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27 January 2010

Dear Mr Monti,

Further to your intervention at BUSINESSEUROPE's Council of Presidents in Stockholm last December and our letter of 9 December on some social aspects, we would like to provide you with detailed input for the important report entrusted to you by President Barroso on how to relaunch the EU single market.

As a key driver for economic growth, the single market is at the core of BUSINESSEUROPE's agenda.

With a market which now comprises 30 countries and around 500 million citizens, cross-border investment flows of 430 billion euros per annum and 70% of Member States' exports being destined for other EU countries, the benefits from closer integration are undeniable.

Despite its remarkable achievements, there are still barriers to the free movement of people, goods, services and capital that represent in total an unfulfilled economic potential of 275 to 350 billion euros. This negatively affects companies' competitiveness and consumer choice.

The current difficult economic situation has also created serious challenges coming from protectionism trends, weaker political support and certain disenchantment from citizens. This could put at risk the benefits achieved and stall further progress of the single market. This is of concern for BUSINESSEUROPE and the companies we represent.

To counteract this trend, revitalisation of the single market must be at the centre of Europe's agenda and of the future EU Growth Strategy. It must be a key element for the recovery of the European economy and the objective that BUSINESSEUROPE would like EU decision-makers to achieve: increase EU's growth potential of 2% by 2015.

To that objective, the areas with particular added-value for the single market must be better defined and prioritised. The following topics are in our opinion key issues for which short term action is needed:

- a true opening of the single market for services
- a European framework for financial markets
- further improvement of goods circulation
- increasing cross-border opportunities for companies
- creation of a digital single market
- further completion of the Trans European Networks.

It is also important, within the parameters of national sovereignty in taxation matters, to encourage Member States to work together to reduce persisting tax burdens on cross border activity in the field of corporate and VAT taxation, and to facilitate the cross-border mobility of workers.

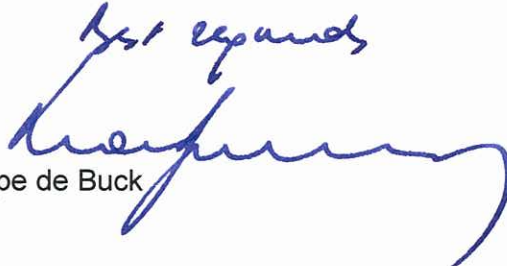
Apart from the above specific areas, what is also needed is a fundamental change in how the EU manages the single market. In this context, we need:

- the setting up of an integrated single market strategy to ensure more coherence and better synergies between the various EU policies
- better enforcement of existing rules, at both EU and national level, by strengthening cooperation between national enforcers and training national judges and civil servants in EU law
- elaboration of a macroeconomic study that measures the benefits and costs of further integration of the single market
- an increased commitment to the better regulation agenda to avoid laws that create unnecessary burden on the single market
- less, better and more targeted action. Whenever needed, new action should be based on solid data and evidence and accompanied by impact assessment, public consultation and should be regularly evaluated
- closer monitoring from the Commission of national implementation of EU legislation. The Services Directive is a best practice example
- to better take into account the needs and problems of SMEs
- a pro-active policy to support the international dimension of the single market through trade agreements and high level dialogues
- to streamline and simplify information and assistance tools for citizens and business and ensure more effective communication.

The Commission must remain the primary guardian of the single market freedoms but this must be complemented by a renewed political commitment and stronger partnership by Member States to act together for the revitalisation of the single market.

BUSINESSEUROPE wants to be an active partner in this debate and we hope to follow up this contribution by maintaining close contact with you and by being able to discuss further any new ideas you might want to introduce in your report.

Yours sincerely,

*Best regards*  
  
Philippe de Buck





27 January 2010

## **ANNEX TO LETTER TO MARIO MONTI ON REPORT ON RELAUNCH OF THE SINGLE MARKET**

### **I. ENFORCEMENT OF EU LEGISLATION**

The important role of the European Court of Justice and the infringement procedures and comparative reports and scoreboards by the Commission are necessary and helpful but not sufficient.

