

**DETAILED UNICE POSITION PAPER* ON THE COMMISSION COMMUNICATION:
“INTERNAL MARKET STRATEGY: PRIORITIES 2003-2006”
(COM 2003-238 FINAL)
NEED TO REVIVE THE DEBATE ON THE INTERNAL MARKET**

New focus on the Internal Market is not only very welcome, but also necessary in order to secure the full benefit of the potential of having one big European market. This is especially important in the light of the ambitious Lisbon objectives and enlargement. As highlighted by the European Council of 20 and 21 March 2003, the Internal Market Strategy is one of the key economic policy co-ordination instruments at EU level. The Competitiveness Council should therefore take a leading role in the drive to implement the various actions needed to overcome the malfunctioning of the Internal Market.

According to the Commission analysis "The Internal Market - Ten Years Without Frontiers" published in January this year, the Internal Market has over the past 10 years delivered substantial benefits to both business and citizens: 2.5 million extra jobs and nearly €90 billion in extra wealth. However, the analysis also shows that in a number of areas the Internal Market does not yet function optimally and that consequently Europe has not gained the full benefit of having a Single Market. This fact is backed up by the experience gained by UNICE members, namely that companies are still faced with different national demands: extra documentation, extra testing, or technical requirements leading to changes in product design or materials.

Furthermore, there is a substantial need for information to both authorities and companies, on the rights and duties laid down in the principles of the Internal Market. Through the EEA (European Economic Area) Agreement, the EU Internal Market is extended with the three EFTA/EEA countries Iceland, Liechtenstein and Norway. However, experience has shown that there is a considerable lack of knowledge about the principles and the function of this agreement, leading to loss of market possibilities for companies in both the EU and the EFTA/EEA countries. Information on the EEA Agreement's principles and function is therefore needed. The main responsibility for such information should be placed on the authorities in the three EFTA countries concerned.

A. GENERAL COMMENTS

UNICE fully agrees to the Commission's background analysis and conclusions on the need to revive the debate on the Internal Market.

The strategy lists a large number of actions: partly actions which are already underway in the decision-making process, partly new suggestions and partly recommendations of carrying out background analyses to be discussed with Member States. In the previous Internal Market Strategy from 1999, many actions were also listed. However, each subsequent Internal Market Review has pointed to the problem that only about half of all actions were realised within the deadline. This is why concrete action is needed now!

* A separate two-page UNICE document (dated 17.7.03) summarises UNICE's comments on the Communication

In the new Strategy the Commission underlines how important it is that the European Parliament and the Member States (both individually and through their participation in Council Working Groups) commit themselves to carry through the various decisions and actions.

Furthermore, it is stressed that Member States have to respect the principles of the Internal Market when introducing national regulations, i.e. they have to ensure that they do not create new barriers to free movement.

From industry's experience, the problem lies in the implementation of European directives (late and bad transposition of EU directives is also an important problem), i.e. the interpretation and use in practice cause problems for companies. Furthermore many different national rules and traditions persist in areas submitted to the principle of mutual recognition. The number of national technical regulations is also increasing, which can be seen from the high number of notifications under directive 98/34/EC. If the new Member States take up the same practice, companies will not gain the full benefit of enlargement.

Against this background, UNICE welcomes the focus put on the need for a stronger commitment by each Member State, as well as by the Council and the Parliament concerning the need for swift and effective adoption and transposition of Internal Market rules and regulations, and a more active role for individual Member States in the enforcement and problem-solving areas.

Indeed, the key point for successful implementation of the strategy is the support and commitment of Member States. In this context UNICE would welcome any steps that would focus this strategy even more for carrying out the decisions and good intentions in practical life, both with respect to better regulation at European level and with respect to national implementation.

In several areas the strategy stresses the role of confidence through the whole system. Here enhancement of the New Approach[†] comes in as a necessary element. Better developed administrative co-operation between Member States is a must, e.g. in the areas of interpretation of directives and market surveillance. Market surveillance has a very important role in ensuring confidence in the system, including fair competition and safe products for consumers. Therefore more attention should be given to this area.

Follow-up of the actions and targets

Even if it is not enough in itself, we take it that the success of the Commission's new strategy for the Internal Market will be assessed regularly and published in yearly reviews, as has been the case for the previous strategy.

Four main headings should be the focus in such an assessment:

- Consolidation
- Enforcement
- Problem-solving
- Information

Under these headings all actions and activities in the strategy can be assessed, and the performance of the Commission, the Parliament and the Member States can be judged.

