide the basis for efficiently performing the essential functions of allocating resources, intermediating savings to investment, supporting better risk

sharing and ensuring a more uniform transmission of the single monetary policy across the euro area. This would reinforce the strengths of the Single Market, underpin the euro as a global currency and support the smooth functioning of the EU economies, during normal times but also in the face of external shocks and financial crises, ultimately amplifying the growth and jobs dividend for Member States.

The government bond market has acted as a catalyst in fostering the integration of European financial markets since the creation of the euro, supported by the emergence of a larger and diversified investor base, reducing transaction and financing costs for governments, and in turn spurring the development of markets for other related asset classes (such as corporate bonds, covered bonds, asset-backed securities and a range of derivative instruments).

Nevertheless, the government bond market is still fragmented, as debt issuance remains at the national level and no step has been taken to date – besides some more transparency and coordination of issuances - to achieve the economies of scale allowed by the euro. Fragmentation means that the European bond market is less liquid than the corresponding US and Japanese markets,<sup>8</sup> resulting in costs for investors, issuers, other debtors and, ultimately, European citizens. For example, households are unnecessarily paying higher interest rates for their mortgages, which are priced using government bonds as a benchmark.<sup>9</sup> Companies, in particular smaller ones, can hardly get bond financing, which exposes them to risks in terms of corporate governance associated to equity financing. Major public infrastructure in Europe, such as the TENs, is transnational, unfit for the currently fragmented national schemes, and their funding suffers from the absence of a liquid bond market for very long maturities, while long-term investors such as Pension funds cannot find a supply of bonds matching their investment needs. Financial operations carried out by EU institutions are also probably more expensive than it could be. The current fragmentation deters foreign capital from coming to Europe – for example, sovereign wealth funds are not attracted by small-size issuances – and if it comes, it asks for a premium to compensate for the illiquidity of the European bond market, implying a net transfer of wealth to the rest of the world. Finally, non-functioning financial markets can hamper reforms in other areas.<sup>10</sup> Overall, the potential of the euro is inevitably constrained without the underpinning of adequate financial instruments for portfolio investment within a single financial market, making the euro area a less attractive location for financial investment,

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<sup>8</sup> As witnessed by low turnover in the cash market and the migration of liquidity to the derivatives markets, the fact that issuances are still relatively small and that there is no efficient and fully representative benchmark instrument across maturities and typologies - which, despite appearance, the German Bund is not.

<sup>9</sup> For a 100.000€ mortgage over ten years, every basis point of interests reflecting the inefficiency of the government bond market implies over 50€ of additional interest payments over the period.

<sup>10</sup> By allowing economic agents to bridge short-term income losses and smooth consumption over time, functioning financial markets bring forward the long-term gains of reforms.

particularly in times of financial crisis, which reduces the capital available to Europe and hence its potential growth and employment.

In Europe, there is a government bond which is perceived as a liquid and safe asset: the German Bund. Its strength reflects the relative preference of investors compared to other government bonds within Europe. But, seen from a global viewpoint, the Bund is a relatively small entity. The recent fall of the euro during the Greek crisis reflects a capital outflow from Europe towards US-Treasuries, which even the quality of the Bund was not able to contain. Europe clearly loses from its lack of a global asset.

Addressing the fragmentation of the government bond market requires creating a new, European-wide market, with a global dimension. At the same time, legitimate concerns need to be taken care of: any solution must ensure that fiscally-responsible countries cannot be forced to bail-out undisciplined member states, in one form or another. The simple fear of this would affect their current favourable market standing, thereby making any proposal immediately unattractive. Prudent changes in issuance practices need therefore to be pursued, so that they could at the same time improve the functioning of the single market and ensure the respect of the no-bail out rule of the Treaty. On top of a more effective multilateral surveillance, tackling moral hazard would benefit from stronger market discipline on profligate governments.<sup>11</sup> This could be achieved by increasing the sensitivity of markets to national budgetary developments, and by making the possibility of a default of national debt more manageable by other EU countries, hence more likely and easier to price by markets.

Against this background, borrowing at large scale through a European body, and then on-lending to Member States, may represent a balanced solution. On-lending to Member States should not exceed a given level of a country's GDP (the same for all Member states) so that, for their financing needs not covered through this mechanism, governments would continue to issue their own, national debt for which they would remain individually responsible.

Given that Member States would get access to cheaper funding through this mechanism, they would consider the European body a preferred creditor, compared to holders of their debt floating on the market, theoretically increasing the possibility of a default only on the latter. In turn, this should increase market pressure (and yields) on the floating debt, creating a stronger incentive for Member States to quickly reduce such debt through sound fiscal policies.

Such mechanism could include all EU countries, with the non-euro area countries also getting loans denominated in euro. This would reinforce their incentives to ensure stability vis-à-vis the euro, consistently with the ERM-II requirements, supporting the euro area enlargement process. In turn, the larger

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<sup>11</sup> Market discipline has been rather ineffective since the start of EMU in preventing the accumulation of imbalances, ultimately putting at risk the very respect of the no-bail-out rule of the Treaty.

the number of EU countries participating in the mechanism, the larger the issuances by the European body, and the greater the benefits in terms of liquidity and depth of the European bond market, and ultimately for the EU Single Market.

Starting with a smaller set of countries would be interesting, provided it creates an issuer which is relevant on the global scene. Hence, the mechanism would already be attractive if EU Member States with smaller and medium size debts would join it, and the more so with large debt countries taking part. However, the real benefits for the EU would be reaped in full only if Germany would willingly participate in this process. For Europe, this would mean a significant step towards a more efficient financial market and a stronger Single Market, underpinning the euro as an international currency and the overall European economy. To Germany, it would provide the possibility to guide a process which is highly relevant for Europe both politically and economically, and to influence the design of the mechanism in a way which deals with its concerns of securing stronger fiscal discipline in the EU and maintaining its favourable financing conditions.

*Key recommendations:*

- ⇒ Make sure that the structure of financial supervision is such as *not* to lead to fragmentation of the single market;
- ⇒ Explore the possibility of reinforcing financial integration through the issuance of E-bonds.

## **2.9. The physical infrastructure of the single market : meeting the investment challenge**

It is impossible to imagine a single market without the physical infrastructure connecting its parts: roads and other transport connections, electricity grids, electronic communications and water networks. Infrastructures are vital for ensuring the mobility that underpins a functioning integrated market and for promoting growth and sustainable development. They are key to ensuring territorial cohesion. Despite the recognition of the importance of the infrastructure dimension of the single market and the central role played by the EU in developing Trans-European networks, a range of obstacles still prevent from "thinking European" in this area.



Planning, financing and management of infrastructure projects take place predominantly along national lines. As production and distribution are becoming more integrated across national borders and as sectors such as energy and electronic communication call for new interconnections, the cross-border infrastructure gap is becoming more acute in Europe. On the one hand, bottlenecks still exist within the single market, notably in the new Member States. On the other hand, new infrastructure must be put in place if Europe wants to accelerate the transition to a green, knowledge-based economy.

Plugging this infrastructure gap is a technical and coordination challenge, but it is also a financial challenge. The economic crisis has a major impact on Member States' capacity to fund new infrastructure projects when priority should be given to fiscal consolidation. At the same time, the private sector faces severe constraints in raising funds and needs legal security in terms of clear guidelines on the implementation of competition policy (anti-trust and state aid) in this area, as well as incentives to invest in networks in a competitive environment. Europe needs to have a fresh look at the economics of cross-border investment and at innovative ways to ensure its financing. The key issue for Europe is how to raise new resources for medium and long term investments of European importance. One way to address the problem is to explore all combinations between public and private funding, including a wider use of innovative source of financing, such as user charges. The reduced fiscal space available for governments will naturally enhance the importance of public-private partnerships as a delivery tool for infrastructure investments. Facilitating the combination of public-private partnerships with the use of structural funds will be crucial in this respect.

Another option is to improve the incentives for long term investors (financial institutions with a public mandate but also private investors, including pension funds) to direct their resources to long term infrastructure projects. The volume of funds managed by long-term investors at global level is estimated at € 30 000 billion, but only a fraction of these funds is used for infrastructure investment. Recent innovative experiences, such as the €1.5 billion Marguerite fund bringing together the European Investment Bank and the public financial institutions of six Member States are a good starting point. A reflection should be made on whether an *ad hoc* European legal framework should be developed for long term investors, with a view to encouraging their focus on infrastructure investments, while taking into account their specific characteristics and the variety of actors within such class of investors.

Finally, relevant resources for infrastructure investments could be freed by the development in Europe of a liquid bond market for very long maturities. This could serve to raise funds for major cross-border investments at EU level as well

as to offer an adequate supply of bonds to match long term investors' investment needs. Developing such a market would require reflecting on solutions to address the current fragmentation of the government bond market in Europe.

*Key recommendations:*

- ⇒ Facilitate the combination of public-private partnerships with the use of structural funds;
- ⇒ Examine whether an ad hoc European regulatory framework would be needed to encourage long term investors' focus on infrastructure projects;
- ⇒ Provide maximum legal security as regards competition policy in the area of infrastructure investment and financing.