While the EU transposition deficit stays around 1%, latest reports<sup>1</sup> show that the number of infringements of Community laws by Member States - especially big ones like Italy, Spain, France or Germany - are still too high particularly in the areas of taxation, customs and the environment.

Member States do not do as much as they should to ensure correct transposition, application, and enforcement of EU legislation. More political support and adequate financial and human resources are therefore needed to create a truly effective partnership and cooperation between the various national and EU actors who play a role in the functioning of the single market.

It is also important that citizens and companies have easy, uncostly and quick access to mechanisms to solve problems they may encounter in the single market.

We ask for rapid action to ensure the following recommendations:

- Creation of a single market coordination agency within national administrations. This body would act as the entry point for addressing internal market issues within the administration. Training on EU affairs for officials in particular on cross-border enforcement is necessary;
- Improved monitoring of the various markets and sectors in order to identify market failures and collect better relevant data and figures.
- In the framework of supervision of the single market, closer cooperation and exchange of best practices between national officials including regular assessment of national legal provisions, and improved transposition and enforcement of EU law (good examples: Consumer Protection Cooperation Network or the Services Directive).

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<sup>1</sup> Internal Market Scoreboard, July 2009, N°19.

- Citizens and companies should have better access to transparent, simple and affordable procedures for alternative dispute resolution. The promotion of out-of-court mechanisms should be given priority over legislation promoting judicial means of redress since they can provide quick, effective and inexpensive redress avoiding the consequences of excessive litigation.
- Problem-solving mechanisms at EU level such as SOLVIT should be further promoted and used. SOLVIT has proven to be a particularly helpful but unfortunately "underused" tool which is poorly known by citizens and SMEs. Actions to ensure sufficient resources in the SOLVIT centres, both human and financial, are highly recommended. Also, initiatives to widen the scope of the problem-solving system and to enable the SOLVIT centres to act in a more proactive manner (to take up "own-initiative" cases) are welcomed.
- Promotion of use IT-based solutions to improve enforcement (exchange of information and data, rapid reaction/alert systems, electronic tools (e-forms), etc).
- Ensure adequate involvement/consultation of representative stakeholders both in elaboration of enforcement/implementation reports or in the discussions in existing Advisory and Technical Committees and other National Experts Groups.

## II. BETTER REGULATION

Better regulation must be firmly embedded in the EU and national systems and remain a priority, in particular more efforts are needed:

- To measure and reduce administrative burdens for all EU legislation, take concrete steps to reach the 25% target for reducing administrative burdens by 2012. Ensure that new legislation does not undo achieved reductions.
- To carry out accessible impact assessments on all initiatives that entail costs for businesses. Open up draft impact assessments to independent and effective review by stakeholders and impartial oversight bodies. Implement the Think Small First principle and measure all business costs.
- To involve all affected stakeholders early in the process and assess their views accurately according to their representativeness.
- To give equal consideration to self-regulatory and alternative policy mechanisms and the 'do-nothing' option. Uphold the single market and minimise implementation differences.
- To include in new legislation, transposition and enforcement arrangements including correlation tables.

## III. AWARENESS OF THE SINGLE MARKET IN THE MEMBER STATES

Rules and policies must be also accompanied by more effective communication and information targeting citizens and SMEs about their benefits and consequences.





Attracting interest of the public opinion, citizens and companies, toward the single market is therefore central. In particular, urgent action is needed at national level. This should be done through better communication and information for instance through:

- Education on EU affairs at early stage and in University;
- Make better use for communication of Commission Delegations and EU-related foundations, networks (e.g. Les Maisons d'Europe, EU Consumer Centres);
- Organisation of seminars and events throughout the EU with the support and participation of stakeholders and Commission's officials.
- More presence of EU affairs in national politics (for instance, participation of the President of the Commission in debates in National Parliaments);
- Use TV, radio, Internet-based tools and social media (Youtube, Facebook, Twitter, etc).

