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EUROPEAN COMMISSION

Brussels, xxx
SEC(2010) xxx

COMMISSION STAFF WORKING DOCUMENT

identifying "missing links" and bottlenecks in the single market

Accompanying document to the Communication setting out a Single Market Act

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INTRODUCTION

This Staff Working Document accompanies the European Commission Communication setting out a Single Market Act. It summarises the bottlenecks and 'missing links' which the Commission identified as preventing citizens and enterprises from reaping the full benefits the single market has to offer.¹ In doing so, it provides an analytical basis for the policy proposals set out in the Single Market Act and its list of actions in annex.

With the presentation of this Staff Working Document, the Commission is responding to the invitation of the March 2010 European Council, which tasked the Commission with identifying bottlenecks constraining growth in the internal market.² This followed an announcement by Commission President Barroso "to launch a major analysis of the "missing links" in the internal market, to find out why it has not delivered on its full potential and thereby to identify new sources of growth and social cohesion".³

This Document summarises the main bottlenecks and missing links from the point of view of the main beneficiaries of the single market – European citizens and enterprises. It includes an analysis of why existing single market rules have not always established clear and unambiguous single market rights for citizens and enterprises.

¹ For the purpose of this analysis, a bottleneck is defined as a legal or administrative gap or barrier that prevents European citizens or enterprises from reaping the full benefits from the single market, causing below potential economic growth. Missing links are gaps in adapting the single market to new developments brought for instance by climate change and the use of ICT.

² European Council conclusions of 26 March 2010:
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/113591.pdf

³ José Manuel Barroso: "Political guidelines for the next Commission"; 3 September 2009

1. BOTTLENECKS TO A MARKET THAT WORKS FOR ENTERPRISES

The internal market is delivering important benefits for enterprises, providing them with a market with over 500 million consumers in an EU-wide economy that represents 28% of world GDP and spans the 27 Member States of the European Union, plus Norway, Iceland and Liechtenstein. The dismantling of trade barriers and the resulting realisation of economies of scale provide important competitive advantages.

Enterprises benefit from one common set of rules and regulatory standards based on the free movement of goods, services, workers and capital. Together with the EU's competition and state aid arrangements, these rules aim to create one single regulatory framework allowing for fair competition. Together with the introduction of the mutual recognition principle, whereby enterprises can in most cases trade in other Member States subject to the rules and regulations in their home country, this single regulatory framework has particularly benefited SMEs that given their size and resources would otherwise often not be in a position to take advantage of opportunities outside their domestic market.

Despite very significant progress achieved, bottlenecks remain that prevent enterprises from reaping the full benefits of the single market. This is illustrated by the fact that intra-EU trade remains significantly below intra-US trade. Bottlenecks can be due to regulatory gaps (e.g. EU patent), including gaps resulting from new market developments (e.g. digital economy), diverging regulatory approaches in different Member States (e.g. in the areas of taxation and social policies), or a failure by Member States to correctly apply EU legislation (e.g. public procurement).

This section identifies bottlenecks that prevent enterprises from reaping the full benefits of the single market.

1.1. ... A supportive business environment

A supportive business environment is a main factor for enterprises to compete freely, fairly and effectively across the single market. In a supportive business environment, enterprises benefit from a smart regulatory framework, access to capital and a tax system that is designed in line with internal market principles. This is particularly important for SMEs, and is the core objective of the EU's 2008 "Small Business Act", which will be reviewed in 2010.

Regulatory framework

- While a sound regulatory framework is crucial for the development of a supportive business environment, regulation may – if badly designed or wrongly implemented – lead to unnecessary burden on businesses, hindering their competitiveness and capacity to create growth and jobs. Examples include multiple reporting requirements of the same information, unnecessarily complex and time-consuming authorisation procedures and multiple overlapping business inspections by different administrative authorities. Although much has been achieved in improving the business environment over the past years, the lack of regular systematic evaluations in all areas of existing rules and regulations means that inefficient and unnecessary administrative requirements risk not being detected and addressed.

- The absence of a network of interconnecting national business registers complicates access to information about enterprises cross-border, resulting in a lack of transparency for other enterprises, consumers and public authorities. Overlapping, but diverging registration, disclosure and dissemination requirements also cause high regulatory burden and administrative costs for companies operating cross-border.
- Provision of services into another Member State more and more involves sending staff abroad. The temporary posting of workers is thus an important element in the services market. At EU level, the Posting of Workers Directive aims to reconcile the exercise of companies' fundamental freedom to provide cross border services under Article 49 EC, on the one hand, with the appropriate protection of the rights of workers temporarily posted abroad to provide them, on the other hand. Therefore, a nucleus or hard core of clearly defined terms and conditions of work and employment has been identified that must be applied to posted workers in the host country. However, at a practical level, the implementation, application and enforcement of the Posting of Workers Directive could be improved and interpretation clarified. Furthermore, complex national administrative procedures in place, and double taxation difficulties, may still provoke considerable complications for the posting of workers abroad, thereby complicating the provision of services by companies in other Member States.
- Further obstacles result from competition rules not being applied in a uniform manner across the single market. National authorities sometimes apply diverging standards when assessing company mergers and at times attempt to prevent or restrict the merger of enterprises that has been approved under EU merger rules. In addition, while a single standard for assessing agreements between enterprises has become effective in 2004, national competition authorities continue to apply national rules in parallel to EU rules, leading to diverging standards for the assessment of unilateral conduct by undertakings and the absence of a level playing field. Similarly, obstacles result from Member States granting State aid that is incompatible with EU rules. It is crucial that an adequate legal framework, procedures and resources are in place to implement competition policy to guarantee that the single market remains an open market, preserving equal opportunities for firms and combating national protectionism.

Running your business

- Barriers to investment still remain in privatised companies, especially arising from special rights (such as “golden shares”) maintained by the government. Given that in the context of the current financial crisis European governments have acquired large stakes in private firms (especially but not limited to the financial sector), there is a risk of further barriers to cross-border investment, exacerbating more horizontal initiatives taken by some Member States to define sensitive or strategic sectors that would be subject to specific rules.
- While a Statute for a European company has been successfully established (SE Statute), the number of companies that have actually chosen the SE Statute as a vehicle for simplifying their structures is limited. Several drivers are suggested as being responsible for this. Among them, the lack of any accompanying tax advantages has been singled out for particular attention. Furthermore, the absence of a European Statute for private companies complicates the operation of such companies in different Member States due to different national legislation. This harms particularly SMEs. Foundations also report that they encounter problems when conducting cross-border business due to different national legislation. The EU company law framework needs to be modernised to respond to the needs of businesses both big and small.

- Existing accounting directives are out of date and contain requirements which result in unnecessary administrative burden, especially for SMEs and micro enterprises. Micro enterprises constitute 75% of companies concerned by the Directives, yet seldom use the sophisticated financial reports that the Directives require.⁴

Access to finance

- Access to capital constitutes a challenge for many enterprises, in particular SMEs, and is complicated by unstable and the often still national nature of financial markets that are not always equipped with satisfactory liquidity. Unstable financial markets lead to reduced lending to businesses, as shown during the recent financial crisis, when debt financing became more expensive and difficult to obtain, as was financing through equity capital markets. An ECB survey of SMEs in the second half of 2009 showed a sustained decline in the availability of bank loans.⁵
- Venture capital can be a main source of finance in particular for innovative start-up companies. Nevertheless, access to venture capital in the EU is complicated by fragmented and underperforming venture capital markets. National initiatives have fragmented the European market and led to the multiplication of small, underperforming and unsustainable funds. There are at present not enough large funds that could finance the growth of firms across Europe. Existing European initiatives show the potential for EU level action but lack the critical mass to have a transformative impact on the market. The current regulatory environment and the absence of coordinated taxation rules, which give rise to double-taxation risks, are main barriers to the development of larger cross-border venture capital funds. Bottlenecks continue at both ends: a lack of funding at the start-up stage and a difficult exit market (where start-up companies are sold off to other firms).

Taxation

- By increasing the mobility of goods, services, people and capital, the single market has led to a mobility of taxes and tax competition. Given corporate mobility, corporate income taxation is subject to particularly intense tax competition⁶. In addition, despite the various initiatives initiated by the Commission in the past decade, such as the updates of the Parent-Subsidiary and the Merger Directive and the creation of the Joint Transfer Pricing Forum, many tax obstacles identified remain and continue to make it difficult for companies to operate efficiently in the single market. The current co-existence of 27 disparate corporation tax systems in the EU creates a market environment which, in the field of direct taxes, consists of as many pieces, often impossible to match, as the number of Member States. This is in contrast to the situation in other areas of the economy (i.e. production, inventories, sales, etc) where companies tend to deal with one single market. Inevitably, such fragmentation may significantly impede cross-border commercial activity, as it creates bottlenecks and distortion in the market and also increases compliance costs for corporate taxpayers.

⁴ According to a study prepared by Ramboll Management, micro enterprises could save up to €6.3 billion if they were exempted from the requirements of the accounting directives. See Consortium Study 2009: Ramboll, CapGemini, Deloitte: http://ec.europa.eu/enterprise/policies/better-regulation/documents/ab_studies_2009_en.htm; and CSES 2008: Evaluation of Thresholds for Micro-Entities: http://ec.europa.eu/internal_market/accounting/docs/studies/micro_entity_en.pdf

⁵ Add reference

⁶ The average corporate tax rate in the European Union has been declining since the early 1980s. The EU15 average reduced from close to 50% in 1985 to slightly less than 30% in 2009. The average for the 12 Member States that joined in 2004 is about 10 percentage points lower.

- A key impediment involves the high cost of complying with transfer pricing formalities. The ways that closely-integrated groups organise themselves strongly indicate that the concept of 'arm's length' pricing of every individual transaction with a group is often driven almost entirely by tax compliance requirements. As a result, the allocation of tax bases according to separate accounting on a transaction-by-transaction basis may no longer be the most appropriate method. Moreover, pricing at 'arm's length' frequently fails to take account of synergies and economies of scale and scope within an integrated market such as the EU.
- Another inefficiency is that the interaction of national tax systems often leads to over-taxation. Cross-border intra-group loss offsets are not allowed, as a matter of principle, within the EU, which creates a setting of over-taxation for companies engaged in cross-border activities. The same applies to group restructurings, which, unless entitled to the treatment of the Merger Directive, cannot benefit from tax-free provisions when transfers take place across the border to another Member State. Further, even where the Merger Directive is applicable, the absence of clearly delineated obligations often leads to different interpretations at national level, which may result in double taxation. What is more, the network of Double Tax Conventions (DTCs) does not offer an appropriate solution for the elimination of double taxation in the Internal Market, as it is designed to operate in a bilateral context at the international level, rather than within a closely-integrated market.
- It should also be pointed out that the current fragmentation of the single market can be detrimental especially to SMEs. Whilst large enterprises may have the resources to resolve some of the obstacles in the single market, SMEs, faced with high tax costs and elaborate and diverse fiscal systems, are often discouraged from taking advantage of the opportunities to expand their commercial activities on the other side of the border. It is noteworthy that, currently, only 8% of SMEs engage in cross-border trade and even less (i.e. 5%) have set up subsidiaries or joint ventures abroad.
- The VAT system as currently designed has limitations in a number of areas, leading in particular to a disproportionate administrative burden for companies.⁷ The complex system of rates and exemptions, the derogations and options offered to Member States and the special rules for cross-border transactions are harmful to the smooth functioning of the internal market and to the competitiveness of EU enterprises as they involve significant compliance costs particularly for businesses operating in several Member States. Since the introduction of VAT, the technological and economic environment has significantly changed providing new solutions and new challenges. However, the VAT system, particularly the reporting obligations of businesses and the way in which the VAT is collected, have remained largely unchanged. In addition to that, the current system is susceptible to fraud: about 12% of VAT is uncollected due to fraud, evasion, avoidance or insolvencies.

When things go wrong

⁷ In the context of the Commission's work on reducing administrative burdens by 25% by 2012, the VAT burdens on business have been quantified at EUR 69.5 billion or, on average, 8.5% of VAT receipts.