## **CHAPTER 3**

### **BUILDING CONSENSUS ON A STRONGER SINGLE MARKET**

### **3.1. A single market for a "highly competitive social market economy"**

The central concern of this Report is how to renew the momentum behind the single market. Plugging gaps and pointing to new frontiers is crucial to generate new energy and confidence in the single market project. It may not be sufficient to create the political climate for a sustainable action, when large sectors of the European public – sometimes including political leaders and even business leaders - doubt the benefits of market integration and think that the process of market opening has gone beyond what was required or desirable.

Over time, the EU system has accumulated internal asymmetries between market integration at supranational level and social protection at national level, which generate frictions and are a source of disenchantment and hostility towards market opening. To make the relaunch of the single market sustainable it is necessary to remove in a targeted way these sources of frictions. In some cases, this implies adjusting existing single market rules to take account of the need of social and local contexts. In other cases, it is necessary to introduce greater coordination of the national regulatory systems, to ensure their coherence and fit with the EU principles.

In the next pages, the Report reviews policy challenges and possible actions in the area of free movement of workers, social services of general interest, public procurement, industrial policy, coordination of taxation policies and regional policy. These are building blocks for a reconciliation between the single market and the social and citizens' dimension in the Treaty logic of a "highly competitive social market economy".

### **3.2. Economic freedoms and workers' rights after Viking and Laval**

Between 2007 and 2008 the European Court of Justice decisions in the Viking, Laval, Rüffert and Commission vs Luxembourg cases revived an old split that had never been healed: the divide between advocates of greater market integration and those who feel that the call for economic freedoms and for breaking up regulatory barriers is code for dismantling social rights protected at national level.

The revival of this divide has the potential to alienate from the Single Market and the EU a segment of public opinion, workers' movements and trade unions, which has been over time a key supporter of economic integration.

The Court's cases have exposed the fault lines that run between the single market and the social dimension at national level in two ways.

First, because the cases brought to the surface the strains to which the current regulatory framework for posting of workers is subject, in a context of divergent social and employment conditions among Member States and acute sensitivity about the perceived risks of social dumping and unfair competition. Secondly, the Court's decisions showed that the reach of the EU law extends to collective labour disputes. This has brought social partners and collective action straight into the heart of the economic constitution of the single market. At the same time, it implied that both national systems of industrial relations and the exercise of the right to strike might have to adjust to fit with the economic freedoms established by the Treaty.

Concrete and normative issues are closely intertwined. On a practical ground, the question is whether the Posting of workers directive still provides an adequate basis to manage the increasing flow of cross-border temporary secondment of workers, while protecting workers' rights. On a normative ground, the question concerns the place of workers' right to take industrial action within the single market and its status vis-à-vis economic freedoms.

There is a broad awareness among policy makers that a clarification on these issues should not be left to future occasional litigation before the ECJ or national courts. Political forces have to engage in a search for a solution, in line with the Treaty objective of a "social market economy".

President Barroso announced before the European Parliament the intention to present a regulation to improve the way the Directive on posting of workers is interpreted and implemented. The gulf between the positions and the requests of social partners on this issue makes such an exercise highly sensitive.

Given the salience of the issue, in the preparation of this report special attention was paid to listening to the views and the concerns of the social partners. A joint consultation was organised with ETUC and BusinessEurope. Social partners had a chance to discuss their concerns, based on the positions outlined in the "Report on joint work of the European Social Partners on the ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases", adopted by four social partners on 19 March 2010 in response to an invitation addressed by the Commission and the French Presidency of the EU. The consultation showed that positions are still distant, but there are areas of shared concern on which one could build to bring the parties closer. One way to facilitate this convergence would be to address both the concrete and the normative aspects at stake in the debate. Yet, the two issues require different strategies of balancing single market and social requirements.

### *More clarity in the implementation of the posting of workers directive*

Ensuring a fair and balanced legal framework for posted workers requires reducing the space for ambiguities in the interpretation and implementation of the posted workers directive. The Member States where the most significant problems have arisen adapted, sometimes through a difficult political process, the implementing legislation. Action at European level, however, would be helpful to dispel the ambiguities that still affect the interpretation of the directive by facilitating access to information, strengthening the cooperation between national administrations and better sanctioning abuses. In this context, it is also of key importance that the fight against "letter box companies" is intensified and that posted workers' access to legal remedies against abuses of their rights suffered in the host country is strengthened.

### *Protecting the rights of workers, rejecting protectionism*

The second question is how to respond to the trade unions' concern that the operation of economic freedoms reduces the protection for the right to strike.

The ECJ rulings pre-date the entry into force of the Lisbon Treaty, which explicitly sets out the social market economy as an objective for the Union and makes the European Charter of Fundamental Rights legally binding at Treaty level. These elements should shape a new legal context, in which the issues and the concerns raised by the trade unions should hopefully find an adequate response. If this is not the case, however, the scope for further policy action should be explored.

In theory, two opposed strategies would be possible to balance economic freedoms and the right to strike.

On the one hand, trade unions propose to amend the Treaty in order to introduce a clause that would exclude the right to strike from its scope of application– the so-called "social progress clause". Such a clause would be modelled on Art. 2 of Council Regulation (EC) No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States. A "social progress clause" would "immunise" the right of strike, as recognised at national level, from the impact of single market rules. However, seeking Treaty changes does not seem a realistic option in the short term.

On the other hand, the opposed alternative strategy would be to regulate the right to strike at EU level. Such a solution is openly prohibited by the Treaty.

The logic of a single market consistent with the "social market economy" now adopted as a template by the Lisbon Treaty suggests a third strategy: a targeted intervention to better coordinate the interaction between social rights and economic freedoms within the EU system. The issue is to guarantee adequate space of action for trade unions and workers to defend their interests and protect their rights in industrial actions without feeling unduly constrained by single market rules. This is the context in which Council Regulation (EC) No 2679/98 may offer a reference point in the search for a solution, although it targets situations very different from labour disputes.

The purpose of the Regulation in fact is to renew the commitment to the free movement of goods while excluding any negative impact on the exercise of the right to strike. It sets out a prohibition of actions that "cause grave disruption to the proper functioning of the internal market and inflict serious losses on the individuals affected" whilst recognising that the right to strike is unaffected by that prohibition. A system of early warning about obstacles to free movement of goods and exchange of information between the concerned Member States is set up to build mutual confidence. The Commission plays an arbitration role, as it can request the Member State concerned to remove the identified obstacles to free movement of goods by a given deadline.

Without the need to touch the posting of workers directive, if measures are adopted to clarify its application, the Commission and the social partners could examine in that context whether to look at the model offered by Council Regulation (EC) No 2679/98. This would require to introduce a provision ensuring that the posting of workers in the context of the cross-border provision of services, does not affect the right to take industrial action and the right to strike as it is protected by the European Charter of Fundamental Rights and in accordance with national law and practices which respect Community law. After all, a similar provision safeguarding labour law has been introduced in the text of the services directive, with slightly different terms from those of Council Regulation (EC) No 2679/98<sup>12</sup>. Such a provision could be complemented by a system for the informal solutions of disputes concerning the application of the posted of workers directive when they risk causing a significant impediment to the functioning of the single market. In such situations, the social partners should refer the matter to the host Member State. The Member State should seek an informal solution, keeping informed the Commission as well as the Member State of origin of the posted workers and companies involved. If the parties refuse the solution proposed, they would be free to defend their rights in court.

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<sup>12</sup> Art. 1(6) of Directive 2006/123/EC of 12 December 2006 on services in the internal market. See also recital 14.

The proposed solution would respond to the concerns with regard to the place of the right of strike in the context of the freedom of movement of workers and would act as a confidence-building mechanism between the social partners. It would be a concrete way to signal that the Single Market is fully compatible with a social market economy.

*Key recommendations:*

- ⇒ Clarify the implementation of the Posting of Workers Directive and strengthen dissemination of information on the rights and obligations of workers and companies, administrative cooperation and sanctions in the framework of free movement of persons and cross-border provision of services;
- ⇒ If measures are adopted to clarify the interpretation and application of the Posting of Workers Directive, introduce a provision to guarantee the right to strike modelled on Art. 2 of Council Regulation (EC) No 2679/98 and a mechanism for the informal solutions of labour disputes concerning the application of the directive.



### 3.3. Social services and the single market

Since the nineties, the place of public services within the single market has been a persistent irritant in the European public debate. The discussion on the role assigned to public services within the Treaty should have found its solution with the Treaty of Lisbon. The Treaty's new Protocol and an amended Article 14 TFEU establish a coherent basis allowing competent authorities to ensure that citizens throughout the EU can benefit from high-quality services of general interest.

In spite of this renewed commitment made in the Lisbon Treaty the debate on the exact interaction between EU rules and the discretion of national and local authorities remains topical. In fact, whilst initially the European debate focused on the macro-issue posed by the liberalisation of network industries, the focus of the debate today has shifted to social and local public services. The fundamental challenge for the provision of these services is to maintain their quality and scope in the context of increasing pressure on public finances, which sometimes requires difficult trade-offs to be made. As these services are essentially financed by the Member States, it is primarily for them and not for the EU to address this challenge. Nevertheless, there are ways to assist Member States in modernising these services and adapting them to a changing environment and to the evolving needs of citizens regarding their scope and quality. At the same time, the Commission can contribute to ensuring that where EU rules apply to these services, the rules are predictable and proportionate.

