

Brussels, 18 July 2002

OPINION
of the
Economic and Social Committee
on the
**Communication from the Commission to the Council, the European Parliament, the
Economic and Social Committee and the Committee of the Regions
2002 Review of the Internal Market Strategy
Delivering the promise
COM(2002) 171 final
(Single Market Observatory)**

On 11 April 2002, the European Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the 2002 Review of the Internal Market Strategy: "Delivering the promise"
COM(2002) 171 final

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2002. The rapporteur was **Mr Kenneth Walker**.

At its 392nd plenary session (meeting of 18 July 2002) the Economic and Social Committee adopted the following opinion by 32 votes in favour and six votes against.

1. Introduction

1.1 The Committee has previously published Opinions on the Commission's Communication of 24 November 1999 setting out its Internal Market Strategy,¹ and on the Commission's first² and second³ annual reviews of this strategy. This Opinion addresses the Commission's third annual review.

1.2 The Commission's third annual review aims to draw together the different strands of Internal Market policy in a single document and, "provide decision-makers with a roadmap for the next 18 months." It is based on a thorough analysis – mainly in the Cardiff report⁴ – of the areas where the Internal Market still needs to be improved. It sets out a series of target actions aimed at filling these gaps.

1.3 This Communication also monitors progress since last year's review. It reveals a mixed picture. The success rate for completing target actions stands at just over 50%, which is about the same as last year. There have been some notable achievements but overall progress has not been fast enough.

1.4 The added impetus from the Barcelona European Council provides the opportunity to speed up the pace of delivery. The need for continuity and results is the central message of the Communication, which centres on the same broad objectives as last year's review, *viz*:

1 OJ C 140 of 18 May 2000

2 OJ C 14 of 16 January 2001

3 OJ C 221 of 7 August 2001

4 COM(2001) 736 final, 7 December 2001

- pressing ahead with the economic reforms agreed at Lisbon and confirmed at Barcelona;
- gearing up to exploit the opportunities which will soon be offered by an enlarged Internal Market;
- ensuring that the Internal Market brings tangible benefits to citizens, especially in their roles as consumers and businesses, particularly SMEs;
- a continuing emphasis on the “fundamentals” – issues such as appropriate harmonisation, mutual recognition, transposition, compliance and enforcement, problem-solving and standardisation – which are essential to ensuring that the Internal Market works in practice, not just in theory.

1.5 The Committee does not propose to reiterate in this Opinion the comments that it has previously made on the earlier Internal Market Reviews; it will confine itself to dealing with matters which impinge on the future direction of the Internal Market and the removal of existing lacunae.

2. The Commission's review of progress

2.1 It is ten years since the deadline of 1 January 1993 for the introduction of the Single Market was first set. In that time, Europe has come a long way but a great deal remains to be done. The Euro and enlargement will trigger a new dynamic and Lisbon has added extra impetus.

2.2 Structural reform is important and is the key to the long-term preservation of Europe's social model. Structural reform is necessary because Europe's ability to create sustainable growth and better jobs depends on the strength of its economy; after the introduction of the Euro, strong flexible economies are all the more crucial in facing external shocks. A strong economy will enable Europe to sustain its unique social model, to benefit from its diversity and to enjoy a high quality of life.

2.2.1 The temptation to postpone change needs to be resisted. Reform can be difficult to implement in practice and uncomfortable in the short run. It often meets with resistance from those with narrow sectoral interests. In the current economic climate, there may be a temptation to slow down the pace of reform and resist change; we have already seen examples of this. Postponing reforms, however, would be a mistake. It would leave the Union in a poor position to benefit from the global recovery, the first signs of which are now becoming visible. Delay would curtail our companies' ability to innovate and become stronger and make it less likely that new enterprises will start up.

2.2.2 Success will depend on political will; promises of action must be kept. Europe has shown that it can pull together and act – if the political will exists. We now have the opportunity to build on this success. Our ability to do so will depend on whether there is enough political will to translate the commitments made at Barcelona into concrete action.

2.3 In reviewing progress since last year, the Commission notes that the overall pace of delivery is still too slow. Responsibility for this is shared by the Commission, the European

Parliament and the Council. The Commission has missed some of its target dates, e.g. on the Better Regulation Action Plan and the Services Strategy, but in the majority of cases the delays have been in the Parliament and the Council, e.g. on the Community Patent, the public procurement legislative package and the take-over bids Directive.

2.4 A scoreboard of targets hit and targets missed is set out in **Appendix 2**.

2.5 The added impetus from Barcelona provides the opportunity to speed up the delivery; this opportunity must be seized. To date, commitments made at European Councils have often not been translated into action at the level of Ministers meeting in different Council formats. This "delivery gap" must now be closed or the overall credibility of the Lisbon strategy will be called into question.

2.5.1 The added value of the Internal Market Strategy is that the whole is worth more than the sum of the parts. Many of the proposed actions will naturally reinforce each other as they trigger a number of changes simultaneously. By implementing only part of the proposed actions, this multiplier effect will be seriously diminished.

3. **The next 18 months: The Commission's Action Plan**

3.1 Given the slow progress to date, a sustained effort is required to ensure that all the target actions are finally completed. There is no need for a wave of fresh ideas at this stage; nor is there a need to change direction. The job in hand is only half done. Economic reform, preparing the Internal Market for enlargement and making it work better in practice are the three priorities.

3.2 Only seven Member States have met the transposition target set at Stockholm. A new target has been set for Member States to achieve transposition rates of at least 98.5%, and to have implemented 100% of all Directives that are two years past their transposition date, by the 2003 Spring European Council.

