



11 July 2007

**NOTE FOR JÖRGEN HOLMQUIST,
DIRECTOR GENERAL, EUROPEAN COMMISSION
DG INTERNAL MARKET AND SERVICES**

LUNCH - MEETING WITH BUSINESSEUROPE ON 11 JULY 2007

SINGLE MARKET REVIEW

(Annex 1: Publication and note on enforcement in the Internal Market and new BUSINESSEUROPE priorities)

Further integration of the European market is one of BUSINESSEUROPE's main priorities for action and communication. It is crucial for the competitiveness of European companies and realisation of the Lisbon objectives.

The Internal Market built on the four fundamental freedoms ensuring movement of goods, services, capital and persons has brought many benefits for citizens and companies.

But it operates in a fast-moving environment marked by globalisation, an enlarging EU, rapid technological progress and rising national protectionism. It also faces problems caused by remaining barriers hampering the four freedoms namely for goods and services, suboptimal enforcement, quality of rule-making or lack of information and effective redress.

The Internal Market needs adjustments to respond to the challenges and take up the opportunities. The Commission's forthcoming Single Market Review offers a golden opportunity to reinvigorate the Internal Market and establish the tools to adapt it to the challenging environment.

This has to be done in close partnership with Member States which bear a particularly important responsibility in making the Internal Market function. DG Internal Market should play a key role in the implementation of the Single Market Review and supervise other DGs' responsibilities vis-à-vis the Review.

For BUSINESSEUROPE, action should focus on four fronts:

Completion: Internal Market must be further integrated and existing barriers removed. Several areas should be given priority: services, financial services, public procurement, transport, goods, energy or telecommunications.



Efficiency: we need better and simpler Internal Market rules, including systematic stakeholder consultation, impact assessment, ex-ante transposition and implementation checks, and a stronger emphasis on the external dimension of the Internal Market.

Awareness/Information: citizens and companies (especially SMEs) must be better explained about the advantages and achievements of the Internal Market and their rights and obligations under it. Only a well-informed user can be a genuine user of the Internal Market. It should be a central element in the communication of Europe in order to bridge the gap between the EU and its citizens.

Questions for Mr Holmquist:

- What are the Commission's plans to communicate and implement the forthcoming Single Market Review both at EU and national level?
- What proposals will complement the Single Market Review?

ENFORCEMENT IN THE INTERNAL MARKET:

It is a key aspect for an improved Internal Market and a better positioning of Europe in the global market. Enforcement needs to be improved and must be a priority in the future EU Internal Market Policy. EU and national governments must step up their efforts to ensure a better enforced Internal Market.

Enforcement means practical application, compliance check and sanction for non-conformity with Internal Market rules and principles. It is at the moment of enforcement, when citizens and enterprises get a "taste" of the reality of the Internal Market and base their vision of Europe to a great extent on the basis of this experience.

On 20 June, BUSINESSEUROPE organised a seminar which showed that important enforcement problems remain in various areas:

- application of the mutual recognition principle,
- market surveillance and border controls,
- accessibility of information, or
- means of redress (sanctions, appeal procedures, problem-solving tools).

These problems represent direct costs for Europe (e.g. the costs of redundant product conformity assessment in several countries are estimated to range from 2% to 15% of enterprises' entire annual turnover) and deprive citizens and businesses of their rights under the Internal Market and undermine their confidence in and perception of Europe.

BUSINESSEUROPE's recommendations for improved enforcement are:

1. Ensuring timely and correct transposition and administrative implementation of Community legislation via systematic use of transposition assistance plans and correlation tables.



2. Effective and homogenous market surveillance, efficient external border control and correct application of the mutual recognition principle.
3. Providing more information, facts and figures on national dimension of the Internal Market focusing on compliance with and enforcement of Internal Market legislation.
4. Creating a greater partnership and cooperation between the Commission and Member States. Also clarification of roles and the division of their competences and responsibilities for enforcement in the Internal Market should be carried out. A Mr/Mrs Internal Market in each National Government could be envisaged.
5. Improving cooperation and mutual assistance among national authorities at all levels: national, regional and local.
6. Ensuring easier access to both EU and national means for asserting Internal Market rights including promotion and reinforcement of Solvit (only 30% of the cases are brought by companies) and speedier and more efficient infringement procedures.
7. Better positioning of the Internal Market in the global context through promotion of EU standards and greater international cooperation.