[†] See Communication from the Commission to the Council and the European Parliament: Enhancing the Implementation of the New Approach Directives, COM(2003) 240 Final

B. COMMENTS ON THE PRIORITY AREAS

This section presents UNICE's main comments on the ten priority areas identified in the Communication. Many of them are already dealt with in previous position papers.

1. Facilitating the free movement of goods

Mutual recognition

It is essential to promote correct and uniform use of the principle of mutual recognition, which is a cornerstone of the Internal Market. We welcome the proposals for a new regulation to facilitate its correct application, among other things by reversing the burden of proof. We also believe it will have a preventive effect to have mandatory notification where mutual recognition of a product is refused - and it will create more transparency and awareness of the principle.

As recommended by the Commission, we believe that wide consultation with Member States, industry and consumer organisations on possible options and solutions is very important in order to prevent this principle turning into new administrative burdens.

Non-acceptance of national certificates

A Spanish manufacturer of meat products agrees that it has become easier to sell its products within the internal market over the last few years. However, there are still challenges.

The company staff is made up of 75 people and in recent years the company has undertaken expansions not only at national level but also in Europe, Asia and South America. The company also attempted to export meat products to the UK. However, the UK does not accept the certificates of fulfilment of sanitary regulations for food products obtained in Spain. The company is required to pass the European Food Safety Inspection Service carried out by a British company. The inspection is annual and the cost is approx. £1,200 plus transport and accommodation for the inspector in Spain. Apart from this, the UK also demands labelling only in English. This is a problem, as the labelling of this company is in four languages.

(Example from UNICE survey)

"Enhancing New Approach"

UNICE welcomes the Communication from the European Commission on the New Approach and we have previously contributed to the New Approach survey carried out by the Commission. This Communication underlines several critical issues that the European Council and Parliament need to deal with in order to avoid a re-fragmentation of the Internal Market. Enhancing the New Approach is important in order to ensure the free movement of goods and the competitiveness of European business.

The New Approach is the most important regulatory approach developed by the EU. It harmonises regulations and sets essential requirements for safety, health and the environment while delegating the setting of technical requirements to business and other stakeholders. Thus the New Approach leaves room for innovation and technical development. The tie to "Global Approach" for conformity assessment also ensures an alignment with international standards, which is fundamental for free trade and the future of EU competitiveness.

There are however some fundamental issues which are critical for the competitiveness of European business and the future of a well functioning Internal Market, but which unfortunately are not dealt with in the Communication. The following issues need to be raised at a political level by the Council and the Parliament.

- *A future vision for regulating product requirements is needed.* Business believes that the principles of the New Approach should become the key principles for all regulatory activities affecting products. Business calls for a much stronger regulatory vision for the EU, based on a comprehensive set of principles in order to avoid different methods and conflicting product requirements. This includes expanding application of the New Approach as a regulatory model into other areas where product requirements and the free movement of goods are affected – e.g. the environmental area. Thought should also be given as to whether the New Approach should be expanded into the "Old Approach" area.
- At the moment there is serious concern among business that *environmental legislation* will harm the Internal Market and fragment the "New Approach". New EU legislation in the environmental area, whether it is made under "New Approach" or not, is difficult to align internationally. The EU is, in fact, moving faster than most regions in this area, regulating the environment at a product-specific level. UNICE is therefore seriously concerned that environmental legislation will fragment the Internal Market, reverse the positive effects of the New Approach, and lead to serious market access problems both within and outside the EU.
- The New Approach needs to become more flexible in *meeting the needs of global business*, enabling not only European but also international standards to be used as a reference for demonstrating compliance with essential requirements of New Approach directives.

Regarding the Commission Communication, UNICE would like to signal strong support for measures strengthening the legal framework and administrative cooperation between notified bodies, accreditation, market surveillance and enforcement. UNICE would also like to signal strong support for a strengthening of CE marking and a stronger legal "Common Base" for more consistent and effective implementation of directives – both in and outside the New Approach area. However, some differences between the individual directives are necessary in order to adapt them to specific sectoral needs. The Commission should prepare an in-depth analysis of the legal and factual differences between the various directives before taking further steps on a Common Base directive.