3.2.1 However, simply transposing Community rules into national law is not enough; the law must also be applied correctly in practice. The reality is that, in too many cases, citizens or businesses who are seeking to exercise their Internal Market rights run into practical problems, such as getting professional qualifications recognised or seeing their products taken off the shelves for no good reason. The Commission can institute formal infringement proceedings but it can take years to resolve disputes – two years in the majority of cases and far longer if the case goes to court⁵. Legal action should be avoided when problems can be solved pragmatically; hence, the importance of the development of the SOLVIT problem-solving network⁶ and the re-launching of the Citizens' Signpost Service. The Commission has also set a target for Member States to reduce their number of

⁵ Internal Market scoreboard No. 9, November 2001

⁶ COM(2001) 702 final, 27 November 2001

infringements resulting from misapplication of Community legislation by at least 10% no later than June 2003.

3.3 Target actions for the next eighteen months have been selected according to the contribution they can make to achieving the key priority objectives. The number of actions has been sharply reduced, from nearly 80 last year to about 30 this year, in order to ensure undivided political attention. The target actions have been grouped under the four headings set out in the original Internal Market Strategy Communication⁷. The four headings are:

- modernising markets;
- improving business conditions;
- meeting citizens' needs;
- anticipating enlargement.

3.3.1 Modernising markets is a primary objective. Major sectors of the European economy are still not sufficiently competitive. Key sectors of the Internal Market remain fragmented and excessively shielded from competition. The Barcelona European Council laid particular emphasis on the integration of network industries and on the financial sector. These are the backbone of a fully-functioning Internal Market. The pace of delivery of the Financial Services Action Plan must be speeded up. Bold steps are needed to achieve more integrated services markets. There are huge savings to be had from more open and competitive public procurement. Mutual recognition of professional qualifications, product approvals and financial services must be made to work; problems with mutual recognition cut trade in the EU by up to **□150 billion in 2000 alone but there are no** instant, one-size-fits-all solutions. The standardisation deficit must be reduced; although work on standardisation has been stepped up, it can still take eight years to agree a European Standard.

3.3.2 Improving business conditions is another high priority. Action aimed at integrating markets by removing trade barriers will have its full effect only if Europe supports creative, dynamic businesses in an environment which fosters entrepreneurship and innovation. Further progress is required on a number of fronts. There should be less and better State aid; the Barcelona European Council called on Member States to continue to reduce State aid while redirecting it towards more horizontal objectives. It is also important to improve the tax environment for businesses across the Union by removing tax barriers and distortions. The competitiveness of companies is being damaged by the regulatory burden on business; the impact on SMEs is particularly negative. Despite all the talk about the need for better regulation, most companies still fail to see any discernible effect on their daily operations. The Commission has presented an Action Plan on better regulation to the Seville European Council but presenting an Action Plan is not enough – it must be made to work in practice; the Member States must play their full part in this. One important area in which Member States can promote entrepreneurship is by making it easier and cheaper to set up a new company. The continuing deadlock over the Community Patent proposal must be broken if Europe is serious about the

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COM(1999) 624 final, 24 November 1999

significance of research and development; without strong and affordable patent protection, Europe will only fall further behind the USA.

3.3.3 The Internal Market should serve the needs of Europe's citizens. Competition is the consumer's best friend and has not compromised their safety. Consumer-protection rules should promote competition and free movement. While price differentials have narrowed over the past decade, convergence is now slowing down. The Cardiff Report and the Green Paper on Consumer Protection⁸ suggested that differing regulatory environments might be part of the explanation. Meeting citizens' needs also requires further integration of sustainable development, environmental protection⁹ and social policy aspects with Internal Market policy and implementation of the Commission's Action Plan for Skills and Mobility, which aims to create a more favourable environment for more open and easily-accessible European labour markets by 2005¹⁰.

3.3.4 The Internal Market is one of the key, highly-visible areas in which it will become immediately apparent whether new Member States are fully prepared both in theory and in practice. With enlargement imminent, the candidate countries must continue to strengthen their administrative capacity, particularly in key areas such as intellectual and industrial property rights, mutual recognition (particularly of professional qualifications), public procurement and money laundering. The Union is supporting their efforts but it is important to integrate the new Member States into the SOLVIT problem-solving network as soon as possible.

3.4 The Commission's target actions are set out in **Appendix 3**. The Committee broadly approves these targets and calls upon the Council, the European Parliament and the Member States to play their parts in achieving them.

3.5 Measuring the results of public policy is difficult. Some valuable results are impossible to quantify; others require so much expense that they are not worth quantifying. However, some measurement is better than no measurement. It is more important to measure outcomes than inputs; what matters is not the number of individual target actions achieved but the impact they have made. Actions should be accompanied by indicators; in the next Internal Market Review, the Commission will seek to make explicit the indicators by which progress on the ground should be measured.

4. **General comments on the Commission's Internal Market Strategy Review**

4.1 At the Lisbon European Council in 2000, the EU set out its mission statement of becoming within ten years, the most competitive and dynamic knowledge-based economy in the

⁸ COM(2001) 531, 2 October 2001

⁹ Council strategy on the integration of environmental protection and sustainable development into Internal Market policy (8970/01)

¹⁰ COM(2002) 72, 13 February 2002

world, capable of sustaining economic growth with more and better jobs and greater social cohesion. Two years into the mission, Europe has fallen further behind the United States in many of the significant indicators by which economic dynamism and competitiveness are measured.

4.2 One of the principal reasons for this is the failure to make more progress towards the completion of the Internal Market. Like the United States, Europe does the largest part of its trade with itself; intra-Community trade accounts for about 63%¹¹ of the total. As the Commission Communication attests, the failure to modernise Europe's markets is restricting the growth in that trade – by as much as **□150 billion per annum in respect of mutual recognition problems alone. The Internal Market is so far from being complete that it is often easier for European businesses to trade with customers outside the Union than within it; if the EU's mission is to be fulfilled, it must make it simpler to trade between Member States than it is at present. The Committee therefore agrees with the Commission that modernising Europe's markets should be a primary objective.**

4.3 Reading the Commission document generates a certain sense of *déjà vu*. Many of the same imperatives, the same objectives, the same exhortations and the same disappointing lack of progress are manifest in each of the Communications that it has produced on this subject. The Commission has advocated the same measures and set the same targets with admirable consistency but the desired results have failed to materialise. The Committee notes the Commission's admission of missed target dates, including that for the Better Regulation Action Plan, to which the Committee had already drawn attention in another Opinion¹². Nevertheless, the Committee concurs with the Commission's assessment that the major portion of the blame for this lack of progress must be laid at the door of the Member States, the European Parliament and the Council.