Questions for Mr Holmquist:

- What are the concrete proposals that the Single Market Review will include to improve enforcement?
- Does the EU need a more decentralised system of enforcement? If so, how to ensure that it works properly and does not result in more national protectionism?

NATIONAL TRANSPOSITION OF THE SERVICES DIRECTIVE

Following the adoption of the proposal in December 2006, Member States will have three years to implement this directive (by the end of 2009).

Swiftly and correct national transposition and implementation is of paramount importance to attain the growth and jobs objectives of the directive.

We support the (DG Markt) Commission's commitment to facilitate national transposition by implementing a transposition and implementation action plan to assist Member States including bilateral and multilateral meetings with national administrations and publication of a transposition guide.

The Commission's transposition assistance action should concentrate in the following key points:



1. Administrative simplification/national screening:

- General obligation for Member States to review and simplify procedures and formalities. Authorisation schemes must be brought in line with the directive's scheme.
- Points of single contact (PSCs) – service providers have to be able to find the necessary information and complete all procedures and formalities relating to access to and exercise of a service activity through the PSCs.
- Procedures by electronic means – MS have to make possible access to the information and the completion of all formalities and procedures by electronic means.

2. Application of article 16/Freedom to provide services clause:

A prohibition for Member States to apply their legislation on services provided from other Member States unless non-discriminatory, proportionate and justified for one of the following reasons: public policy (*ordre public*), public security, public health, protection of the environment.

National Interpretation of the above four criteria will be of paramount importance and will most likely necessitate abundant ECJ jurisprudence if Member States interpret them at liberty. It is vital that the grounds on which Member States can justify national restrictions on foreign service providers are interpreted and implemented strictly and are not enlarged arbitrarily by Member States.

The Commission must remain very vigilant to ensure a restrictive use of the above reasons. Questions arise relating to the burden of proof when MS impose extra national requirements on foreign services.

3. Administrative cooperation:

Member States will have to give each other mutual assistance, and to put in place measures for effective cooperation with one another in order to discharge their enforcement responsibilities.

This is crucial for the smooth functioning of the directive. It should create trust between national authorities and facilitate cross-border provision of services.

The role of the Commission and in particular the Internal Market Information system (IMI) is important for articulation of the cooperation and mutual assistance.

4. Reporting obligations:

MS have to report to the Commission on authorisation schemes, requirements restricting the freedom of establishment, multidisciplinary activities and art. 16.



This information should be made public and easily accessible to the public. This is key for both service providers and recipients to ensure transparency and legal certainty.

The Commission should create standardised forms for provision of the above information. It is crucial for economic operators that MS reporting is done in an easy and user-friendly way which would be greatly facilitated if everybody used a common format so that afterwards everybody, i.e. providers and recipients, can access the information and use it in a reasonable and meaningful way.

Questions for Mr Holmquist:

- What is the state of play concerning Commission's transposition work with Member States namely, multilateral and bilateral meetings, transposition guide, etc?
- How is the Commission going to ensure that Member States make an Internal Market-friendly application of article 16 for cross-border provision of services and avoid arbitrary restrictions?



INTELLECTUAL PROPERTY ISSUES

The European Commission adopted on 03 April 2007 a communication on enhancing the patent system in Europe. This followed a wide consultation in 2006 by the Commission on how to improve the patent system in Europe.

The communication mainly lays down the possible options on ways to address the question of patent jurisdiction in Europe. It was discussed at three meetings of the Council Working Group on Patents during the German presidency without concrete results. These discussions are expected to continue during the Portuguese presidency.

BUSINESSEUROPE has reiterated its full support for improvements to the current patent system via the London Agreement and the European Patent Litigation Agreement (EPLA). These are two initiatives designed to address the issue of costs and legal certainty for patents in Europe, which are key for business.

The London Agreement will reduce translation costs by roughly 45% and bring substantial savings for companies. EPLA is an important initiative to develop a common litigation system providing consistent and efficient enforcement of patents moving away from the current divergent and conflicting national practices in Europe.

Questions for Mr Holmquist:

- Does the Commission feel that progress has been achieved so far with the Member States?
- What are the expectations of the Commission for the Portuguese presidency?
- The Commission is planning a follow-up IPR Strategy communication for 2008. What is expected to be included in this communication?