*Predictability and flexibility: Ensuring that services of general interest can fulfil their public service missions*

The ongoing discussion and a number of consultations have shown that the predictability and proportionality of the EU framework, in particular as regards the application of the state aid rules and the rules related to the selection of the provider, are key concerns of many stakeholders. Over a number of years, the Commission therefore has made an effort to clarify the implications of the applicable EU rules in order to ensure that services of general interest can fulfil their missions and contribute to a better quality of life for European citizens.

There is room to strengthen the general approach adopted in 2005 in the package of measures to increase the legal certainty about financial compensation paid for to a large number of small, often local, public services, which has been welcomed by a wide range of stakeholders. The Commission should examine, on the basis of the findings of its ongoing assessment of the package, all possibilities to further increase the flexibility of the rules applicable to financial compensation, including through an increase of the thresholds and/or through

expanding the list of activities for which compensation does not have to be notified irrespective of the amounts involved.

As regards the application of EU rules to the selection of the provider similar concerns have been expressed concerning the lack of legal certainty and flexibility and the administrative burden created by the EU public procurement rules. However, in the area of public procurement the Commission has not yet taken an initiative similar to the package adopted regarding financial compensation. Given the very positive overall response to the state aid package, the Commission should review the procurement rules with a view to aligning them with the rules on compensation in order to ensure a consistent approach concerning small services of general economic interest.

### *Inclusivity: Ensuring that all citizens can benefit from the Single Market*

In order to be able to effectively participate in the single market citizens need access to a number of basic services of general economic interest, in particular in the area of the network industries, such as postal services, transport services or telecommunications services. In the network industries, market opening at EU level has therefore always been accompanied by measures ensuring that a universal service continued to be provided.

The new Article 14 TFEU reiterates the joint responsibility of the EU and its Member States for the proper functioning of services of general economic interest and provide a specific legal base for EU regulations. It has been proposed to address services of general economic interest in a horizontal framework regulation. However, the consultation has made clear that a proposal for a framework regulation would have limited added value, if any, and that its chances of being adopted would be very small. At this stage, it does therefore not seem appropriate for the Commission to present such a proposal.

However, a re-launch of the single market should examine any gaps in the universal service provisions at EU level that could de facto prevent a relevant number of EU citizens from effectively accessing the single market. In this context, the Commission should consider proposing, possibly on the basis of Article 14 TFEU, a regulation ensuring that all citizens are entitled to a number of basic banking services. Today, having an account has become a pre-condition for accessing a number of services and for fully benefiting from the single market. Nevertheless, according to a study conducted for the European Commission in 2008, 20% of adults in the EU-15 and almost half in EU-10 (47%) still do not have a bank account and policy responses vary widely between Member States. An EU framework for financial inclusion complementing the ongoing comprehensive reform of financial services regulation at EU level would allow an important part of the population, in

particular in the new Member States, to reap more fully the benefits of the single market.

Similarly, the full benefits of an online single market can only be enjoyed via a fast broadband internet connection. In the light of the results of the ongoing public consultation on universal service in electronic communications the Commission should also examine whether there is a case for using Article 14 TFEU to extend universal service in electronic communications to the provision of broadband access.

Moreover, the public service obligations in transport should be assessed and the rights of air passengers be strengthened drawing on the lessons learned from the consequences of the recent eruption of the Eyjafjallajökull volcano in Iceland

*Key recommendations:*

- ⇒ Further increase the flexibility of the State aid rules applicable to financial compensation;
- ⇒ Review the procurement rules with a view to aligning them with the rules on compensation;
- ⇒ Present a proposal, possibly on the basis of Article 14 TFEU, for a regulation ensuring that all citizens are entitled to a number of basic banking services;
- ⇒ Examine the case for extending, possibly on the basis of Article 14 TFEU, universal service in electronic communications to the provision of broadband access; Strengthen rights of air passengers.

### **3.4. Harnessing public procurement for Europe's policy goals**

Public purchases – the acquisition by public authorities/entities of goods, works and services on the market – capture a sizeable share of Europe's GDP. In 2008, EU public procurement amounted to around 2155 billion Euro, equivalent to 17-18% of EU GDP. Out of this, public procurement tenders worth approximately 389 billion Euro were covered by the rules set out in the EU Directives on public procurement.

EU public procurement law plays a key role in the creation and maintenance of the single market. It ensures that suppliers and service providers from other Member States are not excluded from the market of public purchases and that public authorities' natural preference for keeping the purchases within their own country does not partition the EU market. In ensuring non-discriminatory access to public bids, the EU law intends to achieve also good governance and efficiency objectives.

There is no doubt that EU public procurement law has been largely a success, turning into one of the most developed and technically sophisticated areas of the single market. The number of procurement notices published at EU level is constantly growing. Procedures are certainly more transparent than in the past. The score is high also on competitive impact. On average five bidders respond to each procurement tender published at EU level. The expectations of better value for money have also been satisfied: estimates set the savings realised by public authorities between 5 to 8% of the price paid.

There is however a mounting call for a review of public procurement policies, for different reasons and with different objectives. Two questions are at the heart of the debate: whether public procurement policy should be reformed and whether such a review should lead to a greater integration of horizontal policy objectives into public procurement. The Commission has launched an across-the-board evaluation of the 2004 public procurement directives, as a basis for future reform. This sets the scene for reflection on the issue. A re-think of the policy seems well-warranted, first of all in order to simplify, continue to modernise and sharpen public procurement rules.

#### *Simplifying and further modernising public procurement rules*

There are gains that can be obtained by ensuring a better enforcement of rules and greater openness to cross-border bidders. Price reductions differ among sectors of activity and tend to benefit mostly large or centralized contracting authorities/entities. Direct cross border procurement success is still rather limited, concerning on average only 2% of contracts. Some categories of

services are also excluded from the full scope of application of the EU Public Procurement Directives. Whilst for some services, such as certain social services, more flexibility should be sought, the review should provide an opportunity to assess for other, currently excluded, categories of services whether such an exclusion is still valid.

Reforming public procurement should be an opportunity to address teething problems of complexity, administrative burden and SME-unfriendliness. All avenues towards simplification should therefore be used. Member States should also be asked to scrutinize their own national public procurement legislation which, in many instances, is responsible for the complexity and the administrative burden on contracting authorities and small businesses.

Member States should make extensive use of the Code of Best Practices, adopted as part of the Small Business Act to improve SMEs access to public procurements.

#### *Better integrating horizontal policy concerns*

The review of public procurement rules should also address the perceived areas of "friction" with the policy autonomy of national or local authorities. On the one hand, in fact, EU procurement rules are perceived as restricting the ability of municipalities to provide services to citizens in the form they prefer or traditionally privilege. This is the case for instance, where they would like the "in-house" provision of services or the establishment of public-public cooperation. On the other hand, EU rules are perceived as not forthcoming enough in encouraging or even requiring that public purchases support broader policy goals, such as climate change, innovation, gender equality employment or social inclusion goals.

In the first area, some further clarification on the concept of "in-house" would be beneficial based on recent ECJ case law. All the margins available under the WTO Government Procurement Agreement should be used to expand the scope of action for public authorities. Allowing the use of the negotiated procedure with prior publication as a standard procedure in the "classical sector" could help greatly. This could also include applying to contracting authorities (especially local ones) the more flexible regime of the 'utilities' directive relating to qualification lists.

In the second area, there is probably room for a greater use of public procurement as a tool to achieve policy objectives set out at EU level. Public purchase can be a boost for innovative products and technologies in the area of climate change and energy. It may give a push to research and innovation,

promote social cohesion and help meet the poverty reduction and employment objectives set out in the Strategy. Harnessing public procurement towards these goals would require assessing the possibility to impose mandatory requirements relating to policy objectives set out above in the Public procurement directives. Greater clarity regarding concrete operationalisation of the requirements should be provided through legislation based on delegated acts.

*Key recommendations:*

- ⇒ Re-think public procurement policy to make it simpler, more effective and less onerous for national and local authorities; Strengthen SMEs participation by applying the Small Business Act Code of Conduct;
- ⇒ Clarify the rules applicable to "in-house" provision;
- ⇒ Make public procurement work for innovation, green growth and social inclusion by imposing specific mandatory requirements.

### **3.5. The tax dimension of the single market: working together to safeguard tax sovereignty**

Tax policy is an area that both the supporters of the single market and its radical critics tend not to like. Paradoxically, there are reasons why both should look with interest to it.

#### *Cutting tax-related administrative burdens and compliance costs for business and citizens*

Europe has a highly fragmented tax landscape. In many areas, the operation of 27 different set of rules implies significant compliance costs and administrative burden for citizens and business operating cross-border. When an EU tax framework exists, it lacks transparency, leads to loopholes and opens the door to uncertainties as regard the applicable rules or to instances of double taxation or tax discrimination. In is in the interest of business and citizens, to remove barriers to intra-EU operations by addressing the issue of cross-border relief for companies, simplifying and modernising VAT invoicing rules facilitating electronic invoicing, introducing a binding dispute settlement mechanism covering double taxation suffered by individuals and extending the savings directive to close existing loopholes.

Moreover, in some areas, progress on the tax policy side may offer the EU the possibility to use taxation as a tool to complement regulation to achieve agreed policy objectives. The lack of agreement on the proposal for VAT for postal services for instance weakens the prospective liberalisation of postal services in the single market by 2010. Environmental taxation could provide support for the policy initiatives to fight climate change.