4.4 The Committee agrees with the Commission on the need for structural reform. Despite the commitments entered into at Lisbon and re-affirmed at Barcelona, the liberalisation of energy markets is proceeding very slowly; some Member States appear reluctant to do more than pay lip service to the idea. It would appear that there is still considerable resistance to change in some quarters, particularly at the Member State level; in order to overcome this, it will be necessary, as the Commission has said,¹³ to inculcate new habits, to formulate new working methods and to develop a new administrative and political culture. This will require a multi-agency approach in which the Commission must take the lead.

4.4.1 In its 18-month Action Plan last year, the Commission reduced the number of target actions from the then current level of 130 to 78. It has now reduced the number from 78 to about 30. In each of the last two years, the success rate for completing actions has remained fairly constant at around 50%. While it is tolerably certain that the Commission is right in saying that this further reduction will enable political energy to be focused more effectively on the reduced number of targets,

11 European Commission, February 2002

12 CES 364/2002

13 COM(2001) 726 final, 5 December 2001

this constant lowering of sights does not appear to have yielded any improvement in the achievement rate. The Commission seems to expect that reducing the number yet again will result in a higher proportion of the targets being met but experience suggests that this causation theory must not be accepted *quantum valeat*. It would appear to be less a question of political energy than of political will.

4.4.1.1 In democracies, political will is based on the will of the majority. The completion of the Internal Market can only become a reality if a predominant proportion of European citizens recognises the benefits which they can derive from it.

4.4.2 As the Commission states, "An effective Internal Market framework starts with Member States transposing into their national law agreed Directives". The Committee endorses the importance which the Commission attaches to Member States transposing Community Directives into their national legislation correctly and within the set deadlines. At present, the transposition and implementation of Directives in the Member States are a source of additional complexities, divergences and delays. In order to avoid distortions of competition and the creation of different legislative regimes, which hamper and discourage intra-Community trade, there must be a large degree of harmony between the legislative instruments in force in different Member States. This cannot be the case where so many Member States are tardy in transposing Community legislation and where the transposition is distorted by differing national interpretations as well as by the widespread currency of derogations and exemptions. It is simply not acceptable that Member States should continue to be permitted to effectively postpone the process of transposition *sine die*.

4.4.3 A typical example of the delays that occur is provided by the Consumer Guarantee Directive¹⁴, which to date has only been transposed in four Member States. The Commission has set a target of achieving transposition rates of 98.5%, and 100% for all Directives more than two years beyond their transposition dates, but these desiderata appear, *a priori*, to be unattainable.

4.4.4 Nor is it simply a question of transposition. A number of discrete conditions has to be fulfilled in order to complete the process of incorporating European legislation into national law in such a way as to produce the requisite degree of harmony to make a reality of the Internal Market. Cardinal among them are:

- transposition of the legislation in a uniform and timely manner;
- creation of the necessary administrative capacity to enable effective implementation;
- exercise of the political will to secure enforcement.

4.5 The Committee supports the Commission's contention that its proposed actions will mutually reinforce one another and produce a multiplier effect which would be seriously diminished by partial implementation.

¹⁴ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171 of 7 July 1999

4.6 The Committee agrees with the Commission that there is no need of fresh ideas at this stage; nor is there need of a change in direction. It would be impolitic to attempt to re-orientate the process at this juncture. There is, however, an urgent requirement for more substantive progress in achieving the Commission's stated objectives. Time is of the essence in this matter. The Committee broadly approves those objectives and the priorities that the Commission has assigned to them.

5. Comments on the Commission's target actions

5.1 Modernising markets

5.1.1 The Committee agrees with the Commission on the pressing need for Member States to deliver on the commitment which they made at Barcelona to provide freedom of choice of supplier for all European non-household consumers of electricity and gas as of 2004. The Committee considers that, if this target were achieved, it would represent a substantial step forward in the process of liberalisation of services but it would still leave Member States with the discretion to restrict the freedom of choice of household consumers and would leave many other essential services unaffected. As a target, it therefore appears less than ambitious but is probably at the limit of what is politically feasible.

5.1.2 As the Commission avers, "Financial services are the oil in Europe's economic engine". The high-level Mid-term Review of the Financial Services Action Plan (FSAP)¹⁵ estimated that an integrated financial sector could add as much as **□43 billion annually to the EU's GDP growth**. Consumers would be among the big winners. Barcelona reaffirmed the role of the FSAP as the roadmap to claiming this prize. It urged the Council and the European Parliament to adopt this year the eight legislative measures currently under discussion. The Committee adds its voice to this call.

5.1.3 The Commission estimates that more competition in business services alone could add up to **□350 billion to the Union's GDP**¹⁶. Services have been by far the most important engine of employment growth throughout the Community in the late 1990s and they offer the greatest potential for further job growth in the future. The gap in employment in services between the EU and the US is 14 percentage points – or 36 million jobs¹⁷. The Committee agrees with the Commission that in order to unleash this potential it is essential that the remaining Internal Market barriers to cross-border provision of services, the take-up by consumers and freedom of establishment be removed.

5.1.3.1 The Committee considers that it would be useful to conduct an evaluation of the costs to the European taxpayer when consumers are not able to avail themselves of services provided on a secure basis with universal access and with a wide choice of service providers. There is a need for

15 Held in Brussels on 22 February 2002

16 COM(2000) 78, 1 March 2000

17 *ibid.*

adequate legislation and/or codes of conduct to regulate the companies providing such services and, in order to improve the operation of the Internal Market, to avoid distortions of competition, and ensure that these services are provided continuously and to a consistently high quality, these rules should be harmonised across the Community. It would also be instructive to evaluate the costs of the present situation in the services sector in terms of unemployment. These evaluations would be particularly illuminating in the context of enlargement.