We expect the Council and the Parliament to support the measures suggested by the Commission. However, regarding the proposal of a wider application of module H, including quality management systems, we do not believe that the problems for business, with differing modules to be applied for different risks and directives, and thus using different notified bodies for assessments, can be solved by introducing quality system modules in the directives lacking such modules. The various modules of conformity assessment should be used according to the risk categories of the product category dealt with. It should also be noted that a quality management system does not automatically include fulfilment of the essential product requirements.

In areas of low risk, the preferred business module for products is module A and Suppliers Declaration of Conformity, SDoC. This module needs to be promoted as the least trade-restrictive and efficient model for conformity assessment.

Product safety

UNICE agrees on the key importance of market surveillance and effective and consistent enforcement across Europe to ensure that only safe products and services circulate in the common market.

The revised GPSD (General Product Safety Directive) is intended to achieve this objective for consumer products in combination with the relevant sectoral legislation. However, there are still issues that need to be addressed without delay to help legislation attain its objective and to ensure that business and consumers have a predictable and clear legal framework:

- creation of appropriate standards under the revised GPSD;
- development of EU-wide guidance before the revised directive enters into force, in consultation with business, on key issues to promote harmonised practice and harmonised enforcement. UNICE is particularly interested in guidelines to clarify the relationship between the GPSD and sectoral safety legislation, and on notification by producers and distributors of dangerous products.
- improvement of the product safety enforcement framework. This is particularly relevant with the near horizon of an enlarged Europe.

Product marking

National product marks are fragmenting the Internal Market. Concrete measures should be taken to decrease the number of national (public as well as private) marking schemes but this may not necessarily be achieved by European marking schemes which may become just one of many marks.

As for environmental communication, it is important to let market forces and specific sectoral needs decide what instruments are appropriate, be it ISO 14000 type 1, type 2 or type 3 labelling schemes or other methods.

UNICE supports the proposal on a comprehensive study on voluntary marking at both national and European level. Experience from surveys shows that there are still quite a few issues to be dealt with in connection with national testing, registration and marking. There are problems with countries not recognising tests and standards from other EU/EEA countries, and further documentation is from time to time required by local authorities. These requirements add considerable costs to companies.

Different certificates are costly

A Norwegian manufacturer of sound instrumentation has 23 employees and exports 80-85% of its production to Europe and USA. The company experiences that it has become more difficult to sell products within the Internal Market during recent years.

The products produced are all covered by directives. Nevertheless, the products have to go through different national certification procedures. More particularly, national certification is necessary in Spain, Germany and France. The tests are mandatory and each costs about NOK 100,000 - 150,000 for every new product. The cost in itself is not the main problem, it is the time and resources it takes.
(Example from UNICE survey)

2. Integrating services markets

The report from the Commission to the Council and the European Parliament on the State of the Internal Market for Services (CM (2002) 441) clearly demonstrated that action is needed. UNICE consequently welcomes a proposal for a directive on services as well as the Commission's proposal to extend the screening mechanism for draft national regulations. As an example of an area where barriers are especially damaging for industry we can mention the construction sector, and installation and after-sales services of machinery. National registrations in these areas put heavy administrative burdens on companies to fulfil local demands. This is hindering the cross-border activity of small and medium-sized companies especially.

In the areas of services Member States are accountable for most of the barriers through a lack of mutual recognition of qualifications and requirements for registrations; etc. The Commission suggests that services are included in the notification obligations (according to directive 98/34/EC). This will be fine in order to give better transparency, but will not in itself avoid national regulation or ensure free movement, as we have seen from the product area.

UNICE is also supportive of the proposed regulation on sales promotions that will improve the functioning of the internal market for both business and consumers by removing unjustified barriers caused by divergent national rules that impede free advertising and promotions of products and services throughout Europe.

3. Ensuring high quality network industries

Services of General Interest

In its Green Paper on Services of General Interest, which has recently been published, the Commission has taken up the issue of a possible need for a general, horizontal EU regulation on public service obligations. UNICE does not believe that such regulation would be appropriate, on the contrary. Under the existing rules, the Commission has been able to play a very useful role by creating cross-border markets for a number of different services – and this is the very role which the EU should also play in future: through common rules to ensure a level playing field for cross-border network industries to ensure better, cost-effective services for the end-user (both private individuals and companies).

A limitation on competition out of public service considerations, which might easily be the result of a horizontal directive, would cut off the benefits of such developments and might give some Member States an argument for not carrying through a needed modernisation of their public service sector. A general regulation with definitions and principles cannot avoid hindering the dynamics which have driven developments so far. As is stressed in the Green Paper, the boundaries for services subject to tendering have moved considerably during the years. This has been to the benefit of society as a whole.