#### *Tackling the anti-labour bias of tax competition within the EU*

However, there is a second important aspect that gives to the taxation issue a systemic importance for the economic integration process. The functioning of the single market – coupled with the wider globalisation process - places a growing challenge for the operation of domestic tax systems and may erode in the long term their revenue raising capacity, as well as their ability to pursue social and redistribution policies at the national level. Addressing this underlying tension between market integration and tax sovereignty is one of the avenues for reconciling the market and the social dimension of the single market.

Tax competition is a widely used practice in an integrated market, as national systems may use the fiscal tool to increase their attractiveness for businesses and

capital. Tax competition, to some extent, serves a healthy purpose of putting pressure on governments to keep spending under control. However, it presents a disturbing asymmetry. The liberalisation of financial markets and the expansion of the single market allow companies to pursue strategies of tax minimisation and regulatory shopping in search of the most convenient taxation area. In response to this phenomenon, the burden of taxation within EU Member States has progressively shifted from more mobile tax basis (capital income and corporate income) towards a more extensive taxation of less mobile tax bases, notably labour. Over the past two decades, almost all Member States decreased their statutory corporate tax rates, competing for internationally mobile capital. The EU-15 average went from close to 50% in 1985 to slightly less than 30%. The average for the twelve countries that joined the Union in 2004 and 2007 is about 10 percentage points lower. At the same time, Member States broadened the tax bases, to eliminate opportunities for tax avoidance and safeguard their tax revenues. In 2007, taxes on labour accounted for 46% of total tax revenues on the arithmetic EU-average, whereas taxes on corporate income accounted for 9.8%. The average implicit tax rate on corporate income in the EU-25 amounted to 25.5% in 2007, while the average implicit tax rate on labour income amounted to 34.8%.

According to these elements, the tax burden in Europe over the past decade tended to concentrate in a higher proportion on the less mobile bases, i.e. on labour, through personal income taxes and social contributions. This is not a trend created by the single market. Yet, the operation of the single market contribute – involuntarily – to accentuate it. Such a phenomenon have repercussions for the fairness of tax systems and for their long term ability to collect revenue to fund social programmes, as tax avoidance and elusion opens gaps. Consequently, it is important to devise solutions that minimise harmful tax competition and remove the in-built bias towards taxation of less mobile basis. This does not mean depriving national system of a tool to exploit the full potential of the single market. Business surveys show that corporate tax levels are only one of the factors taken into account by business when weighing the attractiveness of alternative locations for direct investments. Other factors, such as stability of political and regulatory environment, infrastructure, productivity and labour costs are considered more important than corporate taxation.

Automatic exchange of tax information and in general cooperation between tax administrations of the Member States should also be improved in order to make tax collection more effective and fair.

Thus, there is scope for exploring measures of tax coordination that would smooth over rough edges - which produce distortions or incentives for tax avoidance - while respecting tax sovereignty. Bilateral solutions could not reach



the same effect and would not be legally viable. Harmonisation itself should not be an objective. Tax sovereignty reflects local preferences for different levels of taxation and is rooted into the democratic process. It has therefore strong foundations that make any attempts at harmonisation, other than for limited aspects more closely linked to the functioning of the single market (VAT and excises in particular), unnecessary and not very realistic.

### *Fiscal exit strategies from the crisis and tax coordination*

An additional argument in favour of some measures of coordination of tax policy comes from the challenges that Member States tax authorities will have to face in devising credible fiscal exit strategies. The economic and financial crisis has led to an explosion of public debt in Europe and at global level. Within the EU, the massive stimulus packages undertaken by governments at the initiative and with the coordination of the Commission, generated a surge in government deficit and debts. Government headline deficits are forecast to reach, on a EU wide average, 7.5% in 2010 and 6.9% in 2011 while EU level debt will jump to 83.7% in 2011. It is realistic to assume that reduction of huge public debt will require in several countries not only expenditure cuts and fiscal discipline but also tax increases. It is also realistic to imagine that consolidation efforts will entail a shift from income taxation towards indirect taxation and a greater emphasis on less growth distorting taxes, notably environmental taxes. Under these conditions, coordination of tax policies could be an important component of a fiscal consolidation strategy at EU level and improve the effectiveness of national action. One advantage of coordination is that it would be more effective in targeting mobile tax bases, plugging the gaps that permit tax arbitrage and avoidance. A second advantage would come from minimising the impact on competitiveness when taxation would target products that constitute input for industrial production, as it would be the case for energy taxation. A third advantage is that coordinated moves would limit regulatory and tax fragmentation that would distort competition within the single market and increase compliance costs for business. They would also reduce the chances of tax induced asymmetric shocks in the Euro-area, thus facilitating the conduct of monetary policy by the European Central Bank. In short, some measures of coordination have the potential to turn a negative sum game within the Single Market in a game where all actors obtain benefits.

### *Identifying areas suitable for measures of coordination of tax policies*

There are three areas in which the possibility of tax coordination could be explored.

The first is the area of corporate taxation. Work towards a common definition of corporate tax bases replacing the plurality of rules existing in each of the Member States, dates back to 2001. The specific design of the proposal requires a careful attention, but the time seems mature to move forward. The Code of Conduct Group on harmful business taxation – set up within the Council under the ECOFIN resolution of 1<sup>st</sup> December 1997 - has done valuable work in identifying and ensuring the removal of harmful tax practices. However, in the context of a relaunching of the single market the role and status of the code should be re-examined with a view to ensuring an even greater coordination of policy in this area, with a wider examination of the effects of harmful regimes, mismatches and other negative effects of tax competition. The code group could also extend its coverage to some limited issues of personal income taxation that are relevant in the context of harmful business tax competition and could look more closely at agreed definitions of tax abuse.

A second area for potential consideration is the area of consumption taxes. Variation in VAT rates affect capital and trade movements, at least in the short – medium term, and are therefore relevant for the functioning of the single market. In a context of a trend towards increasing consumption taxes, coordination of policies directed at raising standard VAT rates or limiting the application of reduced VAT rates may be beneficial.

A third area of relevance for coordination is that of environmental taxation. This is likely to play a key role in the future. It would be of great help to frame discussions on environmental taxation in the broader context of tax coordination so that the benefits in terms of relieving the tax burden on labour would also emerge clearly.

#### *A Tax Policy Group*

A move towards greater cooperation and coordination requires an appropriate forum for tax policy discussion. As long as tax issues are dealt with in a fragmented and purely technical way, positions tend to be entrenched, often resulting in stalemate due to the lack of broader possibilities for compromises. To break the deadlock, there should be a forum for closer political dialogue between the Commission and the Member States revenue authorities at the highest, political, level. A Tax Policy Group, chaired by the Commissioner responsible for taxation and composed by personal representatives of the Finance Ministers of the Member States would provide the best format to launch a strategic dialogue on the possible benefits and limits of tax cooperation and coordination within the single market. Such Group would be of substantial help to the Commission in view of exercising its power of initiative in a way that would benefit from an open and constructive dialogue at the political level, in

which Member States would be encouraged to share their expectations and concerns. Being an instrument for the Commission to inform its initiatives in full awareness of Member States' views, the tax policy Group should be chaired by the Commissioner responsible for taxation. Precedent is provided by the tax policy group set up in 1996, chaired by the competent Commissioner, that allowed the agreement at the ECOFIN on the December 1997 resolution.

*Key recommendations:*

- ⇒ Further work on the elimination of tax barriers within the single market, modernising e-invoicing rules, updating rules on cross border relief, introducing a binding dispute settlement mechanism covering double taxation suffered by individuals and reviewing the savings directive;
- ⇒ Work towards a common definition of the corporate tax bases and move forward with the work of the code of conduct group on business taxation;
- ⇒ Reform VAT rules in a single market-friendly way;
- ⇒ Develop the area of environmental taxation in the broader context of tax policy and their impact on growth and employment;
- ⇒ Agree on the establishment, at the initiative of the Commission, of a Tax Policy Group chaired by the Commissioner in charge of taxation and composed of personal representatives of the Member States Finance Ministers as a forum for strategic and comprehensive discussion of tax policy issues.

### **3.6. Competitiveness and cohesion: the regional dimension of the single market**

The link between greater economic and monetary integration and the development of regions is a red thread that runs through the various steps of European integration, from the Werner Report to the Delors era, when a reformed Community regional policy became one of the essential components of the package deal strategy designed for the relaunch of the single market.

In the political vision of Delors, informed by the conclusions of the Padoa-Schioppa Report on Efficiency, Stability and Equity, market integration could be a win-win process only when complemented by action at EU level to correct structural imbalances at subnational level. Such action would give a push to peripheral regions that otherwise would not be able to participate in full to the single market and would prevent lagging regional economies from seeing their gap from the most performing increase.

Over time, EU cohesion policy has nuanced its original "structural adjustment" rationale, to place greater emphasis on the forward looking dimension of supporting the delivery of the Union's policy objectives and promoting development. The Commission Europe2020 Strategy confirms that cohesion policy is anchored into the broader long term policy priorities for the Union and that the structural funds are one of the main delivery channels for the strategy goals, including social inclusion. As the debate on the future of EU cohesion policy is entering into an active phase, it is worth reflecting also an analysis on the territorial implications of the planned relaunch of the single market.