5.1.4 Public procurement is another area where reform needs to be accelerated. The percentage of public procurement that is openly advertised has increased – but only to 15%. Meanwhile, the percentage of public procurement contracts going to other Member States remains well below 2%. This compares to approximately 20% in the private sector. The Commission has estimated that more open public procurement could result in annual savings to the European taxpayer in excess of **€50 billion. It is difficult to escape the conclusion that this is simply another** manifestation of protectionism by the Member States; as such, it is not in keeping with the spirit of Europe neither is it calculated to advance the fulfilment of Europe's mission statement. The Committee agrees with the Commission that progress on its legislative package proposal is essential and that any attempts to water it down, e.g. by increasing the thresholds, should be firmly resisted.

5.1.5 The Committee shares the Commission's view on the need to ensure wider acceptance of the principle of mutual recognition. The Commission states that, "In many sectors, this principle works reasonably well and avoids unnecessary regulation". *O si sic omnes!*

5.1.6 The Committee deplores the fact that it can take up to eight years to agree a European Standard and considers that some way of streamlining this process must be found as a matter of urgency. It cannot accept that this should be a problem which admits of no solution. The Committee also shares the Commission's view that the situation in some key industry sectors, such as construction products and machinery remains worrying. As the Commission acknowledges, "No real Internal Market exists in these sectors".

5.2 Improving business conditions

5.2.1 The Committee endorses the Commission's view that the Union must support creative, dynamic businesses. This will require the creation of an enterprise culture in which businesses can thrive, free of unnecessary bureaucratic constraints. Legislation must be orientated towards facilitating business rather than restricting it. The Committee regards this as a *sine qua non* for the achievement of sustainable economic growth.

5.2.2 One of the most damaging of those constraints is the regulatory burden on business, which, as the Commission says, must be reduced. The Committee has recently issued two Opinions¹⁸ on simplification and the improvement of the regulatory environment. In these Opinions, it drew attention to the need for better quality regulations, which must involve a reduction in the volume of

¹⁸ OJ C 48 of 21 February 2002 and CES 364/2002, of 21 March 2002

regulation. The Committee does not equate this process with de-regulation. The piecemeal fashion in which European legislation has evolved has resulted in legislative texts which are convoluted and obfuscate; there is a clear need for re-drafting on a massive scale to produce concise and coherent documents rather than the mingled palimpsests which currently exist. The Committee also pointed to the fact that simplification required greater harmonisation of legislation in the EU and called for more widespread use of Regulations instead of Directives, thus presenting Member States with a *fait accompli* rather than an opportunity for creating greater diversity.

5.2.2.1 In the second of these two Opinions, the Committee alluded to the fact that poor quality regulation is currently costing European businesses more than **□330 billion per annum and** that, if one includes the costs to public administrations and the economic inefficiencies arising from poor quality regulation, the total cost to society is in the region of 10% of GDP. In this Opinion, the Committee set out an Action Plan for regulatory improvement and called upon all the actors concerned to play their full part in implementing it. The Committee now repeats this exhortation. Details of the Committee's proposed Action Plan are set out in **Appendix 4**.

5.2.3 The Committee notes the publication of the Action Plan on better regulation which the Commission has presented to the Seville European Council. The Committee is currently preparing an opinion on this document. It trusts that the Council, the European Parliament and the Member States will act promptly and decisively to give effect to the Commission's proposals. As the Commission says, "... we want our companies to be competitive but we tie one arm behind their backs." The Committee calls upon the Commission to give a strong lead in this matter, which lies very much within its remit; although, in the final analysis, the completion of the project must depend on others, the Commission exerts an influence which goes beyond the formal ambit of its authority. The maintenance of the *status quo* is not a viable option.

5.2.3.1 The Committee takes note of the fact that the Commission plans to establish with the Member States a Standing European Business Test Panel, comprising some 4,000 companies, to assist in assessing the potential impact of key regulatory proposals on businesses of all sizes and to obtain timely and representative feedback. The Committee welcomes the initiative but hopes that it will operate more effectively than previous attempts at this exercise.

5.2.4 The Committee has frequently drawn attention to the way in which differences between the tax regimes of the various Member States are fragmenting the Internal Market. Nowhere is this more evident than in the case of VAT, where a tortuous and convoluted text imposes complex and burdensome obligations, differing substantially from one country to another, which act as a major disincentive to cross-border trade, especially for small businesses. The wide variety of rules and the lack of uniformity in the way in which they are applied means that the Internal Market is effectively segmented into fifteen different tax areas. As long as VAT is collected by fifteen different tax authorities in Member States with different legal and regulatory traditions, interpretations, processes, systems, languages, customs, practices and working methods, it is idle to pretend that cross-border transactions can be treated identically to domestic transactions, which is the hallmark of a true Internal Market. From the present perspective, this is merely a pipe-dream. In fact, the present VAT

arrangements are incompatible with the principles of an Internal Market; in a previous Opinion,¹⁹ the Committee pointed out that the concept of intra-Community transactions being treated as "imports" and "exports" is an anachronism which defeats the object of the Internal Market. Similar considerations apply to many other aspects of taxation. The Committee is currently in the process of drawing up an Opinion on this topic²⁰.

5.2.5 The Committee agrees with the Commission that an essential element of promoting entrepreneurship is to make it easier and cheaper to set up a new company and it approves the Commission's intention to set specific quantitative targets on other aspects of entrepreneurship before the end of the year.

5.2.6 The Committee again supports the Commission's call for reductions in the levels of State aid, which are creating distortions of competition. A situation in which these exhortations continued to fall on deaf ears would be untenable.

5.3 Meeting citizens' needs

5.3.1 The Committee agrees with the Commission's assessment that the benefits of wider choice, better service and reduced prices, which stem from competition between suppliers, have generally not compromised the safety or welfare of consumers. The Committee notes that the forthcoming Consumer Policy Strategy 2002-2006 will set out further the Commission's consumer plans and would wish to be consulted on this document when it is published.