Though it is a sensitive issue in several countries, special attention should be paid to opening the market for water and sewage without, however, touching on ownership questions.

Trans European Transport Networks

The Commission should rapidly adopt a proposal for the revision of the TENs (Trans European Transport Networks) Priority Projects, and propose related measures to facilitate and promote their realisation, as announced in the Communication on Developing the Trans European Transport Networks (COM (2003) 132 final). A well-developed transport infrastructure (especially roads) is of utmost importance for the functioning of the enlarged Internal Market.

Energy

UNICE welcomes the recent adoption of the energy market liberalisation package by the Council and insists that the Commission should effectively monitor its implementation in all Member States.

Market opening

The Commission states that the private sector will play an increasingly important role in financing Infrastructure. The prime example for the well-functioning of market opening, namely the telecoms sector, is not highlighted enough in the Communication. In the telecommunication sector almost 100% financing already comes from the market, which shows that, given the right legal framework, enterprise is quite willing to invest.

UNICE supports the actions proposed in order to ensure that public-private partnerships for major projects can be created, subject to effective competition and full transparency under the procurement rules.

4. Reducing the impact of tax obstacles

Company tax

For EU growth prospects it is essential to improve the efficiency of the Single Market through removal of tax obstacles to cross-border business activities.

UNICE consequently welcomes the Commission's short-term proposals for expanding the scope of the Parent/Subsidiary Directive as well as of the Merger Directive in order to avoid double taxation of companies.

Also welcome is the Commission's focus on the need to reduce the compliance costs which arise from dealing with 15 and soon 25 separate tax systems, providing cross-border tax relief and simplifying the existing tax complexities associated with transfer pricing.

The Commission has to study in detail the consequences of the proposed long-term solution of a common consolidated tax base. The conclusions of that study could be an important factor for the success of the European Company Statute, due to become effective in 2004, thereby remedying its major weakness, i.e. national tax treatment.

VAT

The Commission will issue a communication setting out further steps to modernise and simplify the existing system, including the introduction of a single place of compliance for all businesses trading in Member States where they have no establishment.

While it is helpful to simplify the VAT system, the main objective is to ensure a level playing field through neutrality of competition. In general, solutions to the VAT system must be found to ensure a level playing field for companies based in different EU Member States with different VAT levels.

Also the issue of reimbursement of VAT (8th Directive) should be looked into in order to ensure quick and non-burdensome administration of the reimbursement.

5. Expanding procurement opportunities

UNICE supports the proposed actions to open public procurement markets more efficiently. However, industry does not believe that streamlining or simplifying the national legislation in public procurement will be possible by implementing the public procurement package as there are too many and excessively complicated regulations in the Legislative Package.

Regional authorities set own requirements

A company producing products subject to the Medical Devices Directive and selling all over Europe, points to the fact that for public procurement there is no common market. In the health care sector, regional authorities set their own requirements and procedures. Furthermore, national rules for financial support to patients often mean that special conditions have to be fulfilled, such as the size of the packaging, approval by a local certification body or other conditions in order to be admitted to the "list".

(Example from UNICE survey)

We believe it is very important that the Member States should stimulate and develop procurement training amongst procurement officials at all levels of government.

UNICE supports the development of an Action Plan on e-procurement because the regulations in the Legislative Package are not complete. It would like to work with the Commission to ensure that the measures will be robust enough to deal with this changing area.

In addition, we would be willing to work with the Commission to clarify the limits of in-house procurement and to define a modern framework for promoting public-private partnerships.

Defence procurement

European defence procurement can benefit from the application of public procurement regulations, but it might also have some disadvantages as compared with the present procedures.

A liberalisation of the defence procurement market is welcome, but liberalisation must be carried out in a way so that national protective measures and barriers as a consequence of different industrial structures (public and private entities) are taken away in all countries at the same time. This will take a long time. Article 296 of the Treaty is dealt with and interpreted differently from one Member State to another. It is consequently important that the planned interpretative communication takes into account the interests of both large and small countries.

6. Improving conditions for business

Industry very much wants framework conditions which support creative, dynamic businesses. To a large extent it lies within the responsibility of Member States to create such conditions, needed to stimulate innovation and investments and to ensure industry's competitiveness. This is the very focus of the Lisbon process.