The transition to a green and digital economy, the reorientation of manufacturing into high-tech sectors and greater intra-EU labour mobility will trigger several changes. As a result, all regions of the Union will experience a mix of opportunities and adjustment needs. In addition, cohesion policy will continue to play a key role for upgrading the infrastructure of new Member States, which is essential to ensure the interconnection of the single market. These elements call for an in-depth analysis of the requirements that an expanded and dynamic single market places on regional policy. This reflection should extend to assessing what type of reformed cohesion policy, based on strong conditionality to ensure its efficiency, would be best suited to give all regions the opportunity to exploit the single market potential.

### *Using cohesion policy to promote Member States compliance with single market rules*

If one of the goals of a reformed cohesion policy will be to help all regions and Member States benefit from the participation to the single market, and if a greater attention is paid to strengthening conditionality, there is a rationale for using the leverage of EU financial support also to provide incentives for the timely transposition of single market rules. One idea would be to set aside at the start of the programming period of a performance reserve, for example equal to 1% of the cohesion budget for each Member States. This reserve would be allocated to Member States based on an objective indicator of their transposition performance, such as the notifications of transposition measures for single market directives. The Member State would then allocate the funds to its best performing programmes.

### *Tightening anti-relocation provisions in the cohesion policy Regulations*

There is a wide concern among public opinion that companies decision to relocate to other Member States are distorted by the possibilities to get subsidies from the recipient country, which may be co-funded by EU money. In the current programming period, rules have been introduced to deter fund-shopping. Such rules have proved effective, but not entirely. In the cohesion policy regulations for the next programming period, some attention should be given to tighten up anti-relocation rules, and appropriate channels should also be ensured to coordinate the use of EU cohesion funding and the authorisation of state aid support in favour of the same company.

#### *Key recommendations:*

- ⇒ Evaluate the potential impact on EU regions of the relaunch of the single market;
- ⇒ Introduce a conditionality clause in Structural Funds to reward the Member States most disciplined in transposing single market directives;
- ⇒ Tighten up rules preventing the use of structural funds in support of company re-location.

### 3.7. The single market and industrial policy

The word is no longer taboo. Europe's leaders are discussing again the merits, and limits, of an active industrial policy. The return of interest for industrial policy goes in parallel with a renewed attention to the importance of manufacturing for Europe's economy and a wide concern for the profound transformation of the European industrial base triggered by the crisis.

There is in some quarters the concern that industrial policy and competition rules are antagonistic terms. In that logic, an industrial policy could only emerge in Europe through a softer enforcement of competition and a relaxation of state aid rules. A sound competition and state aid policy is not in contrast with a sound industrial policy. The opposite is true: competition is necessary to create the varieties, comparative advantages and productivity gains on which growth and innovation flourish.

*Merger control: not an impediment to industrial activism but needs consistency*

Europe needs an industrial policy that does not conflict, rather builds on its competition rules. Competition rules certainly don't stand in the way of the European companies search for the best scale and size to compete globally. European competition rules have not opposed the birth of numerous European champions, from EADS to AirFrance-KLM to mention only two, and even national champions. Even if Europe had had a more permissive regime, the deals would have fallen under the jurisdiction of the competition authorities of the United States or Japan. They would have been struck down anyway. Europe needs European champions that are able to grow on their own merits and to run with their legs in the global race. National policies supporting national champions would create coalitions of veto actors paralysing the single market and dampening its potential as a tool to drive industrial innovation and structural changes. To build European and not national champions, merger control mechanisms remain indispensable. There is therefore an interest in moving towards a greater convergence as regards how mergers are assessed on the substance and the review process at national level. The objectives to ensure a level playing field – sterilising the impact of national public policy concerns on cross border cases- and a "one stop shop" treatment of mergers – avoiding concurrent review from NCAs - would require that NCAs would apply the substantive EU merger control rules also at national level where a merger has cross border effects. In parallel, cooperation between NCAs should be improved, to ensure procedural and substantive convergence between them and with the EU level. A more radical option would be to revise the mergers regulation's mechanisms for case allocation and re-allocation. This would mean abolishing the so called "two-thirds rule", which requires that mergers in

principle eligible for EU review under the merger regulation are nevertheless left to national competition authorities when more than two thirds of the parties turn-over is realised in one and the same Member States. The advantage would be a more consistent treatment of mergers in key areas of the EU economy.

### *Why state aid control matters*

Merger control is a global feature, while rigorous state aid control is rather a European "unique". Should then Europe become much more relaxed in the way it looks at public subsidies at national level? The argument goes that as Europe applies a stricter state aid regime than its main competitors, firms located abroad have more opportunities to improve their competitiveness while firms located in the EU are increasingly attracted abroad. The argument is both normatively weak and short on facts.

Normatively, the rationale for a strict state aid regime is that Europe is not a state, but a supranational system covering a plurality of national systems. State aid control is an essential tool that keeps the single market open, integrated and competitive. If Member States would engage in a race to subsidies for their own companies, the single market would be disrupted as wealthier Member States would win the contest against smaller Member States. In the process, lots of public funds would be absorbed by non-performing investments.

It is also not true that EU state aid rules are a hindrance to financial intervention by governments *per se*. They set a framework that directs state aid in a direction that supports general public policy objectives and offsets market failures. Support for companies is not lower in the EU than in other jurisdictions. Independent studies show that subsidies aimed at enhancing competitiveness amount to 0.34% of GDP in France 0.43% in Germany, 0.35% in Japan and 0.24% in the US. Even in the area of R&D&I, public support level are very similar among Europe, Japan and the US. In any case, the vast majority of support for R&D&I provided by the US, Japan, China and South Korea would have been allowed under the current R&D&I framework. The argument that state aid control makes Europe a less attractive location for foreign capital is short on facts. The EU has been one of the largest recipient FDI flows for most of the past two decades. Both the stock of FDI as a share of GDP and the number of foreign projects submitted to Commission state aid pre-scrutiny under the multi-sectoral framework and regional aid guidelines show an upward trend. Finally, investment subsidies have the potential to affect localisation decisions within the EU, but hardly between the EU and other jurisdictions, such as the US, Japan China and South Korea. The differential in input prices is such that relaxing state aid rules would not affect localisation decisions. It would rather imply opportunity costs.

### *Moving forward in the definition of a new industrial policy*

Europe should thus remain confident that its single market is its first and best industrial policy. Yet, as all the policy documents since the 2002 Communication on Industrial policy remind, the dynamism of a EU-wide market is best used when it is accompanied by an industrial policy which looks at the long term. There are both the rationale and the scope for shaping up an active, judicious and effective action in support of business and entrepreneurship. This should exploit all synergies between competition and industrial policies and use flexibly all regulatory and policy tools. Europe 2020 describes the broad contours of such a modern industrial policy, which combines horizontal features and support for the competitiveness of sectors, whether they feel the pinch of globalisation or face the transition to green and digital economy. There is also a consensus that an EU action should have some vertical elements, helping national policies to focus on selected highly promising sectors, such as energy, innovative industries and clean vehicles, without forgetting the needs of manufacturing industries. The EU should move ahead to formulate its new conception of an active industrial policy to complement the relaunch of the single market.

#### *Key recommendations:*

- ⇒ Review merger regulation abolishing the so called "two-thirds rule";
- ⇒ Develop a new approach to industrial policy which builds on a mutually reinforcing relation with single market and competition rules.



### **3.8. Open, but not disarmed: the external dimension of the single market**

Openness to global trade and investment is key for Europe's long term prosperity. The European economy is the world largest "exporter" of foreign direct investments (FDIs), with 36% of world FDIs in 2006, and the world largest exporter of goods, with a 16.2% share of global exports. The emergence of global value chains and the geographical fragmentation of production processes mean that EU economies are increasingly interdependent with the rest of the world, and in particular with emerging economies. 65% of goods imported by the EU are inputs for the production of other EU products.

Yet, Europe has an ambivalent feeling about the external dimension of its Single Market. Member States and EU industries are well aware of the huge advantages an EU-wide Single Market brings to the global scene: it makes the EU a highly attractive location for foreign investments and gives valuable leverage in negotiations with trading partners on market access. It creates a competitive environment that enables EU business to expand abroad.

At the same time, there is a widespread perception that European businesses are subject to a strict state aid regime whereas competitors in the rest of the world may benefit from various forms of government's support with less control. European companies in sectors such as shipbuilding, aerospace and semiconductor often complain that the restrictions they face at home put them at a competitive disadvantage in the global race with less constrained competitors. Unfair competition adds to a perceived discrimination suffered by business when operating in foreign markets. Grants of subsidies are less transparent and public procurement more geared to keeping public purchases within the home market than in Europe. Intellectual property rights are also considered a problematic area. The rise of state sponsored investments is also fuelling concerns about an excessive exposure of EU assets to foreign grab in sectors that have been liberalised.

To reconcile its ambivalent feelings about the impact of the Single Market on the EU's global position, Europe needs to better match actions to expand the competitiveness space for its firms and efforts to level the global regulatory playing field. The common commercial policy gives the EU the power and the right tools to act effectively on the global stage. Europe should use these tools to defend and promote its interests in an active, determined way vis-à-vis its trading partners, to ensure trade access and to foster regulatory convergence.