- Despite recent progress, including the introduction of simplified judicial procedures, the European Payment Order applying to non-contested claims and the European Enforcement Order issuable to monetary claims, enterprises can still not efficiently recover debts across borders. Attempts to enforce claims, for example through cross-border disputes in commercial cases, often lead to excessive costs, e.g. due to above-mentioned exequatur procedures which in more than 90% of cases constitute a pure formality but causes considerable costs. Debtors can easily move funds between bank accounts in different Member States, while creditors have no means to block debtors' bank accounts. As a result, cross-border debts remain unrecovered in more than 60% of cases. Barriers that remain to be addressed include insufficient provisional measures, non-transparency on debtor's assets and absence of electronic procedures which could facilitate judicial proceedings.
- Cross-border insolvency proceedings are not operating sufficiently efficiently and effectively. A lack of simplified and harmonized bankruptcy laws across the Union reduces legal certainty and results in complex, long and costly procedures for investors and creates a business environment that is not conducive to European enterprises operating cross-border.
- Despite the tightening of the rules in the current programming period of cohesion policy to deter fund shopping, these rules have not proved to be sufficient enough. 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. Better coordination of the Cohesion funding and of the authorization of state aid support in favour of the same company would be needed, as this also hinders the proper functioning of the single market.

1.2. ... Innovation and knowledge

The EU and its Member States have made efforts to improve R&D and innovation framework conditions and to make the "fifth freedom" (the free movement of knowledge) a reality. Around half of all EU companies introduce innovation to their products or services every year⁸. The EU directly supports research, development and innovation through its 7th Research Framework Programme with its substantially increased budget of €54bn for 2007-13, as well as innovative SMEs through debt and equity financial instruments of the Competitiveness and Innovation Framework Programme in the amount of €1.1bn for 2007-13.

Despite a rising R&D intensity in 17 member states over the period 200-2006⁹, the average annual spend on research and development expenditure in 2005-8 stood at only 1.85%, and thus still fell far short of the 3% target established in 2002 as part of the Lisbon Strategy. The core problem remains: Europe's innovation under-performance compared to main trade partners such as the US and Japan, and its effects on competitiveness. While public R&D spending in the EU is roughly equivalent to that in the US (0.65% compared to 0.75%), it is private R&D investment that is lagging behind (about 1.2% of GDP in the EU compared to about 1.9% of GDP in the US).¹⁰ Given that innovation is mainly driven by private entrepreneurs, there is an urgent need to improve framework conditions conducive to

⁸ Reference needed

⁹ S&T Outlook, 2009

¹⁰ European Innovation Scoreboard 2009: <http://www.proinno-europe.eu/page/european-innovation-scoreboard-2009>

research, development and innovation. This would also support eco-innovation, facilitating the building of a "green economy". The following barriers and bottlenecks can be identified:

Framework conditions for innovation

- The continued fragmentation of the patent system seriously hampers access to patent protection and the efficient management of patents for many enterprises, in particular SMEs, start-up companies, universities and research centres, and private inventors. This fragmentation makes European research and innovation less attractive, since it is unnecessarily complex and costly to secure EU-wide patent protection and associated revenues.¹¹ High patent protection costs lead to a system of fragmented patent protection, where a European patent only covers an average of five Member States at the time of the grant, and protection is often dropped in some of these countries over the lifetime of the patent, only leaving patent protection in the largest Member States. The high costs of multiple patent litigation hampers access to justice, in particular for SMEs, start-up companies, research institutes and private inventors. Divergent judgements lead to lack of legal security, making cross-border commerce more difficult and costly.¹²
- Counterfeiting and piracy is costing the European economy billions of euro and thousands of jobs every year. The OECD has estimated that trade in fake goods may have been worth as much as €188 billion in 2007¹³. EU customs authorities have seized over 178 million fake products at the EU's borders in 2008, up from 79 million in the previous year¹⁴. Fake goods endanger the health and safety of EU citizens: there has been an alarming increase in the circulation of counterfeit medicines, spare parts for cars, aircraft etc. Despite improvements, a lack of sufficiently strong and coordinated IPR enforcement policies and measures have hampered the fight against counterfeiting and piracy. The barriers to addressing counterfeiting and piracy are however also behavioural: a Eurobarometer study in June 2009 found that between a quarter and a third of EU citizens believe it is justifiable, for various reasons, to purchase counterfeit products.
- Complex and lengthy standardisation procedures prevent the European Standardisation System from supporting innovation to the degree that it could. Inefficient standardisation procedures mean that in innovative industries standards, once adopted, often no longer reflect the latest state-of-the-art technology and therefore fail to support the latest innovative and interoperable products. Moreover, the three European Standards Organisations (CEN, CENELEC and ETSI) experience difficulties in engaging with informal standard setters (research centres; universities etc.) with the consequence that their work is often not sufficiently considered in the standardisation process. Moreover, anti-competitive standardisation agreements can hamper interoperability and considerably

¹¹ At present, the basic costs of obtaining patent protection in 13 selected Member States by means of a European patent can reach approximately €40.000. Of this, as much as €15.000 are fees for the processing and validation of the European patent and obtaining required translations to file at national patent offices. Given these figures, the cost per claim per capita (up to the granting of the patent) is about ten times higher in the EU than in the US system, excluding external service costs (lawyers, notaries etc.). Maintaining a patent in force across these 13 Member States costs a total of €56.000 over 10 years, and more than double this for 20 years. This compares to a mere €15.000 for 20 year patent protection in the US.

¹² By way of example, the combined cost of litigation in Germany, France, the Netherlands and the United Kingdom can range from €310,000 to €1,950,000 at first instance, and €320,000 to €1,390,000 on appeal. A unified litigation system would reduce litigation costs by 10-45% on average.

¹³ OECD (2007), The Economic Impact of Counterfeiting and Piracy, Paris

¹⁴ http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2009_statistics_for_2008_full_report_en.pdf

increase the cost of use of the standard through unfair, non-transparent procedures and/or late disclosure of relevant intellectual property rights in the standard setting process. Finally, the lack of a European standardisation approach in certain areas, such as defence and security, can lead to additional bottlenecks and market fragmentation.

Free movement of knowledge

- Building a single market for Research and innovation requires addressing barriers which hampers the development of a European Research Area. . One of the main obstacles to the mobility of researchers is the current practice of limited open recruitment in public research institutions, in particular universities, which are often prevented from hiring freely researchers from other Member States. A lack of cross-border and cross-sector portability of grants provided to researchers means most project funding is tied to the Member State where the funding is originated.
- The efficiency of the European research support system is reduced by the domination of largely autonomous and independent national and regional private, public or public-private programmes and funding systems, leading to their national compartmentalisation. In many regions public support programs for innovation favour service delivery by local and public providers and more ambitious efforts are needed to open up support schemes to service providers from other Member States. A lack of appropriate mechanisms to enable cross-border funding or co-funding and the absence of common legal definitions e.g. of cost models and co-financing, reporting and accounting requirements create major barriers for transnational research activities.
- Different rules on the ownership and exploitation of IPR between Member States hamper cross-border research collaborations, particularly those between private and public bodies. Different approaches between Member States on access to publicly-funded research results and knowledge transfer create barriers to dissemination and innovation.
- Limited recourse by contracting authorities to the possibilities to stimulate innovation offered by EU procurement rules may reduce the demand of research services in the EU.

1.3. ... Goods markets

Around 75% of goods are subject to EU rules, regulations and standards, guaranteeing their free movement across the single market. The remaining 25% of goods are subject to the mutual recognition principle: if their production, import and/or marketing are allowed in one Member State, this decision will apply to the entire single market. Although the regulatory framework for goods is in place, a few bottlenecks remain:

- The management of the existing rules and regulations on the free movement of goods remains to be improved further. One challenge stems from inefficient market surveillance in some Member States, partly due to weak market surveillance infrastructures and a lack of sufficient cooperation between the various actors at Member State level (e.g. between market surveillance and customs authorities). For example, enforcement of consumer product safety rules is not the same across EU countries, which makes still uneven both consumer protection against risks from dangerous consumer products and the playing field for businesses in the consumer products sector. There is also scope to further simplify rules and to improve their enforcement by Member States, which requires national authorities assuming greater ownership. For the protection of the Single Market from threats coming

from third countries a sufficient level of co-operation between the various actors in the Member States (e.g. market surveillance authorities and customs) is needed.

- Anti-competitive industry-led standardisation agreements can hamper the free movement of goods by limiting product interoperability and/or increasing the cost of using a standard through unfair and non-transparent procedures, or late or partial disclosure of intellectual property rights in the standard setting process. SMEs particularly suffer from such practices. They moreover often fail to benefit fully from standardisation processes, with language, cost, lack of information and complexity frequently cited as barriers to their participation in the development of standards and their efficient use.
- In contrast to wines, spirits and agricultural goods, EU enterprises that produce non-agricultural handicraft products with an origin, quality, and reputation or other characteristics attributable to a specific geographic region origin do not benefit from a common framework for protected geographical indications. This hampers the marketing potential and sales of these products. In addition, the further development of the single market in such products is hindered by the multitude of national protection schemes that creates different regimes with different levels, duration and costs of protection.
- Significantly diverging national rules governing copyright levies lead to an important barrier to the free movement of electronic goods, which are subject to such levies, such as printers and photocopiers. While no levies are charged in some Member States, these can reach up to 130% of the price of an electronic good in other Member States.

1.4. ... Services markets

The services economy accounts for over 70% of all jobs and for all net job creation in the single market. It is thus a crucial sector for economic recovery. A well functioning single market for services will help citizens and businesses, in particular SMEs, profit from the single European market, by delivering them jobs and markets respectively.

The need for further development of the services sector can be illustrated by the potential of the business services sector¹⁵ which is a major factor for the competitiveness of European industry. In particular SMEs need in many cases to outsource services they need (e.g; accountancy, pay-roll management etc.). Differences in national regulatory measures continue to act as barriers to entry in certain areas and the absence of EU-wide service standards in certain sectors make it difficult for potential users to assess the quality of cross-border services that are highly specialised or knowledge-based.¹⁶

¹⁵ For example computer related services, telecommunications, logistics, facility management, security services, testing and certification services etc.

¹⁶ Business-related services involve professional services provided business-to-business (e.g. maintenance services, management consultancy, legal services). They currently account for €xx bn per year in the EU, and xx% of the overall services market. Between 1995 and 2007, employment in business services grew by 4.5% annually (manufacturing: minus 0.5% per annum). There are a growing number of examples of traditional manufacturing firms whose provision of business services is rapidly outstripping their traditional core business of producing and selling manufactured products. For more information see: http://ec.europa.eu/enterprise/policies/industrial-competitiveness/files/industry/doc/industrial_policy_and_services_part_1_en.pdf

The Services Directive¹⁷ has been an important step towards a genuine single market for services. Ensuring its proper implementation - notably as regards legislative and administrative simplification as well as the establishment of fully functioning Points of Single Contact - will remain a key priority. Beyond proper implementation, the potential of the tools provided by the Directive to enhance transparency, administrative cooperation between Member States as well as the exchange of best practices should be fully exploited in the years to come. This will ensure that the Directive delivers substantial benefits. One recent study found that EU wide economic gains of the Directive could range between €60-140 billion, representing a growth potential of 0.6-1.5% of GDP, using conservative estimates¹⁸.

In the field of electronic commerce, the Directive on electronic commerce¹⁹ set down common rules on a range of issues, and has thus been an important tool in the development of the online world. However, in addition to barriers affecting payment and delivery services, fundamental barriers notably in the field of contract law are emerging in the online environment and prevent enterprises, including in particular innovative SMEs, from reaping the full benefit of the possibilities offered by the internet.

- Despite its ongoing implementation, a number of barriers continue to exist in areas covered by the Services Directive. For certain requirements, including authorisation schemes and other establishment related requirements often imposed on service providers, the Directive does not provide for an outright prohibition, but recognises that these requirements may in certain cases be justified. The mutual evaluation exercise that is being carried out in 2010 examines these requirements and is helping to assess whether additional measures – legislative or non-legislative – are required to improve the functioning of the single market for services. Furthermore, a number of burdensome and restrictive administrative formalities limit the possibilities for enterprises to start a business and grow it, either at home or in another Member State. Improving and enhancing the functioning of the Points of Single Contact will help address some of these, by simplifying the transactions with public authorities and by providing a possibility to complete procedures at a distance and by electronic means.
- In addition, certain services are not subject to the Services Directive, notably health, and barriers to the single market may persist. Hence, providers and consumers of these services may not be able to benefit from the opportunities a genuine single market can offer.
- SMEs seeking to provide cross border services in the single market are often deterred from doing so due to legal uncertainty and fragmentation in the area of civil law, including contract law. According to business²⁰, as a sole consequence of fragmented national contract laws in combination with EU private international law rules, small businesses wishing to provide services in another Member State incurs an extra-cost of more than €15,000 for each market it wished to enter. According to a 2008

¹⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27/12/2006, p. 36.