5.3.2 Outside the network industries, where Community legislation has not been introduced, Member States determine the arrangements for meeting public-sector obligations and the Commission limits itself to ensuring compatibility with competition and Internal Market rules. This contrasts with the position where Community legislation is in force. The Committee does not regard the two situations as being equally good one as another and welcomes the Commission's announcement²¹ of concrete actions to ensure greater legal certainty and predictability in the application of these rules.

5.3.3 The Committee agrees with the Commission that the current informal arrangements for cooperation between public authorities responsible for the enforcement of consumer protection rules are inadequate and need to be strengthened. The Committee also concurs with the need to ensure that free movement can take place without hindrance in order to avoid the situation where companies simply decide to forego the possibility of selling across the Union because they find it too burdensome to comply with fourteen different sets of regulatory requirements. As the Commission says, "When this happens it is ultimately the consumer who loses out". The prevalence of disparate regulatory

19 OJ C 193 of 10 July 2001

20 CES 584/2002

21 Commission Report to the Laeken Council, COM(2001) 598, 17 October 2001

environments across the Union is acting as a constraint on intra-Community trade. This situation would be exacerbated if the process of enlargement merely resulted in ten new regulatory regimes being added to the existing ones.

5.3.4 The Committee joins the Commission in attaching a high priority to the development of cross-border alternative dispute mechanisms²². This is not a tangential issue; it is integral to the effective operation of the Internal Market.

5.3.5 In its Opinion²³ on the Commission's Communication of 24 November 1999, which set out a proposed strategy for the Internal Market for the next five years, the Committee commented on the objective, "to improve the quality of life of citizens" in the following terms, "The Single Market itself cannot deliver on that point for, even if opportunities become available, citizens may choose not to take advantage of them". The Opinion went on to question whether such an objective could ever provide a measurable target. The Committee notes that this objective has now been modified to "meeting citizens' needs"; it considers this to be an improvement on the somewhat sweeping wording of the original but doubts whether even this modified goal is susceptible to objective measurement. There is no common consensus on what is comprised in the term "citizens' needs"; they are frequently in conflict with each other and the judgement on whether or not they have been met is often largely subjective.

5.3.5.1 The Committee endorses the principle of improving the lives of citizens but would point out that citizens are not an homogenous group with identical needs. The costs and benefits of the Internal Market are distributed differently and on different time-scales to various groups of citizens (industrialists, employees, consumers, etc.) as well as to separate geographical regions and sectors of the economy. Moreover, individual citizens can exercise several different roles simultaneously. It would, therefore, be appropriate to measure the results on the basis of the consequences for individual groups of citizens. Differentiated statements for discrete groups are certainly possible but measurable results for the citizens of Europe *en masse* would be difficult to ascertain.

5.4 **Anticipating enlargement**

5.4.1 Commenting on the Commission's Internal Market Strategy,²⁴ the Committee stated that, "The Committee's main criticism of the broad strategy is that it considers the aspect of enlargement is not sufficiently developed. To seek to ensure that the Single Market contributes to a successful enlargement is a valid objective but that is not sufficient". Would that it were. The Committee went on to argue that the most pressing need was to ensure that the candidate countries would be in a position to adopt the rules of the Single Market prior to accession. Two years later, this remains a concern. The Commission has stated that, "Candidate Countries' (*sic*) administrative

22 COM(2002) 196 final, of 19 April 2002, and forthcoming EESC Opinion, Rapporteur **Mr Malosse**

23 see footnote 1

24 *ibid.*

capacity, including on compliance and enforcement, remains rather weak". Post-enlargement, the Internal Market will certainly be enlarged but will it still be internal? Will it, in other words, still be a Single Market, even to the somewhat limited extent that it is today?

5.4.1.1 The Committee would view with concern a situation in which the process of enlargement introduced still further divergency into the Internal Market by consequence of the augmentation of different regulatory regimes through delays in transposing Community legislation, the proliferation of national interpretations and the imposition of national laws, customs, traditions and established business practices in the new Member States. It would not be acceptable that the process of enlargement should adversely affect the operation of the Internal Market. From a prudential aspect, it is imperative that the subsisting Internal Market rules should apply *mutatis mutandis* to the new Member States.

5.4.1.2 The Committee is, however, conscious of the fact that, in some cases, transposition of the Internal Market rules will require a certain period of time. This is particularly true of accession countries which have been under the yoke of repressive, totalitarian regimes for many years. In these instances, granting transition periods constitutes a helpful alternative, both for the existing and the future Member States, but transition periods have restrictive consequences for the four basic freedoms of the Internal Market. However socially and economically acceptable they may be, and requisite to the enlargement process, it is preferable that their duration should be curtailed to the minimum necessary period.

5.4.1.3 The Committee considers that the simplification of regulations is also an enlargement issue. In its Opinion on EU enlargement (Rapporteur: **Mr Vever**)²⁵ it stated that, "The applicant countries' incorporation of the *acquis* into national legislation is complicated by the great complexity of Community rules and regulations. Although the European Union ought to lead to simpler regulations in Europe, nowadays it continues to introduce provisions which are too complicated for users, too uncoordinated – if not actually inconsistent – to form a generally coherent whole and too close to existing national laws to genuinely harmonise them". The Committee reiterates this position and once more draws attention to the paucity of time left in which to address it. This is an issue which needs to be addressed with celerity.

5.4.2 The Committee endorses the importance which the Commission attaches to integrating the new Member States into the SOLVIT problem-solving network as soon as possible. It also considers that the candidate countries should be encouraged to participate in the PRISM (Progress Report on Initiatives in the Single Market)²⁶ database, set up on the initiative of the Committee's Single Market Observatory. Certain of them have already done so.