*Promoting regulatory convergence and transparency of subsidy policies at global level*

The 2006 "Global Europe" Communication sets out clearly that rejection of protectionism within the single market, must be paralleled by an active agenda to open up markets and ensure a level playing field for trade exchanges. Achievement on this did not match ambitions. Europe should devote more resources and more political capital to press for the removal of behind-the-border obstacles, from technical standards to intellectual property rights, prioritising the issue of subsidies. More has to be done to promote increased transparency and strengthen international rules on subsidies, both at multilateral level and in bilateral and regional agreements. The EU cannot give its business the impression that it will remain the only area in the world where competition and state aid rules are applied strictly. The global debate on the exit from the crisis provides a window of opportunity that should not be missed.

The French Presidency of the G20 in 2011 provides a chance to put the issue on the agenda and kick off a global debate. Europe should also press for greater action at WTO level, where the EU trade partners' level of compliance with notification and transparency obligations is not yet optimal. It should also lead the debate on subsidies within the OECD, pushing for the development of code of conducts and shared guidelines. The full potential of the Transatlantic Economic Forum should be exploited to foster convergence with US and Canada.

In parallel, Europe should step up its effort to bring subsidies and regulatory issues to the table of bilateral negotiations. Provisions on subsidies exist in all free trade agreements (FTAs), but they lack punch and are rarely implemented in practice. The FTA recently concluded with Korea marks a change of approach. It contains WTO-plus provisions on subsidies which will ensure greater safeguards against unfair subsidies based on exchange of information and regular dialogue to address possible conflicts. The EU should ask for similar provisions to be included in a certain number of FTAs currently being negotiated, starting with India, Asean, Central America, Canada and Ukraine. The EU should also press for greater opening of trading partners' markets in public procurement, ensuring that commitment taken at international level are fully followed up. Taking into account the comparatively greater openness of EU public procurement markets, ways to improve the EU leverage in international negotiations on government procurement should be explored.

To fight unfair tax competition, the EU should also follow up to the G20 work on good governance in the tax area seeking on a more consistent basis to include

provision on the three principles of good governance in taxation in international agreements.

*Setting the terms of global competition through anticipatory regulation and standard-setting*

Europe should also pay greater attention to factor in the international dimension when preparing new regulation, so that convergence at global level is easier and business finds fewer barriers to entry into foreign markets. Where relevant, reference to the regulatory solutions adopted in the legal systems of our main trading partners should be made in the impact assessment analysis underpinning new legislative proposals.

Finally, Europe should be on the offensive in setting EU-wide standards for innovative products and technologies, such as in the area of low carbon and ICT services and technologies. While it may be difficult to export EU-standards, having them in place enhance Europe's leverage in shaping developments at international level.

*Shaping a new foreign direct investment policy at EU level*

Investments are a growing share of global trade. They have taken a prominent place in the bilateral agreements concluded by Member States. With the Lisbon Treaty, foreign direct investment becomes a part of the commercial policy, which is an exclusive policy of the EU. The EU should act fast and develop a new comprehensive policy on investments, which serves the interest of business and investors equally.

*Key recommendations:*

- ⇒ Promote a pro-active market access agenda in the G20 and other multilateral fora, with a specific focus on subsidies;
- ⇒ Press for the introduction in bilateral Foreign Trade Agreements of provisions on subsidies;
- ⇒ Press for greater opening of public procurement markets, in particular in the BRICs.

## **CHAPTER 4**

### **DELIVERING A STRONG SINGLE MARKET**

#### 4.1. Regulating the single market, "ma non troppo"<sup>13</sup>

Today, the *acquis communautaire* comprises 1521 directives and 976 regulations related to the various single market policy areas. An action to deepen the single market is therefore unlikely to require a new wave of regulations and directives, as it was the case with the 1985 White Paper. Furthermore, the EU Better regulation agenda sets out strict requirements on how new legislation should be designed. However, this does not exempt from addressing the issue of what modes of regulation and policy making methods are the most appropriate to regulate the single market.

Currently, 80% of the single market rules are set out through directives. These have the advantage of allowing for an adjustment of rules to local preferences and situations. The downsides are the time-lag between adoption at EU level and implementation on the ground and the risks of non implementation or gold-plating at national level. The recent debate on regulation in the financial services area has shown the merits of having a single European rule book. There is thus a growing case for choosing regulations rather than directives as the preferred legal technique for regulating the single market. Regulation brings the advantages of clarity, predictability and effectiveness. It establishes a level playing field for citizens and business and carries a greater potential for private enforcement. However, the use of regulation is not a panacea. Regulations are appropriate instruments only when determined legal and substantial pre-conditions are satisfied. They may not even result in greater efficiency, if the discussion that would have taken place at national level at the time of transposition is shifted to the European level at the time of adoption by the Council and Parliament.

Harmonisation through regulations can be most appropriate when regulating new sectors from scratch and easier when the areas concerned allow for limited interaction between EU rules and national systems. In other instances, where upfront harmonisation is not the solution, it is worthwhile exploring the idea of a 28th regime, a EU framework alternative to but not replacing national rules -. The advantage of the 28th regime is to expand options for business and citizens operating in the single market: if the single market is their main horizon, they can opt for a standard and single legal framework valid across Member States; if they move in a predominantly national setting, they will remain under the national regime. An additional benefit of this model is that it provides a reference point and an incentive for the convergence of national regimes. So far, the 28th regime model received little attention except for the European Company Statute. It should be examined further for expatriate workers or in the

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<sup>13</sup> But not too much.

area of commercial contracts where a reference framework for commercial contracts could remove obstacles to cross-border transactions.

For a smart regulation, policy making methods are equally important as legal techniques. Smart regulation means regulation informed by an accurate knowledge of the factors at play and by a sharp awareness of its potential impacts on the economy, the social context and the environment. The commitment to better regulation should continue. Impact assessment and stakeholders' consultation have proven their advantages in terms of quality of regulation, transparency and accountability. They are key features for reforming effectively the single market. The social dimension should receive greater attention by delivering on the commitment to real "social impact assessments" based on the development of more sophisticated methodologies and upgraded statistical information. A wide and equal access of all categories of stakeholders is a crucial element to ensure a real democratic and legitimate law making process. One of the positive features of the EU system is that it remains more resistant to regulatory capture than many national political systems. This advantage should be safeguarded. The register for lobbies is a step forward. Furthermore, the Commission should ensure that all organisations of interests have access to its working groups and committees, notably those representing diffuse interests, such as environmental NGOs or consumer organisations. All committees and working groups should be registered in an openly accessible roaster. If necessary, the Commission should place a check on their number. Committee proliferation hinders policy consistency and may work against the full participation of civil society organisations when they have small staff and limited resources.

Effective single market regulation can benefit from a shift of focus from individual policy interventions to whole policy sectors and from ex ante measurement of impacts to ex post assessment of what works and what does not work in a given field. Since the Single Market Review of 2007 there has been a greater attention to using Market Monitoring as a tool to identify regulatory needs based on a comprehensive analysis of the functioning of markets throughout the whole supply chain. The experience with the first applications of this method shows that it is fit for purpose, but it poses its own challenges. Market monitoring requires substantial investment in time and resources, precise focus and well defined scope. It should be used as a targeted tool to examine a few selected sectors prioritised for further action. These could include not only mature sectors where bottlenecks and malfunctioning can be identified, but also new or emerging market sectors, to examine how EU action can help them deliver their full growth potential. The consumer dimension and the assessment of the state of implementation of EU rules should be integral parts of the market monitoring exercise

Functioning markets require rules, but rules that work and provide the right incentives to economic activity. Smart regulation is thus quality regulation, but also regulation that does not burden business and citizens with unnecessary administrative obligations and do not impose excess compliance costs. Pursuing the simplification agenda and the reduction of administrative burden with determination is significant contribution to improve the chances of SMEs and entrepreneurs to fight the economic crisis. Ultimately, it is also key to dispel the negative perception that the Single Market is synonymous with over-detailed and useless regulations. The Commission should make all efforts to achieve the objective of reaching a cut by 25% in administrative costs by 2012. Member States should equally be committed not to reintroduce administrative charges through gold plating of EU rules.

*Key recommendations:*

- ⇒ Use regulations rather than directives when possible;
- ⇒ Use the 28<sup>th</sup> regime as an ad hoc solution where appropriate.

## **4.2. Reinforcing enforcement**

The single market is a construct based on law. Thus, it is crucial that Member States take seriously their obligation to timely transpose and correctly apply the rules they agreed to.

The latest Commission Internal Market Scoreboard shows that with an average of 0.7%, the transposition deficit is the lowest ever recorded within the EU, falling even below the 1% target set by Heads of State and Government. Yet, closer analysis points to a compliance deficit which is as persistent as alarming.

The single market remains highly fragmented. At the end of 2009, 74 single market directives had not yet produced their full effects in the EU due to lack of national transposition measures in one or more Member States. In other words, the single market is an engine that works at around 95% of its potential. Member States also have quite a relaxed attitude towards transposition deadlines. On average, they grant themselves an extra 9 months to adopt the implementing legislation after the deadline expires. Some are even more generous and in the case of 16 directives granted themselves more than two years. Overall, 55% of EU directives are not implemented by the deadline. Even when single market rules are transposed on time and correctly, this does not exclude uneven implementation. If we add up non transposition to incorrect transposition, the EU average compliance deficit ranges between 1.5% and 1.8% in recent years. The picture is no rosier when it comes to infringements. At the end of 2009,

there were 1206 cases open. If the number of infringements remained pretty stable over the years, the time to solve these cases has not. It has increased. It is now 28 months for EU 15 and 16 for EU 12. 1 out of five cases takes more than three years before being resolved or brought before the Court. Even when regulations are concerned, administrative implementation can be problematic. The law on the ground often turns out to be very different from the law in the Single rule-book. This "regulatory patchwork" is a serious threat to the credibility and reputation of the single market.