¹⁸ "Expected economic benefits of the European Services Directive", Netherlands Bureau for Economic Policy Analysis (CPB), November 2007.

¹⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") OJ L 178 , 17/07/2000, p.1.

²⁰UK Federation of Small Business (www.fsb.org.uk). Position paper on the Rome 1 Regulation.

Eurobarometer²¹, while 75% of traders do not currently sell cross border, almost 50% of traders indicated that they would start doing so if regulations on consumer transactions were harmonised.

- Given the importance of the retail services in the EU economy (4.2% of EU GDP, employing 17.5 million individuals and representing 20% of European SMEs), their contribution to the competitiveness and innovation capacity of the EU is significant. However, there are currently several bottlenecks hampering the development towards more efficient and fairer retail services within the Internal Market. Such barriers include, among others²², potentially abusive contractual practises, imposed in particular on small suppliers or retailers by larger players throughout the retail supply chain, malfunctioning in the commercial property market, as well as divergent and restrictive entry barriers undermining competition in local markets different approaches to environmentally friendly retail services.

1.5. ... The digital economy

The digital economy is presenting European enterprises with significant market opportunities. Currently accounting for 5% of European GDP, or €660 billion²³, its potential has been estimated at a further 4% of GDP growth by 2020, through a fast rollout of the digital single market²⁴.

Accompanying the transformational power of the internet are huge challenges, some of which need to be addressed at the single market level, while taking into account the global character of the digital economy. This applies notably to regulatory fragmentation between Member States. Even if a lot has already been done to integrate the digital market for goods and services into single market policy making (e-commerce, electronic payment, e-invoicing, e-signature, e-identity and e-procurement), a lot remains to be done to achieve an integrated and advanced usage of digital technologies and services:

- Public sector information is still not sufficiently available on transparent, effective and non-discriminatory terms. This means that an important source of potential growth of innovative online services is not yet being exploited to the full. This fragmentation limits the re-use of public sector information for the creation of new cross-border products and services based on government data.
- The single market dimension has not fully been taken into account in the establishment of e-government services in the Member States, in spite of political commitments. Problems of interoperability and accessibility still exist in using electronic signatures, e-documents as well as electronic identification across borders, even if some of these barriers should be resolved in practice by the Services Directive, which due to its horizontal nature gives a large number of businesses the right to transact with public administrations by electronic means, including across borders.

²¹ Flash Eurobarometer 224 "Business attitudes towards cross-border sales and consumer protection", 2008; http://ec.europa.eu/consumers/strategy/docs/fl224%20_eurobar_cbs_analrep.pdf

²² *Reference to the retail market monitoring report*

²³ A Digital Agenda for Europe - A policy for growth and innovation in the digital society, COM(2010)xxx of xx.5.2010, p. 3.

²⁴ European Policy Centre, Digital Single Market project, Study by Copenhagen economics "The economic impact of a European Digital Single market" March 2010.

- Despite commitments by Member States to create the capabilities to carry out 100% of their public procurement procedures electronically and to use e-procurement for at least 50% of all procurement tenders, electronic procurement still represents under 5% of tenders (in Member States for which figures are available). This is despite the fact that e-procurement is estimated to reduce administrative transaction costs of individual procedures by 50-80%. E-procurement facilitates access to tender procedures, in particular for SMEs from other regions and Member States, thereby increasing competition in suppliers' markets, with positive effects on prices and choice of supplies and services offered.²⁵ Technical challenges, notably inter-operability are one reason for slow uptake of e-procurement as well as the need to build administrative capacity to use them.
- Only 5% of businesses use e-invoicing today²⁶. The potential gain from e-invoicing alone is estimated to €240bn over a 6 years period. Only in an integrated payments market will it be possible for enterprises to streamline and integrate their business processes linked to the payment chain and for consumers to rely on safe and efficient payment methods.

1.6. ... Sustainable and responsible markets

A modern internal market must be both socially and environmentally responsible. The number of enterprises integrating environmental considerations and principles of corporate social responsibility into their operations and strategies has grown significantly over the past years. At the same time, a number of bottlenecks remain in this area, which, if addressed, would support a more sustainable and responsible single market:

Sustainability

- Divergences in the implementation of EU environmental legislation by national authorities results in an uneven playing field, additional administrative and financial burdens for companies operating across Member States. For example, cross-border sales of electrical and electronic goods are subject to significant regulatory barriers, resulting from a current lack of harmonisation and cooperation in the national implementation of the rules on waste of electrical and electronic equipment (WEEE Directive). A range of similar issues relating to the lack of the proper implementation of EU legislation and the negative effects this has on the internal market need to be addressed.
- Similarly, divergences in the implementation of environmental taxes and financial instruments (such as charges or subsidies) by national authorities can result in the uneven internalisation of environmental costs leading to distortions within the single market. The insufficient coverage or level of minimum taxation in existing tax legislation (e.g. Energy Taxation Directive), the lack of financial instruments in some cases, and the presence of environmentally harmful subsidies cause further distortions of the level playing field and might undermine Member States' ability to put effective instruments in place.
- Diversity of national rules regarding sustainable products and services can hamper their free movement and impose additional costs, discouraging companies from investing in

²⁵ Analyses show a strong positive relationship between the number of bids received in a procurement process and the savings achieved for taxpayers - an average of 5% savings across public procurement contracts is achievable where 2-4 bids are received and would translate into a 0.5% increase in EU GDP if realised for all public procurement contracts.

²⁶ Reference needed

sustainable products. The diversity of national sustainability labels and schemes can impose additional burdens on producers, who on top of investing in the production technologies necessary to meet the label criteria, face multiple costs when applying for a label in different Member States or supplying products to different retailers. Compatibility of national approaches with EU instruments such as the Ecolabel needs to be ensured.

- Fragmented demand for environmentally friendly goods and services slows down the development of green technologies and hence - the development of sectors with high potential of sustainable growth. Public procurement can be employed to encourage the supply of sustainable works, goods and services. However, their use differs significantly between Member States and individual public authorities, causing barriers for enterprises. At EU level, the lack of sufficient and up-to-date guidance across all policies on how to strategically use public procurement as a market-orientation instrument needs to be addressed. In the longer term, more far-reaching (legislative) solutions will need to be considered.
- The design of support policy for renewable energy capacity is set by Member States individually. The advantage of such an approach is that support schemes typically are best adapted to the specific conditions of the Member State and this has allowed some MS to globally lead the development of technology in this field. However, by further improving coordination between Member States and reducing the risk of competition between support schemes, renewable energy could be developed more cost efficiently. Furthermore, concentration of renewable energy without market integration can cause substantial price volatility in line with weather conditions.

Responsibility

- In many Member States, the framework on responsible investment for institutional investors (such as pension funds and insurance companies) still does not adequately promote responsible practices. In consequence, these shareholders do not always promote in their investments the long-term interests and perspectives of companies whose shares they hold. A lack of harmonised rules leads to uneven responsible investment standards. This could result in less financing being made available for companies in Member States where these standards are higher.
- Boards of listed companies have not always played their role, in part due to a lack of internal checks and balances. Low board diversity and sub-optimal board structures may in some cases lead to an insufficiently balanced and long-term decision-making environment. The current multitude of national rules, recommendations and different frameworks on the composition, independence, role and liability of company boards has failed to foster an ideal decision-making environment.

1.7. ... Procurement markets

Goods and services procured by public authorities account for approximately 17% of EU GDP. EU public procurement legislation, first introduced in the 1970s, and considerably developed during the 1990s, is based on the principles of transparency and non-discrimination. It has created an open and competitive pan-European procurement market for large procurement contracts above certain thresholds (between €125 000 and €387 000 for services and supplies, and slightly less than €5 million for works). The share of the procurement market that is covered by EU rules represents around 3% of total EU GDP (just

under a fifth of the total value of all procurement). Assessments show that the opening of procurement markets saves taxpayers several billion euro each year.

Despite several successful modernisations of EU public procurement legislation, most recently in 2004, and the gradual extension in scope of what is covered by EU rules (for example, the recent inclusion of previously largely excluded security and defence procurement), a number of missing links still remain to be addressed in this area:

- The complex interaction between EU rules and national rules seems to result in unnecessarily complex and costly administrative public procurement tender procedures, which, combined with a widespread culture of procuring supplies and services regionally, limit the participation by firms from other Member States in procurement procedures. These barriers are major factors hampering the development of a more efficient and competitive internal procurement market that delivers the best possible products and services at the best possible price. In fact, direct cross-border procurement accounted for only 1.7% of all contract awards in 2009. Trade intensity in public procurement markets is much lower than in private procurement markets, suggesting that the full benefits of cross-border trade and competition are not fully reaped.
- The joint procurement of trans-national projects by authorities in different Member States is hindered by the fragmentation of national rules. Hence, different national rules apply to the joint procurement of trans-national projects, which is *de facto* forbidden under some national laws. This significantly hampers the procurement of the construction of cross-border infrastructure, e.g. in the transport or energy field.
- Service concessions account for 60% of public private partnerships contracts (corresponding to a value of €88 billions in 2006) and are awarded in such important yet diverging sectors as energy, waste management, transport infrastructure operation or leisure. Given the scale and growing importance of concessions, it is fundamental for awarding authorities and stakeholders that clear and predictable EU rules governing the award of concessions contracts are ensured. These rules must guarantee open markets for concessions, transparency, non-discrimination and a level playing field among operators, and avoid sub-optimal practices at the contracting stage, which limit opportunities of economic operators to participate in tenders and undermine "the best value for money" principle.
- For many decades, defence and security markets have *de facto* remained outside of the single market, and thus fragmented along national lines. This led to significant inefficiencies and extra-costs for taxpayers. It also limited business opportunities for competitive and innovative European defence industry undertakings, negatively impacting on their global competitiveness. While the implementation of the 2009 Directives on Security and Defence Procurement Directive and on intra-EU transfers of defence products aim to address this issue, a radical change to the still persisting culture of national preferences remains the real bottleneck to efficient defence markets in the single market. The widespread practice of "offsets" in the field of defence procurement, whereby national authorities require economic compensation when buying defence equipment in other Member States, causes significant inefficiencies and market distortions. The abolishment of offsets alone could generate savings of approximately €400 million of direct costs per year.

1.8. ...Infrastructure and Network Industries supporting the Single Market

A well-functioning and integrated single market in network industries is of key significance to the EU economy. These industries, in addition to facilitating free movement of persons and goods and services and providing universal services that should be accessible to all citizens, are the source of essential growth in the economy, reduce economic and social barriers, and are crucial to meet the EU's climate change targets (by facilitating the transition to a low-carbon and resource-efficient economy).

Despite progress achieved in the last decades in establishing the single market in network industries such as energy, transport and telecommunication, bottlenecks remain. They prevent the single market from functioning properly and enterprises and consumers from fully benefiting from economies of scale. For enterprises, more efficient networks would bring easier and cheaper access to factors of production, business partners and markets, increasing EU competitiveness. For consumers, it would bring greater quality services at lower prices. The most important barriers are underinvestment and lack of cross-border infrastructure, lack of interoperability, and a number of market entry, regulatory and technical barriers which prevent the creation of a level playing field between actual and potential competitors regardless of their nationality and location.

Energy sector

In contrast to the single market at large, energy markets remain to a large extent national in scope and dominated by incumbent operators. Thus, there is no single energy market at present. With the implementation of the recently agreed 'Third Energy Package'²⁷, legislation will finally be in place to remove barriers to the single energy market. Member States need to commit fully to implement the Third Package since a well-functioning single energy market is a precondition for the EU to deliver sustainable, secure and affordable energy as well as on its ambitious climate change targets.

