

Report from the Public Hearing on Future Single Market Policy, 29 November 2006

1. INTRODUCTION

The public hearing on future Single Market Policy was organised as part of the Commission's review of the Single Market. Its results will feed into a report on the Single Market for 21st century in 2007. The hearing drew on a recent DG Internal Market's consultation on future Single Market policy and focused on those issues that have attracted particular comments, debate and criticism in stakeholder replies. The public hearing stimulated a constructive and informative debate on the Single Market. This report aims to provide a concise overview of the main recommendations put forward by speakers and members of the audience to facilitate reflection and further development of those issues¹.

Commissioner McCreevy in his opening speech set out the context of the public hearing and underlined the need of reflection on Single Market policies to ensure that they meet the demands of the time so that the Single Market continues to be the Commission's best response to globalisation².

2. FIRST PANEL ON CONSULTATION

*The discussion during the first panel of the Public Hearing focused on the Commission's consultation policy and on how the Commission could more effectively reach out to all Single Market stakeholders. The discussion was chaired by **Jacqueline Minor, Director for Horizontal Policy Development in DG Internal Market and Services** and panellists presented different perspectives on consultation. They were: **Hugues Thibaut from Test Achats** representing consumers; **Andrew Cave from UK Federation of Small Businesses** representing small businesses³ and **Bernadette Ségol from UNI-Europa** representing trade unions.*

The discussion in the panel and interventions from the audience showed that the Single Market was sometimes seen as irrelevant or approached with suspicion. The following suggestions were put forward during the discussion:

Overall Commission consultation policy

- **The Commission was called on to put more thought into drafting and preparing its consultations** in order to make them more user-friendly. In particular, it was recommended that the consultations contain a one-page simple and non-technical introduction explaining the aim of the consultation and sectors affected. This should make it easier for stakeholders to judge the relevance of the consultation. It was also suggested that questions should be more specific and address concrete issues and that the Commission should make greater use of 10-minute online consultations.

¹ Individual questions asked by members of the audience along with replies from relevant Commission services will be shortly available as Annex to this report on DG Internal Market's website: http://ec.europa.eu/internal_market/strategy/index_en.htm

² The text of Commissioner McCreevy's opening speech will be shortly published on DG Internal Market's website.

³ Ms Minor also put forward recommendations on behalf of Ms Małgorzata Starczewska-Krzysztosek (Polish Confederation of Private Employers) who could not participate in the event.

- The Commission was also asked to be **more transparent in its consultations and prove to stakeholders that it listens to their views**. According to trade unions, the Commission's capability to listen was a bigger cause for concern than its ability to reach the stakeholders. In particular, **post-consultation feedback was stressed as very important**. The Commission should publish all replies, provide adequate feedback on views received and explain to stakeholders why their concerns were not taken into account. Furthermore, if the approach to a specific policy has changed in the meantime, re-consultation of stakeholders should be considered.
- Setting up a **peer review group** by DG Health and Consumer Protection, made of representatives from industry, NGOs, consumers, local authorities and national experts, to **analyse how consultation could be improved** was cited as a best practice example. Other Directorates-General of the Commission were encouraged to also engage in such reflection.

Better involvement of stakeholders in Single Market policy-making

- The Commission was called to **ensure balance between various interests** (in particular, industry and consumers) **on its advisory groups**. Mobility of bank accounts was given as an example where consumer representatives did not feel they had sufficient influence and the High Level Group on hedge funds was criticised for not including any opponents of investment funds. The Commission was encouraged to increase the funding of consumer organisations to enable their better participation in policy-making. DG Internal Market's Working Party of Financial Users made of 25 national consumer representatives was quoted as a best practice example.
- Creation of **triangular Commission-industry-consumer platforms** was suggested to involve stakeholders earlier in the consultative process.
- SMEs' engagement in policy-making was said to be limited by difficulties in accessing information. This was blamed on the existence of a plethora of entry points on EU (e.g. IPM, EBTP, Your Europe) and national level (e.g. Innovation Relay Centres, European Information Offices), which at worst led to confusion and at best did not make those networks sufficiently visible. It was recommended to **establish a one-stop-shop system**, which would have one professionally organised, well funded and recognisable point of entry and would consolidate all the currently available websites. Commissioner Verheugen's initiative encouraging EU officials to undergo work experience in industry was seen as very useful to improve the understanding of how SMEs work.
- Consultation questionnaires were not considered to be the best way to contact small businesses. Instead, a **more active and direct approach** was seen as necessary. For instance, it was suggested that **a SME envoy should be established in each Commission delegation** in Member States to translate all Single Market related rules into "SMEs' terms" and that more use should be made of **dependencies between small and big businesses** whereby the latter could play the role of intermediaries between the former and the EU institutions.