Intellectual property rights

The actions listed mainly consist of previously proposed actions which UNICE supports, in particular the adoption by the Council and the European Parliament of the Directive to

strengthen the enforcement of intellectual property rights and the Directive on the patentability of computer-implemented inventions.

In connection with the well-functioning of the Internal Market we especially welcome actions to combat counterfeiting and piracy. Out of consideration for the consumers' confidence in the CE marking and the legal status of companies, it is essential to avoid counterfeiting and piracy which represent a big problem for many companies today, and especially within certain product areas. The recently adopted declaration on the fight against counterfeiting and piracy in the enlarged EU sends a strong political signal of the European Parliament's commitment to the fight against counterfeiting and piracy.

Concerning the Community Patent, UNICE stresses that political compromises at Council level have moved the agreement away from the instrument that business needs today if it wants to compete with its main trading counterparts and, in this respect, does not sufficiently meet users' needs, particularly in terms of costs with the decision to translate claims into all EU languages.

State aid

The level of state aid is still too high. Especially in view of enlargement, it is essential that the extent of state aid is continuously reduced.

The final adoption of the proposed reform of the mergers regime is listed as one of the priorities. This is welcome, provided that this does not result in an increase in the use of referrals to Member States and in changes to the substantive text which will widen the scope of the present regime and lead to legal uncertainty.

UNICE endorses the Commission's intention to propose a new block exemption regulation relating to technology transfer agreements between companies. There is an urgent need to carry out an in-depth review of the existing regulation considering that it is overly formalistic, too complex and too narrow in scope.

Company law

Since the Internal Market Strategy was released on 7 May 2003, the Commission Action Plan referred to on company law and corporate governance has been published (21 May 2003[‡]). UNICE would like to reiterate[§] the fact that new arrangements must establish a more effective, cost-effective, and flexible legal framework for companies to improve their competitiveness at EU and global levels. In particular, the need for further action in European company law should concentrate on the elimination of mobility constraints on companies within the single market, in particular concerning cross-border mergers and transfer of the seat of companies.

Without prejudging more detailed comments at a later stage on the actual action points foreseen, we are particularly pleased that one of the aims of the Action Plan is to foster "*efficiency and competitiveness of business*".

[‡] Commission Communication COM (2003) 284, on Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward, 21 May 2003

[§] Please see UNICE comments on a Modern Regulatory Framework for Company Law in Europe, 17 June 2002 available on UNICE's website: www.unice.org

Data Protection

UNICE is particularly surprised and worried about the lack of reference to data protection in the Internal Market Strategy: Priorities 2003-2006.

Shortly after the publication of the Internal Market Strategy, the European Commission released its first report on the implementation of the data protection Directive 95/46/EC^{**}. The report indicates that a high level of data protection has been achieved. Nevertheless, it also clearly states that, judged against the overall policy objectives of providing a level playing field for economic operators in different Member States; helping to simplify the regulatory environment in the interests of both good governance and competitiveness; and tending to encourage rather than hinder cross-border activity: *“the divergences that still mark the data protection legislation of the Member States are too great”*.

In order to address the problems revealed by the report, the Commission adopted an ambitious “Work Programme for a better implementation of the data protection directive (2003-2004)”.

It is surprising that this work programme has been omitted from the Internal Market Strategy given that the Data Protection Directive was legally based on internal market grounds, i.e. Article 100a of the EC Treaty (now after amendment Article 95 EC), and data protection is an integral part of the internal market.

It is essential for business that the Commission carries out the ambitious work programme aimed at correcting the divergences recognised by the Commission in its report.

Adequate data protection is a necessary condition for consumer trust on the one hand and for the reliable free flow of information on the other hand. The importance of an adequate and uniform level of privacy protection throughout Europe is self-evident. European business experience in complying with Member-State legislation implementing the Data Protection Directive demonstrates that there is a need for simplification and clarification of many of the European personal data protection rules.

Without prejudging more detailed comments on the Commission work programme for a better implementation of the Data Protection Directive itself, UNICE strongly urges the Commission to correct this omission and to demonstrate its commitment to the success of the afore-mentioned data protection work programme.

7. Meeting the demographic challenge

The simultaneous phenomena of a drastic rise in the number of old people over the next decades and the shrinking young population will be of such a magnitude that comprehensive and deep-rooted pension reforms are needed.

Pension reforms are primarily a national responsibility, but national reforms can be underpinned and complemented by relevant measures internal market measures at the EU level.