The Third Package provides for new organisations, such as the European Agency for the Cooperation of Energy Regulators (ACER) and the European Networks of Transmission System Operators (ENTSOs) for electricity and for gas, that will improve the co-operation between Transmission System Operators and facilitate a common grid planning. A new body, the Agency for Co-operation of Energy Regulators will ensure a European oversight to the energy system. These organisations will have to help address the following bottlenecks:

- One important bottleneck stems from the absence of an integrated European electricity transmission grid infrastructure. Existing energy transmission systems were designed on a national basis and lack sufficient cross-border interconnectors. There is an absence of efficient cross-border planning, approval and licensing regimes. Energy security and climate change concerns require infrastructure investments with a European view and transmission system operators, Regulators and governments need to act accordingly. Without one integrated European energy infrastructure, the EU is more vulnerable to problems of energy security, and less effective in creating diversification of supply sources, both within the EU and in relation to third countries.
- For the EU to meet its climate policy targets, renewable energy sources must be included in the existing electricity grid. This requires substantial investments into a new pan-

²⁷ Reference needed

European transmission grid which will be superposed to the existing grid to integrate renewable energy sources, such as wind and solar power.

- In particular regarding distribution grids, smart energy grids are needed, requiring very substantial investments. Smart energy grids allow - through the use of smart meters - interactive communication between the consumers, suppliers, producers and network operators. Smart grids will also enable integration of new technologies such as hybrid electric vehicles and allow improved demand flexibility which is crucial for integrating renewable energy sources to the grid. The increased use of information technology that will create smart grids will also, together with well-functioning energy retail markets, create a market for energy efficiency services.
- The state of implementation of European energy legislation remains poor. This significantly contributes to the absence of an internal energy market. It also means that an important lever to promote affordable and secure energy and to accompany the transition towards low carbon energy is not fully exploited. Without well-functioning retail and wholesale markets, accompanied by smart regulation and a stable regulatory framework, consumers can not choose the most suitable energy supplier and businesses can not take investment decisions based on transparent and predictable conditions.
- A further bottleneck concerns the conduct by dominant undertakings. Even where adequate cross-border network capacities exist, transmission system operators often take a national view of their congestion problems and curtail capacity on their borders thereby not fully exploiting all available network capacity. Furthermore, inhibiting competitors to get access to capacity available on transport networks or granting access only in an impractical manner by dominant undertakings may lead to reduced competition and higher energy prices for companies and citizens.

Telecommunications sector

Initiated in the late 80's, the EU telecommunications policy has successfully achieved one of its two overarching objectives which was the opening to competition of markets which were under the control of national public monopolies. Competition has delivered more choice, cheaper and innovative services to residential and business consumers, thereby contributing to the growth and competitiveness of the EU economy.

With respect to the other objective, the building of an internal market for telecommunications services, important progress has been made in that direction with the implementation of the EU regulatory frameworks of 1998 and of 2002, and one can expect that the latest reforms to the telecoms rules adopted in November 2009 will further improve consistency in the implementation of regulatory obligations across the EU. However, in practice the EU market remains largely partitioned, with few operators offering services across several Member States, and none across the whole of the EU.

In recognition of the remaining challenges in the Digital Agenda, the Commission has undertaken to carry out by 2011 an investigation into the cost of non-Europe in telecommunications markets and what further measures may be needed to address the following bottlenecks and to ensure the benefits of a truly European internal market for electronic communications networks and services.

- Telecommunication networks remain mostly national and do not transcend Member States' borders. As a consequence, European end-users cannot benefit from electronic communication services on a European-wide scale offering seamless connectivity, full interoperability and comparable retail tariffs at attractive levels throughout the EU. The absence of a fully integrated single telecommunications market, including incomplete fixed and wireless broadband network coverage and barriers for operators seeking to provide fully interoperable services in more than one Member State, leads to underperforming communications networks, higher prices and the exacerbation of the digital divide.
- Insufficiently coordinated and, where necessary, harmonised technical and regulatory conditions applying to spectrum use, as well as a mismatch between growing demand for wireless services and available spectrum resources, prevent economies of scale in equipment markets and prevent consumers from using the same equipment across the EU.
- Dominant national operators are insufficiently exposed to competitive pressure from operators active in other Member States. Combined with conduct by undertakings, such as a dominant provider of broadband services charging unfair prices in the form of a margin squeeze between the wholesale prices it charges to competitors and the retail prices it charges to its own customers, may result in lower broadband penetration and higher prices for consumers.

Transport sector

Establishing a Single Transport Area in which modes are truly and seamlessly integrated is vital for ensuring the mobility that underpins a functioning integrated market, for promoting growth and sustainable development and for guaranteeing territorial cohesion. For the time being, the achievement of a single, interconnected and efficient transport system is delayed by a number of remaining regulatory and market failures which hamper the competitiveness of co-modal transport.

- One of the key bottlenecks in the transport area is the **lack of an efficient, interoperable and interconnected transport network**. At present, and despite significant investments undertaken already, the EU does not have a complete cross-border transport infrastructure network, especially for rail and inland waterways, where essential parts are still missing. Air and sea transport networks are available, but not sufficiently interconnected. Moreover, efficient interconnection points between different transport modes are often lacking (e.g. some of the biggest ports and airports are not well linked into the TEN-T network). In addition, except for the road network, the other modes of transport still have major interoperability issues to be tackled. The underlying causes of this situation are amongst others a lack of coordination of policies and investment decisions between Member States and the absence of a comprehensive funding strategy comprising both public and private funding. As far as public financing of infrastructure is concerned, the absence of a clear and transparent legal framework in the field of State aid is an additional aggravating circumstance. The absence of a well-functioning cross-border transport network leads to diseconomies of scale and to a suboptimal functioning of the single market.
- Another important set of bottlenecks in the transport sector are **market access barriers**. Some transport market segments are not yet fully and de facto liberalised. This is the case for instance for the port services market (such as technical-nautical or cargo handling) and for the rail passenger transport. In the vast majority of cases, passengers' transport is in

practice mainly reserved to national historical operators. The market for international rail passenger services is open from 1 January 2010, including cabotage rights within the corresponding itineraries. However, Member States may limit cabotage operations. Moreover, discriminatory charging schemes restrict access to railway related services. In the road transport of goods and passengers, access to the national markets of Member States by hauliers established in another Member States ('cabotage') may only be carried out "on a temporary basis". Difference in fiscal and social regimes is the underlying reason for this limitation. In some modes of transport, the market is not yet accessed on a non-discriminatory basis. For instance in the aviation sector, the allocation of slots in the EU based on discriminatory administrative rules and grand-fathering can lead to inefficient capacity utilisation. Although the market for ground-handling services has been gradually opened by Directive 96/67/EC²⁸, it remains difficult for new providers to enter the market where the airport managers of the platform and/or the dominant carriers offer their services. In some liberalised market segments, a complete and correct implementation and enforcement of EU legislation by Member States is still missing. This is particularly the case for rail freight transport, which has been open to competition since January 2007.

- Market functioning is hampered by a number of **regulatory barriers**. For example, remaining regulatory barriers enshrined in bilateral air services agreements - essentially nationality restrictions and investment barriers - still hamper the airline sector, although much progress has been made since the "Open Skies" court cases of 2002. The competitiveness of this sector - which is very international by nature – suffers as a result. In rail, the efficiency of freight transport is hindered by the fact that it has to share infrastructure with passenger trains. Freight trains must therefore operate at slower speeds and must give right of way to the faster passenger trains, resulting in lower efficiency. While this might be unavoidable in cases where the amount of traffic does not justify dedicated or prioritised infrastructure, there are circumstances in which a greater separation of freight and passengers traffic can be achieved.
- In addition, many **technical barriers** remain. For example in the rail sector, the most striking evidence of such barriers is different track gauges, electricity supply and signalling systems. Another example is the extremely limited possibilities for cross-acceptance of rolling stock. These barriers hinder the free circulation of trains across borders and increase the cost of rolling stock used in international operations which has to be equipped with multiple systems.
- Additionally, numerous **administrative obstacles** exist for the companies in the transport sector. For example, in maritime transport, ships travelling between two European ports remain in most cases subject to custom formalities which are identical to the ones foreseen for international maritime transport. Last year the Commission launched an initiative to simplify and speed up such administrative procedures²⁹. Despite this, the case of vessels carrying mainly EU goods but having a call in a third country still needs to be addressed. Also, different modes of transport require different documentation as there is no single transport document. Liability rules for insurance, which have developed along modal lines, also differ. All this is an obstacle to an effective, multi-modal and energy-efficient European freight transport system. The absence of mutual recognition of qualification in rail constitutes a hindrance to international transport by rail as often drivers must be in

²⁸ Reference needed

²⁹ Communication and action plan with a view to establishing a European maritime transport space without barriers – COM(2009)10 final of 21.01.2009

possession of documents certifying their qualifications to drive trains in all crossed Member States or need to change at the borders.

Bottlenecks to **multimodal transport** are multiplied by various legal, technical and administrative barriers at each modal level. The lack of uniformity within and between modes proves to be a barrier to seamless, streamlined, flexible and sustainable multimodal transport within the EU. One particular example is the lack of harmonised interfaces in fields such as Intelligent Transport Systems (ITS), freight logistics and passenger transport, which are necessary to ensure efficient door-to-door transport. In spite of their potential to contribute positively to EU transport policy objectives, the ITS solutions, especially in road transport, are being taken up slower than expected and, in general, they are deployed on a fragmented basis and most often without ensuring a minimum level of interoperability. Travel and traffic information, for example, is generally available on a National basis or operator-related level, but users and Service providers most often have to analyse and compile themselves individual elements to come to an overall (cross-border, multi-modal) solution - providing room for misinterpretation and unsatisfactorily outcome.

1.9. ... Global markets

The European Union benefits from a high degree of trade openness and integration in global trade.³⁰ It is the largest exporter of goods and services in the world and one of the largest recipients and suppliers of Foreign Direct Investment.³¹ Its trade openness leads to reciprocal benefits for EU consumers and enterprises, and for its trading partners.

At the same time the EU takes appropriate action to defend its interests, where market failures or distortions could harm EU enterprises and consumers. This applies to a wide range of issues, such as consumer health and safety risks stemming from imported counterfeited products (e.g. medicines), or the massive subsidisation of foreign enterprises by their governments, which puts European companies at an unfair competitive disadvantage.

Internal market policy decisions today are irrevocably embedded in the global economy and the global trading system hence policy decisions need to carefully take into account their impact not only within the EU but also on trade relations between the EU and third countries.

Trade openness and access for EU companies to international markets is greatly facilitated by the conclusion of multilateral and bilateral preferential trade agreements, the promotion of EU standards worldwide (for example the GSM standard and UCITS) and the endorsement by the EU of international standards, as well as the support of EU companies in facing up to trade and regulatory disputes (e.g. deregistration of EU financial services firms from reporting required by the US Securities and Exchange Commission). Nonetheless, a number of barriers to open trade remain to be addressed:

- Access to important third country markets is complicated by repeated delays in the negotiations for a new WTO multilateral trade agreement (Doha Development Agenda). As negotiations are stuck on core issues (further liberalisation of agricultural and industrial trade as well as trade in services), only limited progress could be made on increasingly important so-called "rules" issues, such as geographical indications, trade facilitation, non tariff barriers and subsidies. Furthermore, although first tangible results have been

³⁰ EU trade openness, measured in the value of exports plus the value of imports divided by total GDP stood at 23.1% in 2008. The average EU tariff in 2008 amounted to 5.6 % (Most Favoured Nation tariff).

³¹ The EU accounted for some 28.5% of global inward stock and over 36% of global outward stock in 2008.

achieved in negotiating ambitious bilateral free trade agreements (e.g. with South Korea), more progress is needed to cover main trading partners and to ensure that EU enterprises and their foreign partners enjoy all possible reciprocal benefits.