²⁵ OJ C 193 of 10 July 2001

²⁶ www.esc.eu.int/omu_smo/prism

5.4.2.1 Indeed, the Committee feels that greater use should be made of the Internet in promoting integration of the Internal Market. For instance, it would greatly facilitate intra-Community trade, particularly for small businesses, if there were a web-site which could serve as a *vade mecum* for businesses to obtain information on the legal requirements and tax regulations in other Member States. There is also a need to develop A2B, A2C, B2A and C2A capabilities on a wider scale at the European level. At present, this process is still largely inchoate.

5.4.3 The Committee welcomes the "peer reviews" which are being carried out, involving visits to the candidate countries by experts from equivalent authorities in the Member States and the Commission. It agrees that cooperation and understanding between officials in competent authorities is the essence of extending the Internal Market to the candidate countries.

5.5 Measuring progress

5.5.1 The Committee agrees with the Commission that some measurement is better than no measurement and that it is important to combine quantitative measurement with qualitative evaluation but it counsels against allowing the process to become too subjective. It will be difficult to convince citizens that real progress is being made if that progress is not measurable and those measurements must be largely empirical. The Committee accepts that the most important factor is the impact which is made on the real economy. The situation where, "most companies still fail to see any impact on their daily operations" must be remedied.

5.5.2 The Committee welcomes the fact that, in its next Internal Market Review, the Commission will seek to make explicit the indicators by which progress on the ground should be measured. In order to achieve credibility, it is crucial that their validity should be substantiated. It also welcomes the Internal Market Watch, which will regularly assess prices for a standard basket of goods in all Member States.

6. Conclusions

6.1 The conclusion which must be drawn from the Commission's 2002 Review of the Internal Market Strategy is that a great deal remains to be done and progress to date has been disappointing.

6.2 Nor is time on Europe's side in this matter. The 18-month period covered by this review will take Europe to the eve of enlargement and nearly halfway towards the target date set at Lisbon. The imminence of enlargement gives added urgency to the project of completing the Internal Market; if the process of enlargement is to be successful, then both the workings of the Internal Market must be improved to provide a platform for the accelerated economic growth which enlargement should generate and the candidate countries must be brought up to speed on existing Internal Market legislation in order not to create new distortions and inefficiencies in its operation.

6.3 To a large extent, the fact that Europe has signally failed to achieve more substantive progress towards what is generally accepted as a common goal is an indictment not of the Commission, which has acted in the main as a catalyst for change, but of the other European institutions and the Member States. Without strong and real political support from all the actors involved, and particularly from the Member States, the vision of a true Internal Market will remain a chimera and the obtention of Europe's strategic objectives will remain a distant dream.

6.4 Such political support can only stem from a broad political acceptance of the European Union on the part of its citizens. This, in turn, can only be achieved if the advantages of the Internal Market are conveyed to them more effectively. There is a need for a concerted publicity campaign to convince Europe's citizens of the advantages that can accrue to them from completing the realisation of the Single Market and to allay their concerns about possible untoward consequences.

6.5 The fulfilment of the Union's mission statement is predicated upon the unqualified commitment of all the actors involved. The Committee invites the Commission to reflect on a longer-term agenda for the Internal Market in order that it can make a full contribution to the realisation of the goal. It also considers that the scope of the Internal Market Scoreboard should be extended to include factors on which it does not currently report, focusing particularly on those elements which constitute remaining barriers to the completion of the Single Market.

6.6 The Commission is correct in saying that, to be effective, the Internal Market Strategy must be a "shared agenda" for the Commission, the Council, the European Parliament and the Member States. It is also correct in saying that, "Europe's collective leadership must deliver on its promises". It remains to be seen whether the political will exists to achieve this.

Brussels, 18 July 2002.

The President
of the
Economic and Social Committee

The Secretary-General
of the
Economic and Social Committee

Göke Frerichs

Patrick Venturini

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N.B. Appendices overleaf

APPENDIX 1
to the
OPINION
of the Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were rejected during the discussions:

Point 4.4

After the first sentence, amend as follows:

~~"The Committee agrees with the Commission on the need for structural reform. Despite the commitments entered into at Lisbon and re-affirmed at Barcelona, the liberalisation of energy markets is proceeding very slowly; some Member States appear reluctant to do more than pay lip service to the idea. It would appear that there is still considerable resistance to change in some quarters, particularly at the Member State level; in order to overcome this, At the Lisbon and Barcelona summits, commitments were made to liberalise energy markets. At the Barcelona summit, some Member States gave a specific commitment to open up their markets (by 2004), taking account of the specific characteristics of services of general interest. In order to implement the agreed reforms successfully, it will be necessary, as the Commission has said ... "~~

Reason

Pillorying individual Member States is not conducive either to the political debate or to the ongoing development of the markets in services of general interest. This is all the more true given that the debate on the specific characteristics of services of general interest, their importance for economic development and people's living conditions and the resultant requirements for basic conditions on the markets in which these services are provided, is far from closed. Moreover, initial experiences from various countries indicate that basing any approach too precipitously and one-sidedly on the forces of free competition often brings undesired results.

Votes

For : 8
Against: 19
Abstentions: 1

Point 5.1.1

Amend the second sentence and delete the third as follows:

"The Committee considers that, if this target were achieved, it would represent a substantial step forward in the process of liberalisation of services ~~but it would still leave Member States with the discretion to restrict the freedom of choice of household consumers and would leave many other essential services unaffected~~ while at the same time taking account of the specific characteristics of services of general interest. ~~As a target, it therefore appears less than ambitious but is probably at the limit of what is politically feasible."~~

Reason

See point 4.4.

Votes

For : 10
Against: 26
Abstentions: 0

Point 6.4

Replace the third sentence by the following:

"At the same time, however, it will be vital to take seriously the concerns and criticisms expressed in connection with virtually full competition, especially with regard to services of general interest. Public discontent must not be dismissed as 'unwarranted emotion' since it often stems from specific disadvantages that may indeed be related to economic liberalisation. Thus, the completion of the single market will only be successful if, alongside establishing the market itself, the objective of developing the EU into a social union is recognised as equally important and pursued with just as much vigour."