Paradoxically, the 12 worst offenders in terms of transposition delays are the Member States belonging to the Euro-area. Likewise, Euro-area members feature prominently in the ranking for number of overdue or incorrectly transposed directives. That the majority of required national transposition measures are late is not just a problem for the legal coherence and transparency of the system. Late transposition is damaging for the effectiveness of regulation. On average, Euro-area members score once again much worse than non Euro Area members also in terms of infringement procedures.

If the EU wants to re-launch the single market, there are good reasons to take enforcement very seriously. The tricky feature of the enforcement question today is that it presents a mixed picture of successes and failures, innovation and old problems. The Commission has prioritised correct application of EU law within the framework of its better regulation agenda. Preventive action has been stepped up in partnership with Member States. The infringement procedure has been used in a more effective and targeted way. Guarantees of transparency have been introduced in response to the European Parliament and Ombudsman pressure, through for instance the CHAP - complaints handling- system. New tools have been introduced to facilitate informal resolution of problems through very successful mechanisms, such as SOLVIT and with the pioneer EU-pilot project. Nevertheless, the way the enforcement system operates has not changed much compared to the past. To many it works in a less than satisfactory manner.

The hard truth is that the decentralised system in which Member States are responsible for the implementation of EU law and the Commission monitors their action presents many advantages but cannot ensure total and homogeneous compliance. Private enforcement is a complementary tool, but it has limitations as well. At the same time, it is neither possible nor desirable to police the single market only from Brussels. To get out of this sub-optimal compliance trap, it is necessary to strengthen central enforcement through the infringement procedure and grass-root private enforcement. At the same time, it is crucial to explore with determination how to apply a new approach based on network-based governance and partnership. This new approach would best be applied to alternative dispute resolution and to cooperation between the Commission and



national administrations. The ultimate objective would be to design a coherent enforcement system in which infringement procedures, informal problem solving mechanisms and private enforcement through national courts form a seamless web of remedies against breaches of EU law. What is needed is a concerted press towards compliance, with appropriate passageways and coordination procedures between the different elements of the system.

### *Proactive enforcement*

The infringement procedure is the central and vital mechanism tool to ensure effective single market enforcement. The Commission has correctly given priority to infringement policy in the context of a more diverse and enlarged Europe. Based on the Strategy launched in 2007, there has been significant progress on many fronts. The Commission should use infringement with increased determination, including when it comes to cases which expose Member States most directly to the risk of binding measures, namely actions for non compliance with earlier Court judgements and Commission decisions prohibiting state aid and ordering the recovery of amounts paid. Confronting Member States may raise tensions and carry a political cost, but objective enforcement is in the long term interest of all Member States. The enforcement action of the Commission should not be influenced by political considerations and its "distance" from political guidance should be ensured through appropriate procedures and responsibilities.

Processing of infringement cases, notably for non transposition, should be accelerated. The Commission should take a political commitment to limit to 6 months the maximum duration of cases concerning the non-notification of implementing measures (the current average is 14 months) and of 12 months for all other cases under Art. 260 TFUE (down from 26 months). After that deadline, the Commission should be able to decide whether to go to Court or to close the case. Internal periodic review exercises should ensure the respect of these benchmarks. The criteria for priority selection of cases should be further refined and appropriate reporting on the application of these criteria should be made in the Annual Report on monitoring the application of EU law. A determined action should be taken to close older, long lasting cases.

In the longer term, there might be reasons to explore whether the Commission powers under the infringement procedures should not be aligned with those it has under competition policy. Ideally, once the Commission has established that there is an infringement, the decision should create an immediate obligation for the Member State in question to comply. This should of course be without prejudice of its right to appeal the decision before the European Court of Justice.

Increased enforcement power should be matched by appropriate administrative guarantees for Member States and individuals.

In the interest of preserving a level playing field in the single market, the Commission toolbox to investigate Member State respect of State aid rules should be modernised and strengthened. The level of maturity of current state aid rules lags behind those existing in the field of mergers and antitrust. An amendment of the current Procedural Regulation could reform and modernise the investigative tools in the area of State aid.

*Key recommendations:*

- ⇒ Set out a benchmark for the maximum average duration of infringement procedures, limiting to 6 months procedures for non notification and 12 months all other infringement procedures;
- ⇒ Explore how to align the Commission infringement powers to those it has under competition policy;
- ⇒ Amend the Procedural Regulation on State aid to modernise the procedure and strengthen the investigative powers of the Commission, bringing them in line with those in the fields of mergers and antitrust.

*Managing Member States compliance: preventive action, monitoring of implementation and mutual evaluation*

To be effective, enforcement must be a concern at all stages of the policy cycle. The quality of the regulation produced by EU institutions matter when it comes to implementing them. Enforcement-friendliness should be an integral part of the design of new policies and regulations. Clarity of drafting, simplicity of provisions and adequate transposition deadlines greatly facilitate follow up work from Member States. Early awareness of implementation issues should be fostered through the preparation of implementation plans alongside the formulation of new important legislative initiatives. The Council and Parliament should also play their part to the full, accepting to include in the new legislation the obligation for Member States to prepare correlation tables when adopting implementing acts. Technical assistance through expert groups meetings, guidelines and administrative cooperation should be deployed by the Commission services to prepare the ground for correct application of new regulations.

Preventive actions should be matched by a parallel attention to monitoring correct national implementation and to evaluating the actual effects of regulation. Transparency, peer pressure and administrative cooperation are the

silver bullets in this area. The Internal Market Scoreboard has proved to be a very effective tool to ensure transparency and leverage peer pressure. It should be expanded. Once measures are notified, conformity analysis by the Commission is a critical task. Unfortunately, today conformity checks are an administrative nightmare. To make just one example, the service dealing with regulated professions counts 20 people. They have to assess the conformity of over 6000 pages of national measures in 23 official languages. In the area of company law and anti-money laundering, Member States have notified around 10 000 pages of national transposition measures. To deal with such a pile of acts, risk based analysis is one alternative. Stepping up the resources devoted to monitoring and checking correct application is an obvious second alternative. In a longer term perspective, one idea would be to post Single Market desks in the Commission Representation within Member States. These desks could operate a first check of national implementing measures, alerting the Commission headquarters services only when a specific issue arises.

Regular reporting from Member States and mutual evaluation can have far reaching positive impact on conformity of implementing legislation. The mutual evaluation procedure foreseen in the Services Directive for 2010 is an innovative way of using peer pressure to improve the quality of implementation, facilitate exchange of best practices and offer feed back to make adjustments to existing regulation. This model could be extended to other important regulatory initiatives. Mutual evaluation could also be a suitable theme on the agenda of macro-regional cooperation schemes, as in the Baltic Sea Region or in the near future in the Danubian region. Macro-regional frameworks may facilitate the dialogue between national systems without of course recreating barriers between clusters of member states. The evaluation of single market rules in a given area should also be taken into account when the Commission conducts Market Monitoring Studies to detect whether market malfunctioning may be related to the inadequate implementation of directives.

The weight and legitimacy of the European Parliament and of the National Parliaments should also be brought to bear in this area. The Lisbon Treaty reinforces the powers of both the European Parliament and National Parliaments in the law making process. Legislatures should equally look at the other half of the story, reviewing how EU rules are transposed and implemented. After all, National Parliaments are often directly involved in passing implementing legislation. Every year the European Parliament and National Parliaments could select one piece of legislation or an area of single market law and conduct a review of its implementation at national level, to spot inadequate implementation or unanticipated negative effects. The COSAC could be fully involved in the process. The outcome of this screening could further feed action at EU or national level.

*Key recommendations:*

- ⇒ Strengthen preventive action by shaping enforcement-friendly regulation based on impact assessment, introducing systematically correlation tables and stepping up technical assistance to national administrations;
- ⇒ Create single market desks within Representation offices with the task of pre-screening conformity between single market legislation and national implementing rules and to liaise with national administrations responsible for implementation;
- ⇒ Extend Mutual Evaluation Process to new legislative initiatives;
- ⇒ Integrate the ex post evaluation of the implementation situation in a given sector into Market Monitoring analysis;
- ⇒ Select every year one or more EU laws for screening by the EP through a process involving input from National Parliaments and the COSAC.

*Network-based approach and partnership: alternative dispute resolution mechanisms and cooperation between national administrations*

To ensure enforcement effectiveness, it is crucial that citizens know about their rights and have easy access to an informal dispute resolution mechanism.