- The absence of certain internationally agreed rules in certain key areas put a brake on international trade. For example, the lack of internationally agreed rules on the scope and duration of intellectual property rights, combined with shortcomings in enforcement in many third countries, does not facilitate the access to third markets by creative industries and hampers the protection of such rights. This is the case especially in digital markets. Likewise, the lack of effective measures and structures at the international level to combat counterfeiting and piracy complicates EU efforts to this end. The absence of internationally agreed rules is particularly harmful in markets that are global by their very nature, such as digital and online markets, and those for products with public health ramifications like pharmaceuticals. Moreover, the lack of transparency and limited rules on government subsidies and the weak enforcement of the rules that do exist at international level - both multilateral and bilateral - can jeopardise a level playing field at global level. The same is true for the lack of effective implementation of internationally agreed labour, social and environmental standards (notably the ILO fundamental conventions).
- Public Procurement, a sensitive domain by nature as it touches upon public expenditure, is an area of significant untapped potential for EU companies in third countries. However, it has traditionally been a domain subject to preferences for domestic suppliers over their foreign competitors. Thus, even within the WTO, government procurement has not become a domain with multilateral obligations; in fact, it is only covered by a plurilateral agreement (the GPA). Most of the EU's major trading partners operate restrictive public procurement practices which discriminate against EU suppliers.
- Insufficient adoption of international standards worldwide limit the openness of markets worldwide and hamper mutual access of EU and foreign enterprises to each others' markets. Examples include international capital requirements standards for banks (Basel II), international financial reporting standards (IFRS) and international standards on auditing (ISAs).
- The current lack of equivalence or mutual recognition of regulations, standards and supervisory systems causes a lack of coherence in the global regulatory framework, to the detriment of enterprises and consumers. Insurance, accounting, auditing and professional qualifications are examples of areas where a lack of equivalence or mutual recognition is causing significant barriers for individual companies. Moreover, the lack of regulatory and supervisory coherence does not only pose trade barriers, but also endangers economic stability, as witnessed by the uneven and inconsistent regulation and supervision of globally operating financial institutions that contributed to the recent financial crisis.
- Technical product standards that apply within the single market are too often still different from those applying in markets of key trade partners. Even if the EU has managed to promote the international use of European standards in some areas, insufficient convergence or compatibility at a global level of technical standards still causes significant costs for European companies in terms of missed market opportunities. It also considerably increases the costs for companies to amend their products for them to comply with technical standards in different markets, for example in the automotive sector where not only different regulations and standards, but also different approval procedures apply. While substantial efforts have been made to reduce the costs arising from differences in

regulations, standards and conformity assessment procedures with major trading partners, more should be done. Bilateral and multilateral regulatory dialogues continue to be needed.

- A further bottleneck stems from the lack of comprehensive EU investment agreements with third countries that include a broad notion of investment and include investment protection. As a result of investment protection falling under the responsibility of individual Member States until the recent entry into force of the Lisbon Treaty, investment protection for EU investors depends on the existence of bilateral investment Treaties between Member States and a third countries. Likewise, the protection of foreign investment in the EU varies as a result of different bilateral investment agreements which Member States concluded. Consequently, there is no level playing field for European and foreign investors.
- While an increasing number of challenges addressed at EU level require coordinated global action (e.g. climate change, piracy and counterfeiting, financial market regulation), the EU is often not a full member in the international fora seeking to address these issues. The EU is also often not a full-fledged partner in international negotiations where Member States prefer bilateral talks, for example in energy policy. This can inhibit the EU from promoting its policies internationally and complicates the implementation of internationally agreed rules into EU policies, to the possible detriment of internationally operating companies.

2. BOTTLENECKS TO A MARKET THAT DELIVERS FOR CITIZENS

The single market is about more than regulation and harmonisation: it is about empowering all participants in the economy and in society to benefit from an integrated and sustainable Europe. For almost 20 years, the single market has been bringing about substantial concrete benefits for Europeans, allowing them to make the most of free movement in their multiple roles as citizens or consumers, students, workers, patients or pensioners. Since 2002, these benefits have become even more visible through the introduction of euro notes and coins in a monetary – and now increasingly economic - union that now extends to 16 Member States.

Through the single market, consumers have been able to profit from lower prices for goods and services and a much wider choice. By way of illustration, prices of air fares fell by 40% during the decade from 1992. At the same time, the establishment of numerous common standards has ensured the higher quality, safety, and environmental performance of products, as well as the provision of safer and more environmentally friendly foodstuffs to consumers. Increased consumer protection at EU level has also given citizens important guarantees when shopping abroad. New possibilities have also opened for citizens in terms of mobility, be it to travel, study, work or retire in another EU country. Indeed, 72% of citizens find travelling within the EU easier than it was ten years ago; in total, more than 15 million EU citizens have chosen to move across borders to work or spend their retirement³².

Nonetheless, as underlined in the Lamassoure report³³, in spite of significant progress in economic integration, "citizens Europe" is still somewhat lagging behind, due to a number of obstacles which obstruct the daily life of Europeans within the single market. This is notwithstanding the various political realities - such as language barriers, restrictions linked to national public budgets and the need to address certain problems at national or local level - which impose constraints under which the single market will always have to operate and which need to be taken into account when shaping future policy at EU level.

2.1. ... Citizens

A series of bottlenecks and obstacles prevent the single market from delivering concrete results for citizens, who cannot therefore fully profit in practice from their right to live, work and study abroad or to access various goods and services from across the EU.

Mobility within the EU

- Cumbersome administrative procedures related to the right of entry and residence of EU citizens impede citizens' cross-border mobility. When applying for residence in another Member State, EU citizens are often required to submit additional documents not foreseen by EU law and as a result face long delays in the issue of registration certificates. Similarly third country family members accompanying or joining the EU citizen in another Member State may encounter problems in terms of excessive administrative requirements and delays in their application for entry visas and residence cards. In some cases, such family members who were legally resident in one Member State face problems, due for example

³² Reference needed.

³³ "Le citoyen et l'application du droit communautaire", report by Alain Lamassoure MEP to the President of the French Republic, 8 June 2008. See also "Mind the gap: towards a better enforcement of European citizens' rights of free movement", European Citizens Advice Service (ECAS), December 2009.

to the lack of necessary travel documents or non-recognition of residence cards issued by the other Member States.

- EU citizens' right to mobility in the single market is also hampered due to insufficient EU rules in the field of family law, and sometimes due to divergences between national official documents. Numerous citizens are faced with legal uncertainty over which law and court should have jurisdiction over matrimonial property regimes or divorce cases or with challenges to get their civil status recognised. Similarly, when faced with bereavement (about 145.000 cases a year), relatives and executors are often confronted with the complexity and frustration involved in dealing with cross-border wills and successions, caused by lack of clarity about the applicable law, international jurisdiction or insufficient recognition and enforcement of judgments. In addition, they also often find it difficult either to obtain domestically or to have recognised abroad the required official documents.
- Citizens' mobility can be also affected by taxation problems, including discriminatory tax rules relating to property purchases and in connection with the taxation of pensions and inheritances. Difficulties in obtaining complete relief from double taxation, due to limitations in scope or absence of bilateral conventions, or difficulties and delays in claiming tax refunds from other EU Member States, can pose additional problems.
- Difficulties related to registration and taxation of passenger cars can also obstruct mobility. Although citizens who transfer their normal residence from one Member State to another can benefit from tax exemptions in respect of their personal property, passenger cars brought from another Member State can be still subject to – potentially very heavy - registration taxes. In addition, formalities and conditions in place for the registration of motor vehicles previously registered in another Member State often complicate matters further. Drivers also often face administrative obstacles and legal uncertainty in cases of cross-border car accidents, as regards the time period to introduce a request for compensation.
- Despite the existing rights and actions so far to encourage mobility of students (e.g. through the Erasmus programme, European Credit Transfer System or Bologna Process), recognition of academic diplomas, titles or periods of study by national authorities can still be problematic for students, either on returning to their home country, or in another Member State. In particular, the variety of education systems creates important differences both in terms of what is learned and in the diplomas awarded across the EU. In addition, establishing whether a diploma gained in one Member State is equivalent to one gained in another one can be time-consuming and potentially contentious.
- In the future, demand for highly-qualified citizens in Europe is projected to rise. At the same time, citizens are becoming increasingly mobile and when they move, they don't expect any major problems as regards recognition of their professional qualifications. The reality is however different, as mobile citizens must still comply with burdensome administrative procedures and wait up to four months (and in practice much longer) to get a decision on the recognition of their professional qualifications. This is also one of the main areas where CSS and SOLVIT consistently receive a large number of questions and cases³⁴. This results in an expectation gap. Despite the Bologna process, training contents across Member States are not converging to a degree that makes further action superfluous.

³⁴ See the 2009 Solvit report (http://ec.europa.eu/solvit/site/docs/solvit_2009_report_en.pdf) and the 2010 CSS report (http://ec.europa.eu/citizensrights/front_end/docs/css_report_on_prq_220310.pdf).

A further issue for reform relates to already harmonised training requirements for professions which benefit from automatic recognition (notably health professions and architects). The acquis for these professions has been agreed a generation ago and now needs to be thoroughly reviewed

Access to essential services

- Affordable access to services of general economic interest (SGEI), such as energy, broadband internet, public transport or post, still continues to be uneven for low-income and disadvantaged people, with growing gaps in access, use and delivery depending on geographical availability, income or level of information. It is related in part to the differences between the extent to which universal service obligations have been defined across different sectors and the fact that they are not always aligned to actual consumer/user needs.
- Obstacles to the provision of social services of general interest (SSGI), such as childcare, long-term care, social assistance services, employment/training services, and social housing, are mainly linked to insufficient awareness and information regarding how EU rules on internal market and competition, and more specifically public procurement and state aid rules, apply to these services. Concerns on the part of local authorities and small providers' about the impact these rules might have in terms of burdens on public authorities and providers or in terms of quality of the services and choice for the users are also an issue. This situation is a consequence of the changes in the way in which social services are organised, provided and financed: today, an increasing part of these services is outsourced and this leads to the fact that they fall under the scope of EU rules in so far as they can be considered as economic activities.
- Low-income or disadvantaged consumers still face uneven, unaffordable or inadequate access to a number of essential services. For instance, in many Member States citizens are still not guaranteed access to a basic bank account, which usually then prevents them also from accessing other financial services. This is an important bottleneck, as access to basic services has become a necessary pre-condition to full participation in the economic and social life of a modern society. By extension, the lack of a basic bank account may be an important factor of social exclusion.

Health

- Significant barriers exist for citizens wishing to avail of cross-border health services. Cross-border healthcare in the EU is at present a limited phenomenon (estimated at 1% of healthcare budgets, which includes unplanned/emergency care). Patients face difficulties when they ask for reimbursement of healthcare received in another Member State or when they apply for authorisation to be treated in another Member State. Patients may also face difficulties when having medicines delivered on the basis of a medical prescription issued in another Member State. These issues need to be fully addressed. Furthermore, for patients to fully benefit from healthcare services throughout the EU (including related e-services such as e-pharmacy), eHealth initiatives such as Electronic Health Records (long term accounts of a patient's health status) and ePrescriptions are essential tools to ensure the continuity of care in respect of patient safety. The adoption of eHealth at national level is variable. Existing eHealth standards and systems vary from one Member State to another. Institutional boundaries put in place at national level - related *inter alia* to healthcare reimbursement and data protection - hamper the progression of a single digital

market in this field. In addition to these organisational and legal barriers (e.g. difficulties with reimbursement schemes), there are also other barriers that hamper cooperation, also cross-border, among different devices and online access to health data. In particular, the lack of interoperability of electronic health records and major patient-centred applications may potentially inhibit EU citizens from seeking health treatment when they travel, are employed, or reside abroad and hamper the emergence of pan-European markets.

- Unequal access to medicines for citizens across the EU constitutes a further barrier within the single market. The lack of critical medicines due to an absence of financial resources is most noticeable in Member States where the market is small and the expected return for companies is low. Market fragmentation linked to disparities in national pricing and reimbursement schemes has also led to inequality in access to medicines. This has important public health consequences in several Member States.
- People with disabilities are still restricted in their mobility across the EU as, due to lack of mutual recognition of national disability status, they find it difficult in other Member States to access benefits and services they can profit from in their home country. Their access to goods and services is also limited due to inadequate information and labelling, difficulties with accessing shops, on line commerce services or inadequate information on the accessibility features of products and services. This obstacle also applies to products specifically developed for persons with disabilities (such as assistive devices), where they are faced with limited information, different national service provision systems which include different reimbursement schemes subject to different testing and certification, and various eligibility criteria. Despite the fact that EU public procurement rules require public authorities to include accessibility criteria in their tenders whenever possible, this is still not common practice (due to lack of awareness and knowledge on accessibility among public administrations). This is a missed opportunity for the spread of accessible services and goods.