The recently adopted Pension Funds Directive is an example of such measure. It is an important instrument for the completion of the single market in financial services but at the same time, this directive can help the development of an effective second pillar of pension systems in many Member States and thereby help alleviate pressure from the population time-bomb.

^{**} Commission Report COM(2003)265, First report on the implementation of the Data Protection Directive (95/46/EC), 15 May 2003

However, for the directive to have its full intended effect, elimination of tax obstacles to cross-border provision of occupational pensions is necessary. Today, these constitute a significant impediment to cross-border labour mobility in Europe. UNICE supports the Commission's plan to monitor national tax rules impeding the cross-border provision of occupational pension and cross-border transferability, and to take the necessary steps to ensure effective compliance with the Treaty.

UNICE strongly supports moves to facilitate labour mobility in the European Union. It therefore welcomes the Commission consultation on portability of supplementary pension rights of workers making use of their right to free movement within the European Union. However, European employers insist that any EU initiative should aim to remove obstacles to free movement without interfering with the organisation of supplementary pension arrangements in Member States. UNICE is currently reflecting on a response to the forthcoming second-stage consultation.

The growing share of the elderly and substantial longevity growth raise not only the question of higher pensions bills, but also the issue of sharp increases in the costs of health care and long-term care for the elderly. This is an area where national reforms are needed and where the Internal Market could make an important contribution in particular as regards cross-border provision and access to treatment.

8. Simplifying the regulatory environment

High quality regulatory environment is essential for competitiveness and consequently better and simpler regulation must be given high priority on the European political agenda. It is essential that all new legislation and revision of existing legislation are submitted to a systematic and comprehensive impact analysis with the objective of reducing the administrative and economic burdens for companies.

UNICE has welcomed the Better Regulation Action Plan and the Simplification Rolling Programme, and the Commission's intention to make the system work in practice. It is crucial to keep in mind that the objective of such a SLIM exercise is to achieve real reductions in the administrative burdens of companies. Companies complain that European legislation has reached a very high level of complexity and detail which makes it difficult for small companies in particular to meet the demands.

On the specific actions we have the following comments:

Legislative architecture

We fully support the idea of putting more focus on choosing the right legislative or non-legislative instrument or technique, i.e. to choose the one which will most cost-effectively eliminate barriers to trade while at the same time taking due account of public interests and sustainable development. In certain areas there might be a need for more harmonisation instead of mutual recognition, and in others there might be a need for regulations instead of directives. When the most appropriate instrument is being chosen, alternative regulatory models (such as voluntary agreements and co-regulation) should also be considered. New legislation should be the last resort!

Practice has shown that in several fields the Commission tends to regulate the same action in several cascading directives. Better coherence between legislative initiatives from the different DGs is needed to avoid different regulatory methods, overlapping legislation, conflicting requirements and "over-regulation" of companies.

In this connection and for the further simplification process we stress the importance of conducting a wide stakeholder consultation. It is important that the process starts on the basis of real-life conditions and favours the competitiveness of companies through a simple and efficient legislative framework.

It is equally important to carry out impact assessments of new regulatory proposals. There should be a more concerted effort to conduct thorough impact assessments, ideally undertaken by an independent body or service of the Commission that has no direct link with the drafting of the proposal concerned.

Internal market compatibility test

Companies welcome the proposal for a compatibility test to be carried out when new legislation is developed at national level. Today it seems that often one ministry takes care of Internal Market issues, whereas other ministries set up regulation with other purposes and which often creates barriers to free movement. This can be seen, for instance, in the construction area and environmental legislation, and often leads to a fragmentation of the Internal Market.

Through such a compatibility test a wider responsibility and commitment for safeguarding the principles of the Internal Market could be better shared by all decision-makers and thus inspire national authorities to “think European”.

National requirements for fire protection create barriers to trade
Denmark is known for its furniture. This manufacturer employs 40 people and produces upholstered furniture for the European market. Its experiences with the Internal Market are mainly positive. However, there are a lot of statistical returns to be completed and there are many challenges. For instance, the UK has special fire protection requirements for the foam used in furniture. Because of this, a special foam must be used for the UK and new tests are required. This costs extra and impedes a streamlined production process.
(Example from UNICE Survey)

Setting up a website

It seems to be a good idea to create a website where interested parties can report on particularly complex rules or rules which may fail the “Internal Market compatibility test”. It would be appropriate if, on the same site, the Commission could give feedback and monitor follow-up of the simplification process. This should, however, be coordinated with the "SOLVIT initiative", to which UNICE gives its strong support, as well as with other Commission initiatives for simplification (e.g. the BEST initiative).