A precondition for citizens to activate their right under the Treaty and fight non compliance is in fact that they are aware of them. There is no shortage today of EU sponsored information sources on EU law and policies. Yet, the information is often not easily accessible, not always relevant and often fragmented. The number of centres providing basic information or legal advice on EU issues is large: Europe Direct Network, Your Europe Portal, Citizens Signpost Service, Entreprise Europe Network, Consumer Protection Cooperation Network, to mention some of them. They target different publics, provide different services, have different purposes. Their mutual relations are often unclear. Users are often redirected from one centre to another or find difficult to understand why their request is not accepted. Furthermore, they are not well connected with problem solving networks, such as SOLVIT.

Over the past years, the SOLVIT network has developed significantly. Yet, it is still underused, handling just 1600 cases per year. As it covers the 30 countries of the European Economic Area, this means that on average each national centre handles a little more than one case per week. As it relies on centres managed by the national administrations, it struggles with some shortcomings, such as lack

of adequate staff, insufficient oversight from the Commission and a wide variety of procedures and quality standards used. Another very successful experience in the area of informal dispute settlement is that of the EU Pilot scheme launched by the Commission in April 2008 to correct breaches of EU law at an early stage, without having to open an infringement procedure. This system only covers, however, fifteen Member States. Its exact articulation with the infringement procedure on one hand and SOLVIT on the other hand is a recurrent question.

The first measure to improve the situation is to strengthen the existing mechanisms to provide an informal solution to disputes. This would mean strengthening SOLVIT through a clearer legal basis, minimum rules on staffing and some EU co-funding. The EU pilot scheme should be extended to all the Member States, ensuring its articulation with the infringement procedures in a way that does not indirectly lengthen the duration of the latter.

A more radical solution would be to establish an EU network of alternative dispute resolution centres along the lines of the model applied for the decentralisation of competition policy with the creation in 2004 of the European Competition Network (ECN). The idea would be to merge all the centres existing at national level (for information, legal advice or problem solving) into a one stop shop point for citizens covering both cases of misapplication of EU rules and cases involving small scale breaches to EU legislation. The centre would remain within the national administration to maintain the advantages of proximity to citizens, knowledge of local laws and respect of subsidiarity. EU law should define the set up, powers and procedures of the centres. Some forms of co-funding from the Community budget could also be explored. The national centres would have a partner in the Commission, that would oversee their functioning, supplying, where requested, legal advice or stepping in the procedure should the complainant be unhappy with the solutions found (or not found) for his/her case. This network of problem solving centres should be coordinated with the centralised enforcement by the Commission through appropriate rules and procedures, and could help relieve part of the burden on the infringement procedure.

Easier and faster cross-border administrative cooperation between national administrations would also make it easier for citizens to enjoy their rights within the Single Market. The Internal Market Information System (IMI) introduced with the Services directive has proved to be a very successful mechanism to put national administrations in contact and should be extended to other sectors than Services. Furthermore, the Commission should invest in animating networks with national administration on implementation, facilitating exchange of best

practices, training, and discussing guidance on how to apply Single Market rules.

*Key recommendations:*

- ⇒ Extend the EU Pilot scheme to all 27 Member States and step up the SOLVIT system ensuring EU co-funding and a clearer legal basis.
- ⇒ Step up administrative cooperation by extending the IMI system to other areas of legislation
- ⇒ In the long term, establish an EU network of alternative dispute resolution centres.

*Private enforcement*

The EU legal system empowers citizens and business to stand up for their rights, through litigation before national courts. Thus, private enforcement is a key tool to contribute towards reduction of the compliance deficit and to ensure the effectiveness of the Single Market. There are two ways in which private enforcement can be strengthened.

Firstly, national judges play a key role in interpreting and applying EU law next to national law. The Commission, in partnership with Member States, should step up its support for training programmes and structures to ensure that national judges and legal professionals have a solid knowledge of the Single Market rules they are most often required to apply.

Secondly, the right to obtain compensation for damages following a breach of EU law is the same for all citizens of the EU. Access to this right is not. The remedies and procedures differ from Member State to Member State as they are enshrined in the national legal system. The result is a marked inequality between Member States in the level of protection of the right to damages. Experts have calculated that the amount of unrecovered damages may range to more than 20 billion per year in the EU. There is some rationale in addressing this problem in particular when it comes to breaches of competition rules. A legislative initiative could aim at creating in all Member States minimum guarantees that allow victims of competition law infringements to effectively enforce their right to compensation before national courts.

Key recommendations:

- ⇒ Step up EU law training initiatives for judges and legal professionals in partnership with Member States;
- ⇒ Adopt minimum standards on the right to compensation for damages.

**CHAPTER 5**

**A POLITICAL INITIATIVE**

**TO STRENGTHEN THE SINGLE MARKET**

**(AND ECONOMIC AND MONETARY UNION)**



## **5.1. New political initiative**

President Barroso has identified the single market as a key strategic objective to be pursued with renewed political determination. He has also announced the Commission's intention to lead this process, fully engaging the European Parliament, the Council, Member States and all stakeholders.

This report, commissioned by President Barroso, aims at providing inputs for the articulation of a new strategy, that the Commission may wish to consider.

Building on an extensive consultation process, the proposed strategy is comprehensive and consists of initiatives respectively aiming at building a stronger single market, building consensus on it, and delivering it. A package deal is suggested.

All this requires investment in a fully fledged political initiative. This may create a new momentum, which is necessary also to make swift progress with proposals that have been on the table for a long time.

For this to happen, it seems necessary not only to work on each specific initiative, but also to refocus the way in which the single market is dealt with by the EU institutions and to redefine the place of the single market in overall EU policy making.

## **5.2. Refocusing EU institutions on the single market**

The Commission, which has been able to defend the single market even during the unprecedented tensions of the recent crisis, should continue and, if necessary, intensify the full use of its powers of enforcement. In the legislative process that it initiates, the Commission should be a strong advocate of the integrity of the process, so that its proposals, whilst of course being fully open to the decisive influence of Parliament and Council, would not end up denatured, as sometimes has been the case. Withdrawal of a proposal may on occasions be preferable to a deeply unsatisfactory outcome. Also, the Commission should encourage the Council to make full use of qualified majority voting, in the many areas where that is foreseen, without indulging in endless processes to try to have all Member States agree, often at the expense of the incisiveness of the outcome.

In its own internal *modus operandi*, which of course it is entirely for the President and the College to determine, it seems appropriate to adopt a more comprehensive approach in the formulation of policies for the single market. Numerous portfolios are crucially involved.

The President's leading role is particularly crucial to bring a wholistic vision. A Group of Commissioners embracing all the competences on economic integration, chaired by the President, or by the Commissioner for the Internal Market and Services when the President is not available, could be the appropriate body for policy formulation. On the other hand, the responsibility for enforcing existing rules should stay as close as possible with the specifically competent Commissioners, because enforcement actions should not be the object of broader mediations.

The European Parliament could consider ways to bring, there two, more unitary vision to a subject area which is currently in the competence of the Internal Market and Consumer Protection Committee, but – in the approach suggested in this report – involves heavily the comptences of several other Committees, like the Economic and Monetary Affairs Committe and the committees active in the areas of industry, social policies and others.

The Council has a similar problem. Single market issues are to a large extent the remit of the Competitiveness Council, but other key responsibilities for aspects of the single market are in the hands of the Ecofin Council, the Social Affairs Council and others.

Now that the European Council, also through the role of its permanent President, can afford a greater continuity in steering economic governance of the EU, it would be helpful to have a top-level comprehensive guidance of the Council's contribution to this key pillar of European integration. While the power of initiative and the enforcement – under the control of the Court - will of course have to remain firmly in the hands of the Commission, the whole process of giving a stronger impulsion to the single market would benefit if the European Council considered this to be one of its key areas of permanent attention, giving its President a mandate to ensure that is done with political vision and concrete continuity, in close cooperation with the President of the Commission.

Parliament, Council and Commission should also consider introducing a fast-track legislative procedure for those measures that would be included in a strategic initiative for the single market, as was done following the 1985 White Paper.

To ensure proper follow up, there could be an annual moment when the three institutions, involving also the stakeholders, take stock of the „State of the Union“, as regards economic integration.

### **5.3. The place of the single market in EU policy making**

Throughout this report, it has emerged that the single market, although lacking a strong identity and visibility in terms of policy perceptions, is really instrumental to several other areas of EU policy making, which do attract greater political interest. Yet, these areas risk not delivering what they are intended to deliver, if they cannot fully stand on a robust single market.

Europe2020 is a promising overarching policy initiative, which will be crucial for the future of Europe. It identifies correctly a single market pillar. It seems crucial that new political energies be triggered around this pillar, to give momentum to several related initiatives of the strategy. The relaunch of the single market on the basis of a new consensus and commitment, as proposed here, might perhaps provide such energy.

Economic and Monetary Union, as mentioned in previous chapters, has a weakness in the insufficient degree of single market and competition at play in many Member States. They made the bold decision to share the same currency. That requires, at the very least, a high degree of sharing effectively a single, integrated, flexible market, a prerequisite for an optimum currency area and a vector for improvements in productivity and competitiveness. The Eurogroup should make a point in calling all its participating Member States to achieve at least the degree of actual embracement of, and compliance with, the single market and competition that occurs in non-Eurozone Member States.

The effort to put in place some form of Economic government, the latest expression of the EU's ambition to control its economic fate, should also consider the single market as a key item on the agenda. This is certainly a commitment, and a policy, shared by all 27 Member States. Therefore, this is a natural candidate topic to be dealt with systematically in the upcoming building block of Economic government.