Reason

Self-explanatory. See also many countries' experience of liberalising services of general interest.

Votes

For : 16
Against: 21
Abstentions: 0

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TARGETS HIT
<input checked="" type="checkbox"/> Further liberalisation of Postal Services – competition to apply to more mail services within agreed timetable
<input checked="" type="checkbox"/> Establishment of European Food Authority – essential for consumer confidence
<input checked="" type="checkbox"/> Agreement on procedures for faster and better securities' legislation drawn up in close cooperation with markets, users and regulators (“Lamfalussy” approach)
<input checked="" type="checkbox"/> Commission proposals to liberalise selling of cars in Europe (“block exemption”) – injecting more competition which is good for consumers
<input checked="" type="checkbox"/> New Telecommunications Package adopted - encourages increased competition and protects consumers
<input checked="" type="checkbox"/> UCITs Directive adopted – more freedom for fund managers to invest across borders – and agreement on the Regulation on International Accounting Standards after just 6 months of negotiation – greater investment protection and comparable company accounts
<input checked="" type="checkbox"/> Proposals presented for a more uniform, transparent and flexible regime for recognition of professional qualifications
TARGETS MISSED
<input checked="" type="checkbox"/> Public Procurement Package still not agreed - reform necessary for both public sector and utilities, with potential savings of up to €50 billion
<input checked="" type="checkbox"/> Community Patent frustratingly stuck – would provide legal certainty and lower costs, good for SMEs
<input checked="" type="checkbox"/> Take-over Bids Directive – 12 years' work called into question and Europe’s broader interests frustrated, but Commission will re-launch shortly
<input checked="" type="checkbox"/> Pension Funds Directive deadlocked – important in view of ageing population and deeper capital markets
<input checked="" type="checkbox"/> Directive on Protection of Biotechnological Inventions still only transposed by five Member States – losing potential benefits of legal certainty and innovation in a sector which is crucial for Europe
<input checked="" type="checkbox"/> Commission proposals for Services Strategy behind schedule due to complexity and slow input from Member States – great employment potential
<input checked="" type="checkbox"/> Eight Member States failed to meet the transposition target set at Stockholm – causing legal insecurity and leaving gaps in the Internal Market’s framework
<input checked="" type="checkbox"/> Commission’s Better Regulation Action Plan put back by six months – due in part to the request from the European Parliament to postpone adoption until after the end of the consultation on the Governance White Paper

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MODERNISING MARKETS

No later than December 2002:

- adoption of proposals for the final stage of market opening of gas and electricity, including freedom of choice of supplier for all European non-household consumers as of 2004
- adoption of proposals creating the Single European Sky and proposed rules on airport slot allocation
- adoption of the second package of measures to revitalise European railways
- adoption of proposals on pension funds, financial conglomerates and prospectuses²⁷
- adoption of the public procurement package

No later than June 2003:

- Commission proposal to remove Internal Market barriers to trade in services
- CEN to achieve a total of 150 harmonised standards in construction products and 450 in machinery
- Commission to review its contractual arrangements with European standardisation bodies in order to link Community financial support more closely to performance criteria
- Adoption of the new take-over bids proposal
- Adoption of Regulation concerning sales promotion

IMPROVING BUSINESS CONDITIONS

No later than December 2002:

- as a follow-up to Commission Action Plan to simplify the regulatory environment, a system for impact assessment and minimum standards for consultation, including increased use of Interactive Policy Making, to be operational
- adoption of Regulation aimed at bringing about a more efficient enforcement of competition rules by involving national competition authorities and national courts in the enforcement of Articles 81 (cartels) and 82 (abuse of dominant position) of the EC Treaty
- proposal for amendments to the EC merger Regulation aimed at ensuring the continuing effectiveness of merger control in the context of globalisation and enlargement

- completion of the “Tax Package” (Directive to ensure effective taxation of savings income in the form of interest payments, Directive on a common system of taxation applicable to interest and royalty payments between associated companies in different Member States and roll-back of all harmful tax measures)
- adoption of the Community Patent proposal

²⁷

Five other proposals are expected to be adopted earlier in 2002 (Directives on Collateral, Market Abuse, Insurance Intermediaries and Distance Marketing of Financial Services and the Regulation on International Accounting Standards).

No later than June 2003:

- Member States to reduce the overall level of state aid as a percentage of GDP and to redirect such aid towards horizontal objectives of common interest, including economic and social cohesion, and target it to identified market failures
- adoption of Directive on the patentability of software-related inventions
- All Member States to ensure that a private limited company can be set up within 18 working days at a cost of no more than **€213 and with a minimum paid-up share capital of no more than €3,000**

No later than December 2003:

- Commission proposals for targeted measures aimed at removing company tax obstacles to cross-border economic activity

MEETING CITIZENS' NEEDS

No later than December 2002:

- adoption of a state-aid framework for services of general economic interest and development of a mechanism to monitor performance²⁸
- Commission proposal for legal framework for enforcement cooperation between public authorities responsible for protecting consumer economic interests

No later than June 2003:

- Commission proposal on the introduction of a European Health Card to replace the current paper forms needed for health treatment in another Member State

No later than December 2003:

- adoption of Regulation to harmonise and reinforce food and feed safety controls – will apply to all stages of the food chain – production, transformation and distribution of food and feed
- adoption of proposals on trading of greenhouse-gas emission allowances and environmental liability
- adoption of proposal on mutual recognition of academic and professional qualifications to enhance labour mobility
- adoption of proposals to modify and simplify Regulation 1408/71 on the coordination of social security schemes to help free movement of people and employees
- adoption of proposals in line with the European Company Statute on associations and mutual societies to give non-profit organisations the opportunity to organise themselves efficiently across borders

Anticipating Enlargement

No later than December 2002:

²⁸

The Commission will present a Communication on an evaluation methodology for network industries and public utilities to the May Internal Market, Tourism and Consumer Council.