Internal consultation within the Commission

It was suggested that a **common consultation procedure** be applied regardless of which Directorate-General launches a consultation and that the same deadlines be given to stakeholders in all Commission consultations. The Commission was also called on to ensure better coordination between its Directorates-General and encourage mutual involvement in their respective stakeholder consultations.

Impact Assessments

The Commission was called to **improve and make better use of impact assessments** to verify whether a specific policy was going to improve competition for **consumers** and make them net beneficiaries; to **more rigorously assess the effect on SMEs**; and to better take into account **the impact on jobs and workers**.

3. SECOND PANEL ON ALTERNATIVE TOOLKIT FOR SINGLE MARKET POLICY

*The discussion during the second panel focused on what tools the Commission should use, in shaping modern Single Market policy. **Retail financial services sector was chosen as a case study to discuss what tools have been already developed and whether they could be applied in other areas.** The discussion also addressed the perspective of consumers as main users of retail financial services. The discussion was chaired by **Irmfried Schwimann, Head of Unit for Financial Services in DG Competition** and panellists presented different perspectives on tools for Single Market policy. They were: **Benjamin Pacary from European Consumer Centre in Luxembourg** and **Stephen Locke from UK Financial Services Consumer Panel** representing consumers' views; **Klaus Naumann, former CEO of B&S Card Service** talking about developments in payment cards market; **Albert Scholten, Head of Financial Services Monitor in Dutch Competition Authority** representing a national competition authority; and **Fabrice Demarigny, Secretary-General of CESR** representing financial securities supervisors.*

The Financial Services Action Plan (FSAP), aiming at creating a well functioning Single Market for financial services, has brought a wave of legislation to the sector. The FSAP was seen as a success. Despite the frequent request for a 'regulatory pause' and a shift towards non-regulatory tools, legislation was still thought by the speakers to be a useful instrument to address shortcomings in retail financial services and increase consumers' confidence in financial markets. At the same time, a better balance of regulatory and different non-regulatory tools was recommended. The following suggestions emerged from the debate on those issues:

Legislative measures

- **Regulatory efforts towards more harmonisation were seen as necessary** to encourage service providers to operate on a cross-border basis and persuade consumers to invest their savings and buy financial services products abroad, by providing them with adequate protection and information. For instance, legislative measures were deemed to be the best instrument to provide better access for intermediaries and ensure their independence and liability; achieve a Single Market in specific sectors such as payment cards (e.g. Payment Services Directive); and harmonise rules on investor protection and commercial practices for financial services (e.g. advertising).

- At the same time, it was stressed that **legislation should be flexible, adhere to Better Regulation principles** and introduce efficient and straightforward procedures for consumers' benefit. For instance, decision-making should be based on the proper resourcing of inputs and cost/benefit analysis. The regulatory phase in financial services area was seen as a success also thanks to the **Lamfalussy process**. This approach was applauded for being based on proper consultation of all stakeholders and making extensive use of 'comitology' whereby implementing measures were adopted according to a transparent and flexible procedure based on technical expertise.

Non-regulatory tools

- **Analysis and a clearer evidence base** about the functioning and potential problems in retail financial services markets was seen as an important means to be able to choose the right tools and keep pressure on the markets. DG Competition's Sector Analysis on Payment Cards in EU countries was quoted as a case in point. Good understanding of consumer concerns was seen as important given the absence of a single unified consumer interest. However, the onus was said to be not only on policy makers to listen to the consumers' concerns, but also on the consumers – via their associations – to voice these concerns.
- **Enforcement** was seen as crucial to increase consumer confidence. This should not only be done via 'traditional' enforcement tools, but also alternative mechanisms, such as out-of-court dispute settlement, development of networks (e.g. FIN-Net or under CPC Regulation) and self-regulation (e.g. in the area of safe credits).
- **Monitoring of the markets was also said to have an enforcement effect**. The work of the Financial Sector Monitor within the Dutch Competition Authority, which identifies barriers to competition, researches their causes and provides guidance, was given as an example. In this way it was possible to increase awareness in the markets about the necessity to enforce competition rules and industry was pushed for compliance.
- A '**European supervisory culture**', was believed to be necessary to ensure a coherent and common application and enforcement of rules across the EU. To this end, in the area of financial services, an active cooperation between responsible national authorities takes place in framework of the European committees of supervisors and regulators: for securities (CESR), insurance and occupational pensions (CEIOPS) and banking (CEBS). Via these committees, supervisors not only give advice to the Commission, but also co-operate on a daily basis to ensure that supervision is done in an equivalent way anywhere in the EU.
- **Moral persuasion and the threat of being confronted with legislation** were also quoted as a useful tool to encourage the industry to make progress through **self-regulation**. The work of the European Payment Council or the area of Clearing and Settlement, where banks – faced with the prospect of legislation - committed to self regulation, were given as prime examples.
- Finally many speakers stressed the importance of **communication** and ensuring that information about all the major initiatives (e.g. Single Euro Payments Area) reaches consumers and users.