Pensions

- The trends towards defined contribution schemes, away from defined benefit schemes, raises the question whether the IORP Directive needs to be amended in order to take account of this shift. A reassessment of the IORP Directive might be necessary in areas such as governance, risk management, safekeeping of assets, investment rules and disclosures.
- The IORP Directive contains minimum requirements for prudential regulation, including solvency rules for defined benefit schemes. These solvency rules are currently the same as those applying for life assurance undertakings. With the entry into force of the Solvency II Directive in 2013, the question is whether an equivalent solvency regime should also apply to IORPs.

2.2. ... Consumers

Bottlenecks preventing the empowerment of consumers within the single market are an important block on economy recovery. Confident and well-informed consumers are key drivers of more efficient, more innovative and more integrated European markets. With consumers worried about the state of the economy, not only the lack of rights and appropriate safeguards, but also the lack of effective means of redress to enforce substantive rights granted under EU rules, are barriers to reinvigorating consumer confidence.

Rights and safeguards

- The existence of 27 different regimes for consumer contracts complicates the consumer-to-business relationships, and makes the conclusion of cross-border contracts more difficult and costly. For instance, a consumer may be able to return a product bought online within 21 days of the sale in the same country, whilst a consumer based in a neighbouring Member State might only have 7 days to exercise this right. As a result, consumers do not enjoy the same contractual rights across the EU, and burdens are imposed on small companies. This leads to reduced cross-border provision of goods and services, and consequent less choice and higher prices for buyers.
- Consumers are not provided with easily accessible and understandable price information which would allow them to compare product prices cross-border. A Commission study has shown that in half of the Member States, consumers could save 10% or more for over half of all the products for which they searched³⁵. Paradoxically, search engines and price comparison websites may deepen fragmentation and segmentation of the single market, even though they have the unique potential to do precisely the opposite.
- Increased consumer choice in liberalised utilities markets is a pillar of single market policy. In the energy sector, many consumers do not however have any real choice between the different operators, as national markets are still largely dominated by incumbent suppliers. Furthermore, consumers do not have sufficient information to respond to price signals. For instance, a monthly fixed fee with a final settlement of the electricity bill at the end of the year does not give sufficient information to enable the consumer to use energy more efficiently. Satisfaction on the part of household consumers is thus not surprisingly low³⁶. In the context of increased electricity demand and developments to ensure its more efficient use, there is a need for empowered consumers that can control their energy consumption, and participate directly in the electricity market through renewable generation and smart distribution networks. Consumers therefore need sufficient information to be in a position to make well-informed choices on environmentally-friendly and energy efficient products.
- Lack of equal consumer rights also affects the transport and travel sectors. While there are some general principles in respect of passenger rights, the same rights are not conferred to passengers in the different modes of transport or in relation to the different geographic levels of transport (many exemptions exist for instance for domestic, regional and local services). This lack of true level playing field on passenger rights between different types of transport and between different operators of the same type creates the risk of distorting intermodal competition in the single market, and of leaving passengers without sufficient protection. Consumers also face obstacles in travel sector, where consumer protection differs depending on how the travel arrangements are offered for sale (even if the travel components can be identical).
- Cartels and other anti-competitive agreements reduce the incentive for independent companies to provide new or better products and services at competitive prices and consumers end up paying more for less quality. In particular, market sharing agreement can deny consumers from other Member States the benefits of more price competition and a better choice of supplier.

³⁵ Ibid.

³⁶ See the 2nd edition of the Commission's Consumer Markets Scoreboard, COM(2009)25 of 28.1.2009.

- Diversity of national rules regarding value added products and services, and proliferation of private certification schemes for food sector goods and labelling claims can lead to untransparent advertising and misleading claims.

Enforcement of rights

- Consumers often do not obtain redress when their substantive rights as set out in EU legislation are breached. This concerns both individual consumers trying to enforce their rights and groups of consumers who have been harmed by the same breach. The lack of redress is particularly important as regards cross-border mass claims. Every year an estimated 6 million consumers are harmed by an illegal practice of a trader. Alternative Dispute Resolution (ADR) schemes can help consumers, both individually and collectively, to defend their rights, because they are cheap, quick and simple. However, consumers and businesses are not sufficiently aware of existing ADR schemes and such schemes are still lacking in many sectors. Groups of consumers face barriers to bring mass claims cross-border. While national judicial collective redress mechanisms exist in 14 Member States, this is not sufficient to address cross-border problems. Companies face distortions of competition as a level-playing field is lacking. Economies of scale by bundling claims are lost. These barriers prevent consumers from enjoying their substantive rights in the single market as set out in EU legislation, and can be expected to rise as e-commerce develops.
- Attempts to enforce rights, for example through cross border disputes in civil and commercial cases, are lengthy and often lead to excessive costs, which can for instance be due to remaining procedures needed to get a court judgment recognised and enforced in another Member State (a so-called "exequatur" procedure). That being said, there has been progress in this field, with the establishment of European judicial procedures such as the European Small Claims procedure. This procedure deals with claims below €2000. However, this quite low threshold still prevents consumers the full access to justice across borders.

2.3. ... Workers

Many barriers and bottlenecks are stopping workers benefiting from job opportunities across the EU. This is in spite of the fact that free movement of workers and the rights of EU citizens to either establish themselves professionally or provide services are fundamental freedoms in the single market.

In 2008, 2.3% of EU citizens resided in a Member State other than their Member State of origin (an increase by more than 40% since 2001). Substantial work has already been done at EU level, for instance to ensure that they do not lose their social security entitlements when moving across the border; and bilateral tax arrangements in place that are designed to ensure that they do not suffer double taxation. However in practice legal and administrative obstacles are still in place hindering the mobility of workers. In addition, other practical reasons also influence mobility, including housing issues, language, or employment of spouses and partners.

The 2005 Directive on Professional Qualifications marked an important simplification of the system for recognition of professional qualifications. It strove, in an innovative manner, to make labour markets more flexible, further liberalise the provision of services, encourage

more automatic recognition of qualifications, and simplify administrative procedures. Despite this comprehensive modernisation of the EU system, the overall framework for recognition of qualifications remains far from complete.

Social rights

- Workers still lack appropriate awareness, notably at national level, about their mobility rights and they are often not given enough support by public employment services or private employment agencies, leading to an insufficient mobility culture among the European workforce. Furthermore, there are no sufficient policy measures in place to favour and encourage labour mobility, be it occupational (between jobs or within enterprises) or geographical (between regions or countries), for instance, national employment protection legislation can still prove too rigid or there are not enough training or up-skilling schemes available. Yet, labour mobility can be a powerful adjustment mechanism to respond to the new needs of labour markets, by making them more efficient and adaptable to change, and therefore much more attention needs to be given to create conditions for a balanced labour mobility within the EU.
- Different social laws in Member States can sometimes introduce complications for free movement of workers. For instance, the most recent developments on the labour market are characterised by an increased short-term mobility of workers. Despite new modernised and simplified Community rules on the coordination of social security systems, which have recently entered into force, the situation of highly mobile workers, including researchers who frequently work in different Member States on short-term project-related contracts, needs to be further analysed to ensure that these rules can better respond to the current labour market conditions.
- There are a number of other forms of social protection, such as supplementary occupational pensions or private health insurance, which can be lost upon moving to another Member State. Similar issues apply to social assistance benefits, where recipients are generally discouraged from exercising their right of free movement as when moving, they become dependent on the welfare system of another Member State. A pension fund based in one Member State and operating an occupational pension scheme located in another must fully respect relevant social and labour laws in force in the second Member State, which, coupled with a lack of transparency about differences between national social and labour laws, constitutes a major obstacle to the cross-border provision of occupational pensions. The current level of integration of occupational pension systems is not adequate to meet the demographic ageing challenge, to facilitate freedom of movement of workers or to provide enterprises with opportunities to seek the best qualified human capital.

Taxation issues

- Apart from social security issues, the lack of a coordinated approach across the EU to taxation can lead to problems, e.g. related to discriminatory or double taxation, for employees who cross the border on a daily basis for work reasons or those who work in other Member States on a temporary or permanent basis. Most problems are linked to the gaps in the bilateral double taxation conventions between Member States. Their bilateral character means that they are not able to deal with taxation by more than two countries; they do not cover all tax issues, such as e.g. new taxes in the contracting Member States; they are interpreted in divergent ways by national authorities; and the network of conventions between Member States is not complete. Furthermore, the bilateral approach

to addressing double taxation problems may create loopholes and grey zones which may offer scope for tax fraud and evasion.

2.4. ... Retail financial services

While within wholesale financial markets the single market is almost a reality, the market for retail financial services remains largely fragmented along national lines. To reap the full benefits of a single market, there is a need to address remaining barriers and bottlenecks to the free flow of financial services and establishment within Europe. Despite considerable achievements and a number of ongoing projects, such as the creation of a Single Euro Payments Area (SEPA), several bottlenecks remain. In many cases, consumers are cautious about shopping around or changing providers, particularly if this involves searching cross-border. Difficulties are often due to the lack of clear and comparable information about charges, problems in comparing products, the costs involved in switching providers, and a lack of clarity as to their rights when shopping cross-border. These are barriers which affect almost all citizens in their daily lives. Furthermore, many service providers have also remained reluctant to offer financial services cross-borders due, inter alia, to various obstacles which affect the supply side of the markets.

Financial services for consumers

- Lack of transparency in bank fees constitutes a major barrier in retail financial services. Consumers cannot understand and compare the cost of their current account, which inhibits them from changing to cheaper accounts. Consumers in Member States where fees are complex and non-transparent are thus paying higher fees than they need to be paying. Greater transparency is also a pre-condition for cross-border transactions and the successful functioning of SEPA. An analysis of 224 banks covering 81% of the EU retail banking market in terms of customer deposits found that 66% of their websites required additional contacts to establish the cost of a bank account. It also showed that prices for bank accounts at EU level differed much more than the prices of other services varied across the EU³⁷.
- Numerous international surveys³⁸ have demonstrated low levels of understanding of financial matters on the part of consumers. While some authorities and organisations provide financial education, this is not done in a co-ordinated or systematic manner in Member States. Yet such education is very important, as it raises awareness of financial risks and opportunities, develops the skills necessary to seek out the most suitable financial products and results in well-equipped consumers who are a key element for stability and efficiency of financial markets.
- The issue of consumer protection, information and transparency regarding marketing, pricing and performance is imperative in the case of voluntary pensions insurance and private pension savings products, as these have a social protection purpose and thus differ qualitatively from normal savings, insurance and investment products. However, the radical drop in asset prices resulting from the financial crisis has revealed serious

³⁷ See Study on the data collection for prices of current accounts provided to consumers at: http://ec.europa.eu/consumers/strategy/facts_en.htm#Retail; and Commission Staff Working Document on the follow up in retail financial services to the consumer markets scoreboard, SEC(2009) 1251 of 22.9.2009

³⁸ Reference needed

weaknesses in their design and marketing. Further work is needed in this area as these products are playing a more important role with Member States increasingly relying on pre-funded schemes for overall pension provision

Cross-border issues

- Citizens, notably students, face problems when attempting to open bank accounts or to obtain a credit card in a Member State to which they have recently moved, or where they are not a resident. Financial institutions may defend such refusal on the basis that certain categories of potential customers represent an increased risk to a bank and require enhanced due diligence, or that they are not able to obtain a picture of the borrower's credit repayment history. However, in many cases, customer refusal cannot be explained as objectively justified and proportionate.
- Integration of the household credit market remains limited, with the EU mortgage loan market fragmented along national lines. Citizens face considerable difficulties in obtaining comparable information on mortgages and most often face refusal when wishing to take out a mortgage from a bank in a different Member State, or from their bank for a property located elsewhere in the EU. Shopping around is also difficult or even impossible due to the lack of comparable information. The level of direct cross-border lending remains low and there continue to be substantial divergences between Member States in terms of prices, product choice and approaches to the regulation of different actors, such as non-bank lenders and credit intermediaries. As demonstrated by several studies³⁹, the integration of EU mortgage markets could bring significant benefits, leading to increased efficiency of mortgage lenders and availability of a wider range of products, which are being foregone in the current situation.
- Payments in euro throughout the EU can prove more difficult and costly than domestic ones. Such a situation is to the disadvantage of consumers, who still encounter difficulties when making cross-border electronic payments in euro. While large value payment systems have reached a high level of integration, retail payment systems are still fragmented and in most cases still do not operate beyond national boundaries. Having a single currency without an integrated retail payments market means that the benefits of increased competition and operating economies of scale in euro payments markets remain untapped, and that considerable differences in the fees and performance of payment products persist. It has been estimated that benefits of integrated payment markets could amount to around €120 billion⁴⁰ over a six year period.