Information on national regulations, etc.

The Commission also mentions the need to give citizens from other countries easy access to information on national legislation. Such information and availability online would be a great help and facilitate free movement of persons, the setting-up of companies, etc., which are often complicated due to a lack of information. UNICE invites Member States to take on such a task without delay.

Development of appropriate indicators

Indicators for measuring the administrative burdens can prove very useful. In this connection UNICE has previously recommended a system along the lines of the Dutch MISTRAL. In the Netherlands there is also an independent organisation (ACTAL) which has the task to monitor the simplification process. Such a model might be useful also at European level.

It would be a great advantage if the same indicators were used in all countries, and it would create better transparency. UNICE has previously suggested such a system in connection with the Green Paper on Entrepreneurship.

9. Enforcing the rules

It is especially in the enforcement and interpretation of the rules that companies experience problems in practice. This is why UNICE supports the priority given to this area of the strategy.

Effective application and enforcement is mainly the responsibility of Member States, and can therefore only be achieved if Member States are prepared to play a much more active role in the day-to-day management of the Internal Market.

In view of an increased number of Member States in the Union it is evident that the Commission cannot continue to play the role of policeman. It is essential that the existing members make an effort to reduce the number of infringement cases, and that correct and timely implementation is carried out in a more stringent manner in future.

It would also help companies working on many markets if transposition and interpretation in practice are carried out in a more uniform way. Notified Bodies have an important role to play in this context. Therefore, to ensure uniform interpretation of the rules, close co-operation and active participation in the work of interpreting the rules should be mandatory. This issue is dealt with in more detail in the Commission's communication on enhancing the New Approach, and UNICE supports the planned action in this area.

In the light of the above, UNICE fully supports the idea of studying the possibilities of setting up national mechanisms which could help ensure the correct and timely application of Internal Market legislation and relevant Treaty articles. Such national monitoring units should work in close co-operation with each other in a network – to ensure uniform interpretation and enforcement.

Proposals on inserting standard sanction clauses into Directives as well as standard clauses to put administrative co-operation on a stronger footing are welcomed and supported by UNICE.

It would be a good idea if such a national monitoring unit also serves as the national co-ordination centre and contact point for problem-solving through the SOLVIT initiative.

The Swedish Kommerskollegium could serve as a good model for such problem-solving units. One could also consider regional co-operation in this field – i.e. neighbouring countries setting up one common regional problem-solving unit.

10. Providing more and better information

Surveys show that there is a lack of knowledge and awareness of the opportunities given by the Internal Market, which leads to an “under-performance. The lack of knowledge of rights and obligations also means that companies are not able to address obstacles – hence not able to enjoy rights/privileges given by the Internal Market concept.

There is also a lack of knowledge of the problem solving mechanisms that have been built up to help businesses when they encounter problems. A comprehensive information campaign for the SOLVIT initiative needs to be carried out.

Against this background UNICE fully supports the proposal for national action plans to raise general awareness of Internal Market opportunities, as well as information on where companies can find help and assistance. It would be useful if the Commission could propose some concrete areas for which national action plans should be elaborated.

Also, the establishment of a common database for Internal Market regulation should be given high priority.

Lack of knowledge about regulations complicates communication

A leading supplier of foundry equipment and metal surface finishing systems is based in Denmark. The company employs about 420 people and sells its products all over the world. They find that it has become easier for the company to sell its products within the Internal Market, as requirements are now harmonised. However, it is the experience of this company that it has become much more difficult for small companies. This is seen in the communication with sub-suppliers who often are not aware of the obligations they have according to European directives.
(Example from UNICE Survey)

C. GETTING THE BEST OUT OF THE ENLARGED INTERNAL MARKET

The experience gained so far shows that there is a great need for coordination, information and mutual understanding of Community rules and principles. It cannot be stressed enough how important it is to offer administrative support and concrete technical assistance and training to the new Member States. As an example market surveillance can be mentioned, as well as the need to train customs officers who will have the important role of policing the external borders of the Internal Market. In this area there is a need to comply with the regulations, while still preserving a certain degree of flexibility and understanding for the underlying principles and intentions.

A recent survey carried out by the Confederation of Danish Industries shows that many barriers lie in areas where the adoption of Community rules will not automatically lead to tearing down the "remnants of the wall". There is a need for setting targets with clear deadlines to promote good governance, best practice for customs and tax systems and fighting corruption.