- Complete “Peer Reviews” by Member State and Commission experts in the problem areas identified, including financial services, professional qualifications, data protection and postal services
- Ensure that “twinning” arrangements (whereby a Member State cooperates or twins with a Candidate Country by helping and advising their administration) are set up to cover all key sectors in the Internal Market for all Candidate Countries

No later than June 2003:

- Carry out targeted Training Programmes for officials in Candidate Countries responsible for enforcement in the areas of free movement of goods, the provision of services and the freedom of establishment which are covered by Treaty provisions rather than specific Community Directives

No later than December 2003:

- Conclude negotiations on the Protocol to Europe Agreement on Conformity Assessment and Acceptance of Industrial Products (PECAs) with those countries which meet the conditions
- Candidate Countries to become full and active members of CEN and CENELEC²⁹
- Integrate the Candidate Countries into the SOLVIT problem solving mechanism as fully as possible

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This target action applies to those Candidate Countries which will become Member States in the next EU enlargement. The criteria for full membership of CEN and CENELEC include adoption of their policies on intellectual property rights, adoption of 80% of harmonised standards and establishment of a legal framework allowing standardisation to be carried out as a voluntary, non-governmental activity.

The Commission

- Set up a Regulatory Review Body to monitor the review of existing legislation and set out guidelines for new legislation; this Body should incorporate representatives of the Commission, the social partners and the national agencies.
- Set up an internal legislative network and an inter-institutional network to promote good practice, apply the principles of legislative quality and encourage the development of a new administrative culture; the internal legislative network should be operated by a Simplification Unit linked to the General Secretariat.
- Encourage the Member States to replicate these bodies and create joint organisations containing representatives of the European bodies and their national counterparts.
- Create a simplified legal base for the establishment of an effective, integrated system of RIA at the European level; encourage the Member States to follow suit and to coordinate their systems with the Community system.
- Set specific targets for achieved reductions in the volume of legislation within stated timescales.
- Give all new regulations, and existing regulations which are renewed, a finite life at the end of which they would be reviewed for continued relevance.
- Withdraw existing legislative proposals that are no longer of topical interest.
- Provide exemptions or partial exemptions from some regulations on a sliding scale for SMEs and particularly micro-businesses.
- Streamline the *acquis communautaire* by producing a “core *acquis*” and introducing a systematic process of codification.
- Improve the accessibility of the *acquis* by revising the *Official Journal*.
- Make the *acquis* available on-line on a special web-site, highlighting changes as they occur.
- Set up an advice centre for businesses and citizens who require assistance in interpreting the *acquis*.
- Make full use of advances in information technology to reduce the compliance cost of regulations by developing B2A and C2A facilities.
- Appoint transposition/application correspondents to improve communications between the Commission and the Member States.
- Widen and improve the consultation process; render it more transparent by publishing a statement of the submissions received and the impact they have had on the legislative proposal.
- Introduce a system of peer reviews at the European level and encourage the Member States to do likewise.
- Make wider use of Regulations rather than Directives.
- Develop the use of co-regulation, where appropriate.
- Apply the “public interest” test to all legislative proposals.
- Seek alternatives to regulation wherever possible; in future, impact assessments should include a report on the Commission’s examination of alternative, non-legislative possibilities.

- Produce a monitoring report each year by the Spring Summit, consulting the Economic and Social Committee by asking it to produce an opinion on this report.
- Hold a Simplification Forum every two years in conjunction with the Economic and Social Committee, in order to consult the socio-economic actors on the progress and direction of the simplification process.

The Council

- Adopt, on a proposal from the Commission, a legal framework for RIA.
- Make the completion of an RIA an essential prerequisite for any legislative proposal submitted to it.
- Create a Regulatory Assessment Office.
- Where legislative proposals have been substantially modified in the negotiation process, revise the RIA accordingly.
- Co-operate in fast-tracking proposals resulting from the simplification process.

The European Parliament

- Introduce an internal Code of Conduct for simplification.
- Make the completion of an RIA mandatory for any legislative proposal.
- Co-operate in fast-tracking proposals resulting from the simplification process.
- Provide additional funding to appropriate stake-holders (e.g. NGOs) to enable them to participate effectively in the consultation process.

The Economic and Social Committee

- Implement the Committee's own Code of Conduct.
- Comment on the Commission's compliance with the Regulatory Impact Assessment procedures in all Committee opinions.
- Comment in its opinions on the legislative quality of the Commission's proposals.
- Participate in the Commission's two-yearly Simplification Forum.
- Participate in the Commission's intensified consultation system in accordance with the Commission's proposals.
- Issue own-initiative Opinions on simplification and regulatory improvement issues, as necessary.

The Committee of the Regions

- Adopt its own code of conduct.
- Comment on the Commission's compliance with the RIA procedures in all its opinions.

- Comment in its Opinions on the legislative quality of the Commission's proposals.
- Participate in the Commission's two-yearly Simplification Forum.
- Participate in the Commission's intensified consultation system in accordance with the Commission's proposals.

The Member States

- Adopt a multi-annual simplification plan at the EU Summit by the end of 2002.
 - Introduce national Codes of Conduct.
 - Set up national Regulatory Review Bodies.
 - Set up national legislative networks to promote good practice and apply the principles of legislative quality.
 - Interface these bodies with their European counterparts.
 - Create Regulatory Assessment Offices.
 - Introduce an integrated system of RIA.
 - Complete an RIA when transposing EU Directives into national law.
 - Submit an RIA when notifying the Commission of an intention to introduce technical legislation under Directive 98/34.
 - Transpose EU Directives into national law correctly and within the set deadlines.
 - Establish improved national consultation procedures.
 - Provide on-line access to the body of national legislation, including transposed Community law.
 - Establish a national simplification policy.
 - Introduce a system of peer reviews.
 - Set specific targets for achieved reductions in the volume of legislation within stated timescales.
 - Give all new regulations, and existing regulations which are renewed a finite life at the end of which they would be reviewed for continued relevance.
 - Provide exemptions or partial exemptions from some regulations on a sliding scale for SMEs and particularly micro-businesses.
-