ACCOUNTING HARMONISATION

- The adoption and implementation of IFRS in the EU has been very costly for companies. The main objective of having one set of international accounting standards for listed companies is not yet a reality until the US stick to their US GAAPs. BUSINESSEUROPE has been pushing for years in order to have a real convergence of accounting practices. We have welcomed the IASB and FASB joint commitment for a real convergence by 2009. This should remain the main objective. Recent contacts with SEC have shown that we are moving in the right direction. The SEC has very recently published a document confirming the objective of avoiding a reconciliation with US GAAPs for European companies by 2009. We also understand that the used of IFRS would be made optional in the USA in a near future.

Nevertheless concerns are growing about the fact that IFRS as adopted by the EU could not be considered as full IFRS by the SEC. The SEC abandon of



reconciliation takes as a basis full IFRS (as adopted by IASB). This has to be clarified since the objective is having a lack of reconciliation for IFRS as adopted by the EU.

Questions for Mr Holmquist:

- Is the Commission satisfied about the contacts it has with the FASB and SEC on the convergence process? How does the Commission assess the reference to IFRS as adopted by IASB vis-à-vis the ones applied in the EU?
- Does the Commission believe that the 2009 deadline can be met?
- Is the Commission happy about business messages and the pressure business is exerting on the USA?
- How can we cooperate further on this?
- Another issue of importance is the financing of IASB. BUSINESSEUROPE has coordinated messages/actions vis-à-vis its members so that national debates take place in accordance with the Ecofin declaration of July 2006. It would be important that the Commission establishes an assessment of where we stand. BUSINESSEUROPE has always recommended that debate at national level takes into account financing of both IASB and EFRAG.

Questions for Mr Holmquist:

- What are the Commission views on the financing of IASB process?
- Is there anything that business can do in addition to what it has already done?
- EFRAG is the body where discussion on endorsement is taking place. Business has invested a lot of time and energy in this body and has always called for a strong recognition by the Commission. The smooth interaction with the High Level Review Group is very important. The demands for more powers from the European Parliament are also to be followed very closely.

Questions for Mr Holmquist:

- Is the Commission happy about the functioning of / relationship with EFRAG?
- How does the Commission assess the growing role of the Parliament in the accounting debate?



PUBLIC PROCUREMENT

Following on (though distinct from) last autumn's EP deliberations on the issue of PPPs (Weiler Report) the Commission has indicated that it will be coming forward with initiatives on two aspects of PPPs in the coming six to nine months: firstly on in-house procurement otherwise known as **Institutional PPPs** (IPPPs) and secondly on **concessions**.

On IPPPs, the Commission is planning an interpretative communication. On concessions a legislative initiative is in the pipeline.

BUSINESSEUROPE's views on IPPPs

- BUSINESSEUROPE believes that Public Authorities have the right to decide for themselves what they do themselves and what they procure from third parties.
- When Public Authorities decide to acquire a work, supply or service, the procurement process must comply with EU Procurement Rules.
- In-house Contracts - including work arranged without a contract - can be seen as a way to avoid the use of EU Procurement Rules
- The scope of the definition of "in-house" is crucial. In-house Contracts all too easily lead to restriction or obstruction of competition and frustration of the smooth operation of the Internal Market. When Public Authorities use in-house Contracts instead of awarding a contract though use of EU Procurement Rules the testing of value for money through a competitive process does not take place; this occurs when the in-house status is abused.
- BUSINESSEUROPE is of the opinion that clarification is needed in order to identify to what extent Community law applies to the delegation of tasks to public bodies, and which forms of cooperation remains outside the scope of internal market provision.
- BUSINESSEUROPE is also of the opinion that legal certainty does not require amendment of the Directives. Clarification on the issue could possibly form a part of an Interpretative Communication on IPPPs.

BUSINESSEUROPE'S views on concessions

- BUSINESSEUROPE believes that Public-Private Partnerships (PPPs) and particularly concessions have many advantages as an approach to the delivery of public services and as a means of instilling efficiency in the management of Europe's public services.
- We believe that clarification of the circumstances surrounding concessions and of the competitive procedures applying to them would create the legal certainty required for public authorities to use concessions more widely and effectively.