We recommend that a benchmarking and best practice process is promoted. In this context, it is also necessary to reform the structural funds as a consequence of the phasing-out of PHARE. Today the structural funds are mainly used for building infrastructure, retraining workforces and the like. In future there is a need for the new members to obtain support to build up "good governance", for instance to build adequate and up-to-date legal, tax and customs systems, and for training public officials. There is also a need for better, faster working, and incorruptible courts. The study of law must be improved, teaching capacity must be increased, etc. Furthermore, the funds should also be made more flexible to accommodate the needs of individual Member States.

It is extremely important to monitor the progress made in both the accession and candidate countries and through this to make sure that the Accession Agreement requirements are met. As TBTs are among the most common trade barriers in these countries particular attention should be given to conformity assessment and mutual recognition.

PECAs

The Commission stresses the importance of continuing the efforts to conclude PECAs (*Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products*) in as many areas as possible. The negotiations and contacts necessary in this context are very important for the process of bringing the new Member States closer to a common understanding of the existing regulations and principles.

However, the efforts spent on reaching agreement on further protocols should be balanced against the possible benefit for companies. The new Members have undertaken the obligation

to fulfil all the *acquis* before accession. This is why resources on both sides should be spent in the most efficient way to gear the whole administrative system to this end.

D. BUILDING THE INTERNAL MARKET IN AN INTERNATIONAL CONTEXT

In order to ensure an increasingly free exchange of goods, etc., with the new EU neighbouring countries, the proposed measures are useful and necessary. However, the Commission must take a very pro-active approach in the dialogue with these countries and include a number of the measures proposed under the heading "Getting the best out of the enlarged Internal Market". Particular weight should be put on positive and encouraging measures such as institution-building, training, and technical assistance.

The strong emphasis of the paper on the new neighbours of the EU is well justified as they are closest to the EU's sphere of economic influence. However, dialogue on common international standards and other harmonisation issues should be intensified with other important countries and regions throughout the world - US, Asia and Latin America, mentioned here in the order of priority for European Business. A pro-active and visible EU approach on regulatory dialogue with major trading partners throughout the world using a variety of instruments from aid and technical assistance to investment agreements and ad hoc negotiations should be pursued.

European business applauds any initiative to simplify tariff and customs procedures - be it inwards or outwards of the Internal Market. Some of the major trade obstacles are still unpredictable non-tariff barriers. Therefore, any dialogue with foreign countries on customs procedures and any measure to simplify or increase transparency in third countries is welcome.

In a newly issued UNICE position paper on "EU Trade policy on Technical Barriers to Trade (TBTs)– A new push for the removal of technical barriers to trade globally" UNICE discusses important aspects putting the Internal Market into an international context.

The following points, tied to the Internal Market, are made in this paper:

- Regionally and bilaterally, the EU needs better strategic coordination between its many regional initiatives in the TBT area, including technical assistance. These activities should be in line with the overall global strategy for removing TBTs and facilitating trade. The EU needs to move forward with sector-specific strategies, setting specific goals for harmonisation / equivalence of regulations, standards and conformity assessment systems.
- Special priority should be given on developing the EU-US Transatlantic Economic Partnership Agreement (TEP) in the regulatory and TBT area and implementing the EU-US Guidelines on Regulatory Cooperation.
- EU regulatory cooperation should put more focus on global models for "Best Regulatory Practice" including coordinating and harmonising regulatory objectives for environment, health, and safety between major trading partners.
- With regard to conformity assessment, UNICE urges the Commission to put less focus on initiating new Mutual Recognition Agreements (MRAs), make better use of the experience with MRAs to improve regulatory cooperation and coordinate better with private MRA initiatives.
- The EU should concentrate its resources on promoting Suppliers' Declaration of Conformity as an efficient mode for demonstrating conformity and an important part of Best Regulatory Practice.

Promoting “New Approach” internationally and concern over EU fragmentation

Promotion of New Approach internationally has become an important part of the Commission’s External TBT trade policy. Business gives full support to this work. However, this strategy for global alignment only works as long as the EU and other countries use international standards as a base for regulating or giving equivalence to each other’s regulatory objectives and standards. These aspects should be taken into account when the New Approach is being promoted and developed.

The New Approach covers only part of the sectors and products regulated by the EU. It is important to have a global strategy for aligning sectors outside “New Approach”.

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