- **Standard contracts**, whereby all consumers are to be provided with the same minimum necessary information, and the setting up of organisations for consumer protection and information on EU, national and local levels were suggested as possible means to achieve this aim. However, the draw-backs of such standardisation (less choice, less room for innovation) were also strongly pointed out.
- **Participation of consumers** in shaping the measures under the Lamfalussy process was seen as a weak point and the Commission was asked to increase funding to strengthen consumers' involvement.

4. THIRD PANEL ON ENFORCEMENT

*The discussion during the third panel focused on proper application of Single Market rules and ways of providing effective redress where problems of application arise. The discussion was chaired by **Claus-Dieter Ehlermann, Wilmer Hale** and panellists presented different perspectives on enforcement tools. They were: **Charlotte Cederschiöld MEP, Vice-Chair of the Internal Market and Consumer Protection Committee** representing the European Parliament; **Pavel Telička, Chair of the EPC's Better Regulation Task Force** talking about Better Regulation agenda; **Paul Skehan, Deputy Secretary General of Eurochambres** representing chambers of commerce; **Richard Rosengren, Kommerskollegium - National Board of Trade, Sweden** representing a national authority responsible for SOLVIT; and **Anne Spiritus-Dassesse, President of the Brussels Commercial Court** representing a national court.*

The panellists agreed that the Single Market was a great achievement but stressed it did not yet function as well on the ground as it could. They proposed the following measures to be taken by the Commission and the Member States to make it work better:

Role of the Commission

- It was stressed that the Single Market legislative framework is mostly in place (in particular, given the final stages of adoption of the Service Directive) but that the Commission needs to ensure active follow-up to the legislation, not only through transposition into law, but further to the point where it is implemented.
- As the Guardian of the Treaties, the Commission was called on to actively take up its responsibilities of ensuring the application of EU law. Lack of resources or heavy caseload should not justify inaction.
- However, it was acknowledged that the Commission cannot alone be responsible for enforcement and that it was time for Member States to take on a greater responsibility for the correct application of the rules they have commonly adopted.

Problem prevention

- It was suggested that **Regulations would be preferable to Directives** as a Single Market legal tool, given that they are not subject to interpretation and leave less room for possible conflicts.
- An **Internal Market Guide**, aimed at authorities applying EC law, was described as an example of ex-ante enforcement measures in Sweden and a best practice to follow by others. The guide contains general EC law principles, rules on free movement of goods, services, capital and persons, relevant case law of the European Court of Justice and an explanation on how it should be interpreted.
- It was recommended that an **Internal Market Task Force**, initially a Danish proposal, be created in each Member State. Its main objective would be to screen existing national legislation to find out whether any rules created barriers to trade and to identify the amount and type of those barriers.

Problem solving

- A mention was made of the 2002 Communication on Better Monitoring of the Application of Community Law which set priority criteria for **infringement proceedings**. It was stressed that such prioritisation should be applied across all Directorates-General and fast track procedures for those “priority cases” should be put in place. In addition, calls were made for shorter delays in infringements and the provision of tables of correlation for all directives. Speakers pointed out that there were still too many infringement proceedings which demonstrated that penalties were not sufficient and not delivered quickly enough. DG Internal Market was called on to continue to increase the fines until the number of infringement cases decreased significantly.
- There was agreement that the Commission needed the cooperation of Member States to prevent gold plating and cooperation of the **national courts** to improve the implementation record. Inefficient implementation was said to send the signal that some national courts are reluctant to acknowledge the primacy of EU law. It was stressed that national judges should compare whether national law is in compliance with European law and give precedence to the latter and citizens should be able to rely on national judges to properly enforce the EU law. In that context, good training was seen as very important and it was recommended that training of national judges be strengthened at Member State level.
- Regarding **non-legal tools**, **SOLVIT** was seen as good and well appreciated by those stakeholders who use it, but still insufficiently promoted and under-funded. There were calls to allocate more resources to its development and promotion. Another suggestion to improve the working of SOLVIT referred to the creation of a “chat room” in the database for sharing experiences. The purpose would be:
 - ✓ to use it for on-line consultation in pending cases, for instance in complicated cases to achieve a better legal assessment of a problem,
 - ✓ to create a source of SOLVIT case law in order to promote uniformity in the application of Community law,
 - ✓ to use the chat room in order to build “peer pressure”, which could prove useful in SOLVIT Centres' dialogue with national administrations.