Retail investors

- For many consumers, investment products are central to planning for the future, yet national divergences in the regulation of the retail investment markets limit opportunities for buying products cross-border, while creating unnecessary uncertainty, higher costs and lower consumer protection. While the market for UCITS (Undertakings for Collective Investment in Transferable Securities) is generally well integrated, cross-border trade in other retail investment products (e.g. retail structured products or insurance-based investments) is much less developed: consumers generally prefer identifiable local brands and products which are distributed through local distributors. Inconsistencies in the level of

³⁹ Reference needed

⁴⁰ Reference to a study which estimated that the benefits of SEPA over a six-year period could exceed €123 billion in payments markets.

consumer protection standards on sales and product transparency make it harder for investors to compare products and to buy cross-border.

- Consumers seeking to invest private savings face unnecessarily high costs due to remaining inefficiencies in the European fund market. Divergent national approaches to the organisation of the fund industry also raise investor protection concerns. Moreover, limits on cross-border trades in non-UCITS retail funds constrain the range of investment opportunities available to retail investors, raising costs and reducing access to a full range of risk-diversified retail investments.

2.5. ... The digital economy

Bottlenecks excluding consumers from the digital economy have been highlighted by the Commission's Communication of 19 May 2010 "A Digital Agenda for Europe"⁴¹ as important shortcomings in the single market. These bottlenecks have become more visible in the online space as the internet has become a platform for consumers to profit from the single market. That being said, for the moment e-commerce remains too limited in terms of its overall size, reaching at best 4% of retail sales in the Member States. This means that opportunities to benefit from the single market – through finding cheaper offers and a greater selection of goods and services online - are being lost to consumers, and cross-border e-commerce is not functioning as well for them as it could. This is at least in part due to low consumer trust in e-commerce services, which can be ascribed to a number of barriers, some of which also relate to the offline single market (such as the lack of a clear set of consumer digital rights, lack of trust in redress mechanisms, and the lack of an EU system of trust marks) and language barriers⁴². There is also lack of information available to consumers about offers in other Member States. The digital economy is closely interlinked with the offline world and the phenomena of multichannel shoppers and multichannel retailers are gaining on importance. The presence of credible e-commerce offers increases competition for offline shops. The insufficient development of e-commerce, especially cross-border, is therefore a major bottleneck to the development of greater competition and innovation across the retail sector.

- Many company websites do not allow consumers based in another Member State to make electronic purchases of goods or services. This practice, which may constitute discrimination by traders against consumers on the grounds of their place of residence, constitutes an important brake on the development of the single market. The Commission's 2009 "mystery shopping" study⁴³ showed that in 61% of attempted purchases, traders refused to serve consumers either residing in another Member State, or whose credit cards were issued in another Member State. This means that consumers do not have equal access to cross-border offers, and they are losing out as a result. The Services Directive prohibits retailers from discriminating against consumers according to their place of residence, including in the online environment. The Directive nonetheless does not prohibit different

⁴¹ Commission Communication, "A Digital Agenda for Europe – A policy for growth and innovation in the digital society", COM(2010)245 of 19.05.10. See also The March 2010 Consumer Markets Scoreboard, xxxx.

⁴² 34% of EU citizens made internet purchases of goods or services from a national seller in 2009 (up from 28% in 2008), however only 8% of citizens purchased from a seller in another Member State (compared to 6% in 2008). Similar disparities between national and intra-EU purchases are also visible on the sellers' side - while 51% of EU-27 retailers sell online, only 21% of them actually engage in cross-border sales, and of those who do, most in reality are only selling to consumers based in one or two other Member States.

⁴³ YouGovPsychonomics, 2009, "Mystery shopping evaluation of cross-border e-commerce in the EU".

treatment if it is "objectively justified", for example because of different costs for transport. However, given that different circumstances may be considered as objective justification, further guidance is necessary in order to support national authorities enforcing this non-discrimination clause. In cases where there are objective reasons, it needs to be examined how these objective reasons can be addressed with a view to facilitating access to services (for example additional costs due to fragmented national contract laws in combination with private international law rules could be addressed, *inter alia*, through a harmonisation of consumer contract law).

- Improved payment systems are required for internet purchases, and their fragmentation in the single market remains an important bottleneck. The absence of an integrated Euro-payment market (including the establishment of a legal end-date for migration to SEPA payment products) is a barrier to allowing payment networks to operate efficiently. In addition, new payment instruments should be now promoted following technological advance.
- The necessity to clear multiple layers of copyrights governing a single online transaction and therefore, difficulties accessing online music, books or audiovisual content does not benefit European consumers. Even the most successful music portal only operates in 16 out of the 27 Member States. In particular, consumers from the newer Member States still often have no websites from which they can legally download audiovisual works or music, and are often prevented from accessing websites targeted to consumers in other countries. Fragmented copyright licensing also leads to difficulties with online display of library (e.g. hindering the emergence of European digital libraries; including for orphan works), museum and archive collections, preventing citizens' access to European cultural heritage. The creation of a European digital single market requires using the potential of online distribution, both in terms of technique and of Europe's cultural wealth, by enhancing the online availability of creative content and at the same time ensuring rightsholders adequate remuneration and protection of their works.
- Access to education and culture is even more restricted for people with disabilities. Only 5% of books are produced in formats suitable for citizens with visual impairments, accessibility considerations are only to a limited extent taken into account in development of digital content, and persons with disabilities are often put at a disadvantage due to lack of accessible online services and lack of adequate terminals to use them.

2.6. ... Sustainability

Sustainable consumption needs to be enhanced if the single market is to move towards a more sustainable growth path. Bottlenecks preventing the market from sufficiently reflecting these concerns are a barrier to achieving the Europe 2020 Strategy objectives of smart, sustainable and inclusive growth.

- Diversity of national rules regarding sustainable products and services (including sustainability or ecolabels) make it more difficult for consumers to identify sustainable products and services. Notwithstanding the revised EU Ecolabel⁴⁴, problems remain in that there are numerous national and private labelling in place, for which there is a lack of

⁴⁴ Regulation 66/2010 provides for gradual convergence of the EU and national ecolabels through the development and revision of EU Ecolabel criteria.

common criteria and methodologies. This can lead to a lack of coherence in the information that these labels convey. In addition, lack of cross-border promotion within the EU potentially stifles their more widespread use.

- Similarly, the absence of harmonised rules on green claims, unclear provisions on environmental information in the current unfair commercial practices legislation and its uneven implementation, can impact on private demand for green goods, whereby consumers are misled by unsubstantiated environmental claims on products and their trust in those might be diminished.

3. BOTTLENECKS TO A MARKET WHERE RIGHTS AND RULES ARE FULLY RESPECTED

Despite all that has already been achieved over the years to build a single market legal framework, some shortcomings still need to be addressed in the framework itself, and a substantial gap still exists between that legal framework and the ability for citizens and businesses to benefit from it in practice. Citizens and businesses do not sufficiently make use of the rights and opportunities offered by the single market since they are not sufficiently informed about them, fail to understand them or simply do not know where to turn when they encounter obstacles. This information gap is exacerbated by the fact that political commitment to single market issues is sometimes missing among stakeholders concerned. In addition, national, regional and local authorities in particular often lack a "European reflex" when confronted with cross-border issues: in many cases, citizens and businesses encounter unnecessary obstacles because authorities ignore or fail to apply European rules.

To overcome these problems, the Commission has, in recent years, created a number of information, advice and assistance services (such as, for instance, the Enterprise Europe Network, SOLVIT, the Citizen's Signpost service or the European Consumer Centres network). Such services often make a real difference for the citizens and businesses that use them, but remain under-used. Only a very limited number of citizens and businesses find their way to these services.

As the Lamassoure report rightly pointed out, information and assistance services reach out, to date, only to a 'happy few', not so happy but very few.' And, given that all services have particular mandates and still do not co-operate sufficiently, citizens and businesses that do manage to get in contact with one service, often end up knocking on the wrong door.

This section sets out the cross-cutting bottlenecks still in place, building on the analysis done for the Recommendation on measures to improve the functioning of the single market⁴⁵, and its implementation over the intervening year.

3.1. ... Informing citizens and businesses about their rights

Citizens and businesses need to be fully aware of their rights in the single market and have easy access to the related information to be able to enforce their rights and make use of the many opportunities that the single market offers. Citizens, for instance, need to know how to apply for studies or work abroad, whereas companies and SMEs require information about how to establish themselves in another country, how to apply for EU wide standards or take part in EU wide funding programmes. Member States have an important role to play in ensuring dissemination of information on single market rights, being familiar with the situation on the ground, including regional particularities. Substantial efforts have been undertaken at national and EU level however a number of substantial bottlenecks still need to be addressed.

- Citizens and businesses often do not feel informed enough about their rights in the single market. This is clearly illustrated by a number of reports, e.g. showing that less than half of citizens of every Member State felt informed about their single market rights, and that only

⁴⁵ Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market, OJ L176, 7/7/2009, p. 17.

20% of citizens really know about their European rights in general⁴⁶. This is often linked to insufficient communication and awareness-raising at both national and EU levels. In addition, citizens and businesses often do not know where to turn to when their rights are being infringed. For instance, one of the single market focused Eurobarometer studies⁴⁷ indicated that EU information services on the single market are not known to 7 out of 10 citizens, and a third of citizens would not know where to seek assistance in case a problem concerning their rights arose⁴⁸. In addition, reports from assistance services such as the 2009 annual CSS and SOLVIT reports, show that obstacles often flow because citizens and businesses are not properly informed about their rights and opportunities.

- When citizens and SMEs try to look for information on single market related issues, they often find that, while there is considerable information generally available at various levels, it is difficult to access or understand, or it does not cover all the relevant topics. Information sources, including governmental portals and information campaigns, at national level are often dispersed; they tend only to be in the official language(s) of the Member State and often lack the cross-border perspective.
- In addition, specific EU justice related online services, which could facilitate the use of single market rights, are missing, such as tools to find a practitioner (e.g. lawyer, notary, legal translator in another Member State), interconnection of different registers, or citizen-friendly online information and electronic procedural tools related to victims' or defendants' rights and legal systems in other Member States.

3.2. ... The legal framework

Shortcomings of the EU single market framework are often related to its complexity, the way it is drawn up, and the still existing differences between national laws. All of these vary across the different areas of the single market. Substantial effort has been invested in the recent years to address these shortcomings, for instance, through the increasing emphasis on better regulation, notably impact assessments and evaluations. In addition, some work has been carried out on market monitoring, which could be an effective tool to identify regulatory (and non-regulatory) needs through in-depth analysis of the functioning of markets. Yet work still needs to be continued, including on addressing some key issues, such as the required level of harmonisation between national laws, types of legal instruments to be used when drafting single market legislation or further development of methods to gather evidence about single market obstacles.

- The complex nature of single market rules can in some instances lead to a lack of clarity, and therefore diverging national interpretation and subsequent diverging transposition measures. The predominant use of directives when drafting single market law can further lead to differences among national implementation rules, and consequently, inconsistent application and fragmentation of the single market framework in practice. This is exacerbated in many cases following a minimum level of harmonisation approach, rather than full harmonisation, where a level playing field is the top priority.

⁴⁶ 'European Union Citizenship Analytical report,' The Gallup Organisation /European Commission (2008): http://ec.europa.eu/public_opinion/flash/fl_213_en.pdf.

⁴⁷ 2006 Eurobarometer, http://ec.europa.eu/internal_market/strategy/index_en.htm#061204.

⁴⁸ Idem.