- We believe that such an approach could improve the efficiency of public services, create greater transparency, allow innovative approaches to the delivery of public services across Europe and allow the channelling of necessary private funding into infrastructure.
- If specific legislation on concessions is to be promoted we believe that it should focus on services concessions and the contractual relationship therein between the public and the private sectors.
- It should focus on how concessions are awarded on the basis of competition.
- It should make clear the award procedure applying to services and public works concessions.
- It should allow the possibility for the parties to renegotiate terms on the basis of stated contractual circumstances for such renegotiation.
- We believe the Commission should refrain from setting hard rules for duration of concessions. Focus instead should be on providing guidelines to public authorities.
- At all times the Commission and stakeholders should remain aware that there may be differences in what is understood to be a concession across Europe.

Questions for Mr Holmquist:

- What is the current state of play (content, timing, key issues) with regard to both issues?
- What are the Commission's views on the input provided by BUSINESSEUROPE on both of these issues in April?
- What does the Commission expect from BUSINESSEUROPE in terms of additional input?

FINANCIAL SERVICES

1. Private Equity Investments

Private equity has become an increasingly important source of financing for Europe's companies, in particular where public equity is not available or not appropriate. Most importantly, the availability of venture capital for companies in the seed and start-up phase is crucial to encourage potential entrepreneurs to face the challenge of creating their own business, and to develop and bring to market their innovative ideas.

Regarding *buyout transactions*, on the other hand, where the investor acquires part or



total of a company, companies the rising share of debt-financing of these transactions, ("leverage") is posing significant problems in some countries. These leveraged buyouts may lead to increasing debt levels of the target companies, since loans for financing a PE transaction are often passed on to the acquired company which has to service the debt; the new owners may demand special dividend payouts from the company, to be financed by additional debt; the nature of the debt is second tier, which carries higher interest and may contribute to an increasing debt level of the target company; and the target company may be forced to issue high-interest bonds to finance the initial debt, thus adding more debt.

It is our view that private equity investments can be most beneficial to the long-term development of our companies and our economies if the strategies of PE investors are governed by the sustainability of company development and financing. They may then allow the target company to release its potential for innovation, to the benefit of overall economic growth and employment. In this regard, we believe that the transparency of PE financing needs to be improved. Better knowledge of the way PE funds finance themselves will improve the efficiency of financial markets, to the benefit of liquidity and access to capital, and contribute to their stability. These aims might be achieved by non-legislative measures.

The European Commission set up an expert group on private equity in 2006, which published its final report in July 2006. This report came to the conclusion that there were a number of obstacles to cross-border business of PE funds which needed to be eliminated. We fully agree with this conclusion, as we believe that the EU must be an attractive location for the establishment of, and for investments by PE funds. The group's mandate, and consequently the final report, however, did not include the corporate governance and financial issues of PE investments.

Questions for Mr Holmquist:

- Is the Commission of the view that the elimination of cross-border obstacles to the operations of PE funds needs to be accompanied by a framework for improving the transparency of private equity financing structures?
- If so, what measures does it find appropriate to achieve these aims?

2. Single Euro Payment Area

The creation of the Single Euro Payment Area (SEPA) will allow the corporate users of financial services to implement cost savings through operational and structural business rationalisation; to enhance their cross-border business operations; and to benefit from increased choice among providers of SEPA products from different member states. The recently adopted EU Payments Services Directive supplies the legal framework that will allow banks to offer SEPA products and companies to use them.

BUSINESSEUROPE is representing the point of view of corporate users in the



dialogue with the European Payments Council, representing the banks, via the European Stakeholder Forum, to which the European Commission is also a member.

Three priorities have been outlined by us: firstly, the current lack of clarity on the products to be offered by banks as of 2008 and their pricing structures needs to be addressed; secondly, there needs to be agreement on the definition and the conditions of additional optional services to be offered by banks in addition to core SEPA products; thirdly, clear national implementation and migration plans for direct debits and credit transfers and set a single end date to the operation of domestic payments systems for all participating countries need to be agreed.

Questions for Mr Holmquist:

- What is the Commission's view of the current projects of the EPC? Does it think that the point of view of corporate users is sufficiently reflected?
- Does the Commission think that the envisaged supply of SEPA products and services in 2008 will be negatively affected by the transposition deadline for the Payments Services Directive, which will apply only in 2009?