In order to improve enforcement it was also recommended that a “**Single Market authority**” be established in each Member State to ensure the correct application of EC law.

5. FOURTH PANEL ON COMMUNICATION

The discussion during the fourth panel aimed to point out how the Commission's current information and communication policy could be improved. The discussion was chaired by John Wyles (Senior Partner in GPlus Europe) and panellists presented different perspectives on communication. They were: Paul Hofheinz, President of the Lisbon Council; Peter MacDonagh, former Senior Adviser to the Irish Prime Minister, communication consultant; Hendrikus van Oostrum, Journalist of Financieel Dagblad representing national press; Arlene McCarthy MEP, Chair of the Internal Market and Consumer Protection Committee and Edit Herczog MEP, Member of the Internal Market and Consumer Protection Committee representing the European Parliament.

The discussion in the panel and interventions from the audience showed that the Commission faces real challenges while reporting on the Single Market, because it involves selling a highly technical topic to the non-specialised media which aim to entertain their public. At the moment it seems that "Europe is a badly sold product".

EU citizens are flooded with differing information – sometimes they are over informed, sometimes not informed at all and often vulnerable to myths about the Single Market published in the media. The panellists proposed the following ideas on how to pass the right message about the Single Market to the general public:

Communication as a priority

It was stressed that the Commission should eventually acknowledge that it is in the communication business and start treating communication as the number one priority. The Commission was warned that the opponents of the Single Market will not fight fair and will use propaganda and false myths and therefore, it was important to be ready with a good communication strategy backed up by necessary resources.

How to communicate

- It was suggested that more attention be paid to the **language used**: there was a tendency in the Commission to use the language of Single Market opponents. The Commission was called to use more positive and active wording, highlighting the benefits and achievements of the Single Market.
- The Commission was asked to give information about its activities in the **simplest possible way**, using clear figures and background information, to be presented by well known and trusted personalities. Such clear and informative data would be of particular importance for journalists writing about the Single Market.
- Some speakers stressed that **Commission Representations** should be more involved in bringing European policy closer to the general public by for instance, organising with national governments debates on all major policy issues.

- The **Services Directive** was cited as an example of an unsuccessful Commission's communication strategy. The Commission was said not to have explained its objectives well enough and not to have sufficiently reassured those who were afraid of the Directive's impact. The same criticism was also made of Member States. According to participants, both should have been more active in correcting myths and misinformation published about the Services Directive.
- The need to agree on a **coherent message within the Commission** was also underlined as there could be some fields of common interest for several Directorates-General. They were called to keep each other informed and up to date and learn from each other's best practices.

To whom to address the message

The Commission was said to usually see business as the priority target group. This was thought to be risky as some business sectors may be opposed to those proposals which they think could endanger their interests. Instead, it was stressed that the broadest possible audience, including citizens, should be informed about the Single Market.

6. CONCLUDING REMARKS

In his **Keynote address Prof. Monti** underlined that lack of consultation at EU level was yet another myth about the EU – instead consultation was in his view taken very seriously in Brussels. He saw the Single Market as a great success but stressed that it was less evident for citizens and that some hidden barriers still remained. Prof. Monti suggested addressing these issues further within a **group of experts**, following the example of the High Level Working Group chaired by Mrs. Simone Veil⁴ in the 1990s. Talking of the **EU economic situation**, Prof. Monti stressed that there were large divergences among Member States in the development of the Single Market. Paradoxically, although monetary union was supposed to be a crowning achievement, there was now single currency without a completed Single Market. He saw the gradual alienation from the concept of a market economy by the big continental economies as one of the reasons although market economy was originally a continental concept. To ensure **better implementation** of the Single Market, he saw tools such as Internal Market Scoreboard as very important. A strong enforcement power by the Commission was also key, in his view, as proved in recent cases of economic protectionism. Those cases should be seen as a positive sign of maturity of the Single Market demonstrating that businesses dared to challenge national protectionist policies. He underlined the **importance of strong links** and cooperation **between Single Market and competition policies** and warned of negative effect on Single Market policy in case an external agency was created for competition policy or if the Constitutional Treaty weakened the Single Market and competition articles.

Mr Stoll concluded the Public Hearing by summing up the main recommendations and thanking the speakers and participants for a lively and constructive debate⁵.

⁴ High Level Working Group on questions of freedom of movement

⁵ The text of Prof. Monti's speech and the concluding remarks of Acting Director-General Mr Thierry Stoll will be shortly published on DG Internal Market's website.