- In some single market areas, the problems stemming from differences in national legislation are even more acute. For instance, in the area of financial services, despite the existence of an EU regulatory framework, key differences in national legislation still remain, stemming from exceptions, derogations and supplementary provisions introduced at national level when implementing EU legislation. Divergences in national laws and the lack of a harmonised EU core set of rules applied throughout the Member States prevent the establishment of a true level playing field where financial institutions would face the same rules in each jurisdiction and consumers would be covered by the same level of protection across the EU.
- In the legislative process, implementation and communication issues are not always satisfactorily anticipated in the preparation and drafting of single market legislation – and therefore are not sufficiently present in the existing legal framework. This mainly concerns mechanisms necessary to ensure effective application and enforcement (e.g. through administrative cooperation, problem-solving systems as well as out-of-court and judicial redress), as well as the obligation on national authorities to inform citizens and businesses about the new rules, which are still often lacking in legislative drafts.
- Regardless a number of existing tools for gathering quantitative and qualitative evidence about obstacles to the single market (such as for instance market monitoring exercises), some of them are not yet sufficiently developed or their results are not yet sufficiently taken into account in policy-making. Similarly, regardless the fact that cases handled by the existing assistance and problem-solving systems offer good insights of how the single market functions in practice and where the shortcomings lie, data from such services are not always actively used yet for policy-making purposes. In addition, these services tend only to cover the "tip of the iceberg" and there is, therefore, a need to better identify where and why citizens, consumers and businesses experience problems.

3.3. ... Implementing single market rules on the ground

The effective, uniform and efficient implementation of single market rules on the ground – i.e. their transposition, application and enforcement - are a fundamental prerequisite for the single market to work in practice. Member States have the responsibility to implement EU legislation and to ensure that the single market functions properly on the ground. By contrast, the Commission is tasked to act as the Guardian of the Treaty, when and where problems with regard to the efficient and effective enforcement of the rules arise in Member States. Despite the efforts invested by national authorities and the EU institutions to improve implementation, the available evidence still points to important deficits in that area. In particular, over 1000 infringement cases are currently pending in the single market area [or rather – a number of infringements introduced in 2009], and xxx rulings have been delivered since 200x by the European Courts. All of these rulings found that Member States did not comply with their single market obligations.

Transposition of single market rules

Transposition is an important first step in the implementation process, ensuring that once adopted, EU directives governing the single market are transposed into national law correctly and in a timely manner. Despite substantial progress achieved at national level (as shown by the Internal Market Scoreboard) and increased efforts at EU level to provide guidance and

assistance, further improvement are needed, in particular as far as the quality of transposition measures is concerned.

- Timely transposition of internal market rules at national level is still not fully achieved across the board leading to fragmented legal frameworks across the EU. Although the average transposition deficit, as measured by the Internal Market Scoreboard, has fallen under the political target of 1% and is now 0.7%⁴⁹, it appears much higher when looking at the record of individual Member States or at specific directives. Furthermore, the average transposition delay for overdue directives still remains at the unacceptably high level of 9 months. The reasons for delays are often linked to national transposition work starting late or lengthy internal adoption procedures. With some exceptions, national parliaments do not have fast-track procedures for implementation of single market law obligations, which would allow accelerated transposition, in particular in cases where the deadline has already passed.
- In addition, good quality national transposition measures are often lacking, with Member States "gold plating" supplementary provisions to address purely national objectives, and in the process leaving an unlevel-playing field in single market terms. There are also at present insufficient means and resources to address this issue and to prevent new single market barriers from being erected. For instance, there is not enough exchange of information on transposition measures (e.g. through correlation tables), and there is no process in place at EU level to ensure systematic upfront checking of draft national legislation, which could help to verify correct transposition and compatibility with single market rules. Similar solutions have proven to be successful in particular areas, such as the Commission scrutiny of draft technical rules notified by Member States in the goods area (although it does not cover transposition measures as such)⁵⁰. However, there is no comparable universal approach encompassing all single market areas.

Application of single market rules

Once EU single market rules are incorporated into the national legal system, national administrations must ensure proper application, so that citizens and businesses can enjoy in practice rights stemming from these laws. Application covers administration of rights and entitlements by national authorities in individual cases, e.g. by recognising the qualifications of a foreign professional or registering foreign service providers. The manner in which single market rules are applied has seen significant progress but still requires substantial improvements, with national authorities not always correctly applying the single market related Treaty provisions and secondary legislation.

- Efficient tools and procedures for cooperation between national authorities in different Member States are sometimes still missing. Moreover, provisions on administrative cooperation, and on support mechanisms (e.g. electronic means such as the Internal Market Information or the Consumer Protection Cooperation information system) to make it feasible, are not yet sufficiently included in EU draft legislation. This constitutes a significant bottleneck as efficient administration of single market rights depends on authorities receiving the relevant information from their counterparts abroad – and close cross-border cooperation is crucial in that context. Deficient cooperation can result in long

⁴⁹ Internal Market Scoreboard no 20, 1.03.2010, http://ec.europa.eu/internal_market/score/docs/score20_en.pdf

⁵⁰ Directive 98/34/EC, OJ L 204, 21.7.1998, p. 37.

procedures, duplicate controls, increased costs, or situations whereby citizens' or businesses' rights might be denied. In addition, lack of coordination within Member States can also be seen as a bottleneck, with competences for single market issues often dispersed across a wide variety of national (federal, regional and local) authorities and in many cases no single interlocutor on single market issues in place.

- Often national and in particular local authorities, as well as judges and other legal professionals, lack sufficient knowledge about single market rules, as for instance demonstrated in a 2008 survey on judges undertaken by the European Parliament⁵¹, and not enough adequate training is made available to them. Such lack of knowledge can constitute a significant obstacle as officials and judges are the ones who need to ensure the application and enforcement of single market rights on a daily basis. Better knowledge of single market rules and of each other's legal systems is also essential to gain mutual trust among national officials, judges and other legal professionals, and to provide more confidence to citizens and companies regarding their cross-border activities.

Enforcement of single market rules

In cases where rules are misapplied, and consumers and businesses encounter problems in exercising their single market rights in practice, efficient enforcement measures are needed – be they through judicial, administrative or out-of-court problem-solving procedures - to ensure a quick resolution of problems and provide effective redress. Although substantial efforts have already been made at EU and national levels, a number of obstacles are still in place, including the lack of sufficient knowledge of single market rules among judges (referred to above).

- Not having the right systems in place, which would help to informally solve cross-border problems, means that Europeans – in their roles as consumers or workers, employers, producers or service providers - cannot in practice make use of the opportunities that should be theirs. This is an important bottleneck as these systems are usually more effective in solving real problems of application, and offer citizens a faster and cheaper alternative to taking cases to national courts. The informal systems put in place at EU level in cooperation with Member States, such as SOLVIT or the European Consumer Centres Network work well (for example, SOLVIT finds solutions in 86% of cases and most are resolved within 10 weeks). Nevertheless, the potential is much wider, and to achieve this, the available problem solving networks would need to be further strengthened (in terms of resources and authority) and information about these tools - improved. At national level, such informal mechanisms are often not available in a systematic manner. Where they do exist, they are rarely specialised in single market issues and often lack a sufficiently powerful institutional status to work effectively. As a result, there are still gaps in enforcement. For several types of problems related to the exercise of single market rights, there is no informal problem-solving solution available.

- Various aspects of the existing national rules and procedures governing antitrust damages actions stand in the way of citizens and businesses effectively exercising their right to

⁵¹ Report on the role of the national judge in the European judicial system, by Diana Wallis MEP, 4.6.2008, 2007/2027(INI). The results show, among others, significant disparities in national judges' knowledge of EU law across, with for instance 61 % of judges participating in the survey never having attended a training course concerning EU law.

obtain compensation for the harm suffered through a competition law infringement. According to expert estimations, the overall amount of unrecovered damages of this nature may range to more than €20 billion per year in the EU.

- The formal infringement proceedings carried out by the Commission primarily on the basis of complaints received from citizens usually take a long time (the average duration to resolve such proceedings ranging from 28 months for EU 15 to 16 months for EU 12), with single market rules subject to the complaint being correctly applied only with a considerable delay. The delays are, to a significant extent, due to the non-cooperation of Member States during and after the infringement procedure. For example, national authorities take an average of 17.7 months to comply with the Court judgements, which have found that particular Member States had not complied with their obligations. In addition, the format and procedural requirements under the infringement procedure make this instrument most suitable to address structural shortcomings in correct national implementation rather than to solve individual cases. Prioritisation of complaints needs to be further improved to deal more speedily with the structural problems, and individual cases should be more often directed to alternative problem solving tools, which in many cases can provide faster and more focussed solutions to individuals.

3.4. ... Supervisory and regulatory authorities

In some sectors of the single market, specific supervisory or regulatory authorities have been set up by EU legislation with day-to-day responsibility for application of single market rules. This concerns utilities sectors such as energy, telecommunications, transport and postal markets. In these sectors, independence of supervisors and regulators and cooperation between them is of particular importance to ensure that single market rules are applied in a uniform way across the EU. In other fields – health professions for example – the decision to set up "supervisory bodies" remains with Member States but cooperation between national bodies is equally important to ensure free movement of professionals.

Cooperation between national supervisors and regulators has developed over time to varying degrees across different sectors. Yet it is important that a number of remaining shortcomings be addressed – including in some cases as regards their independence - as lack of proper supervision could undermine the trust citizens have in the single market. In addition, lack of coordination between national regulators could subject enterprises to different supervisory and regulatory requirements in different Member States, and could result in consumers not being able to benefit from the protection that one common supervisory and regulatory standard could offer.

- In rail transport, the insufficient independence of the national regulatory bodies from infrastructure managers and incumbent rail undertakings leads to discriminatory treatment of new entrants in terms of an access to the infrastructure, rail-related services and resources (maintenance, training facilities, etc.).
- Postal markets offer a telling example of how insufficient regulatory cooperation (in particular as regards cross-border delivery for e-commerce and in view of cross-border mergers), and the lack of a forum for such cooperation, can lead to lesser involvement of SMEs and to citizens' needs not being met by incumbent operators.

- In network industries, more focus is needed to ensure an effective structural separation of Member States' regulatory functions from activities associated with ownership or control of operators. In particular, the issue of dismissal of chairpersons of the National Regulatory Authorities (NRAs) for electronic communications continues to raise concern in a number of Member States.
- Experience in the liberalisation and integration of energy markets and electricity markets in particular, has demonstrated the importance of the liquid European traded wholesale markets. Currently the oversight is dispersed among financial regulators on the one hand and energy regulators on the other hand, whereas the companies do not distinguish between the two. Moreover, the authorities' competence is limited by national borders, whereas companies operate on a European level.
- In the audit market, regardless the internal control and management changes ongoing in the audit firms, they are still overseen and inspected locally by individual national audit regulators, which leads to divergent supervision practices across the EU. In addition, the current cooperation between national public oversight systems is insufficiently suited to address a number of EU-wide issues, such as inherent risks in the EU audit market, potentially leading to negative consequences on audit quality.
- In the area of financial services, the financial crisis demonstrated how failings in cooperation, coordination and trust between financial supervisors can undermine financial stability, with the current arrangements proving incapable of preventing and tackling the crisis. Enhanced supervisory coordination is critical to ensure a level playing field and to minimise the risk of regulatory arbitrage. Moreover, existing arrangements have proved inadequate to provide the EU financial system with an appropriate framework for macro-prudential supervision, i.e. aiming at identifying and preventing risks for the stability of the financial system as a whole.
- The task of ensuring effective, proportionate and deterrent sanctions in the financial sector has been left to national legislation, thereby resulting in a patchwork of national frameworks, which negatively impact on uniformity and effectiveness in the application of single market law. In addition, according to recent mapping exercises carried out by the Committee of European Securities Regulators (CESR), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Banking Supervisors (CEBS), the maximum amount of the sanctions is in most cases too low and clear situations of poor enforcement have emerged. In contrast to the current situation, sanctioning and enforcement powers should be guaranteed in an equal manner throughout all Member States, as they are a precondition for a credible EU supervisory system and are of fundamental importance for the protection of consumers and investors. Such equivalence of enforcement and sanctioning powers would also ensure the integrity of European financial markets.