#### IV. EXTERNAL DIMENSION OF THE SINGLE MARKET

The single market is an asset which should be used as a springboard to meet the challenges and grab the opportunities of the global market.

The EU should support of free trade and fight protectionism, while at the same time providing effective market surveillance to guard against unsafe and illegal products. Close cooperation and capacity-building in non-EU countries in this field could combine trade facilitation and consumer protection objectives. The EU should avoid laws and regulations which burden international trade or provoke protectionist reactions by our trading partners.

With the Lisbon treaty in force, the EU must adjust to the new political framework and to the additional power in the field of trade and investment in order to more forcefully promote its economic interests in the global arena. The European business community should play a central role in formulating the EU's trade and investment policies.

Regulatory and standards issues are increasingly determinants for companies' ability to engage internationally, whether through barriers in non-EU countries or through excessive regulatory burden on European firms domestically. The EU should aggressively pursue regulatory cooperation or convergence, promote the use of international standards and develop mutual recognition. Trade agreements, high-level dialogues and international organisations like WTO or OECD can be effective channels to improve regulatory cooperation, equivalence and convergence internationally. Industry has a vision of "one test, one standard, accepted everywhere", which should be the long-term goal. It is also vital that the business community is fully associated with this action to ensure that results enhance competitiveness.

Expansion of the single market through the Eastern and Southern Neighbourhood policy will generate new market opportunities for business. However, the EU must develop a more coherent approach to this strategy including more technical assistance



to partners (including business organisations) and a stronger commitment to enforce the rules in these countries.

The export of EU regulation and standards per se should not be the core objective of these efforts. In the first place, the design of EU regulation must maintain competitiveness at its heart. Excessive burdens on EU companies will not be compensated for by a gradual international acceptance of EU approaches and first-mover advantages are certainly not guaranteed. Moreover, regulatory cooperation efforts with partner countries will not be successful without a spirit of openness to other approaches. For this reason, benchmarking of EU regulation against international best practice particularly with that of EU's main trading partners should be a general practice. This benchmarking should be systematically included in EU impact assessments.

Improving the single market for key sectors like energy or digital industries will also strengthen the global competitiveness of EU companies in these sectors. This will also make the EU a much more attractive market for energy suppliers and for companies want to invest in innovation in Europe.

## V. SOCIAL DIMENSION OF THE SINGLE MARKET

The social dimension of the EU consists of the combination of highly developed national systems complemented at the European level by more than 70 directives in the employment and social field. The balance between the internal market and the social dimension must therefore be seen in the context of this dual and complementary level of policy-making.

The Lisbon Treaty consolidates the division of competences between the European and the national levels. A good example of how EU action can add value by providing a framework for national labour market reforms is the adoption of common principles on flexicurity by the Council at the end of 2007.

European citizens largely agree with this. In September 2009, the Eurobarometer showed that the large majority of Europeans considers the overall impact of the EU on employment and social affairs to be positive. This is the case across all measures, i.e. improving access to education and training (78%), promoting gender equality (76%), but also on fighting discrimination, unemployment or poverty (70% or more).

The EU must reconfirm its commitment to the free movement of labour with Europe as a key element of the single market. Remaining restrictions on labour market access for EU citizens need to be removed. They can only remain in place if justified on the basis of concrete evidence pointing towards severe labour market distortions.

Better implementation and enforcement of existing directives is key to address the concerns on a part of Europe's citizens and workers. A considerable amount of EU legislation and regulation has been introduced in recent years. Effective





implementation and enforcement must now be the main focus of action. This is also true for the posting of workers directive.

Posted workers represent only 0.4% of the EU workforce but they play an essential role in helping companies to deal with temporary shortfalls in the labour supply. The problems raised by the ECJ cases on Viking, Laval, Rüffert and Luxembourg should be – and are – dealt with at the national level. They do not necessitate a revision of the posting of workers directive. They can be solved through better implementation at national level and more effective exchange of information and administrative cooperation between Member States and/or social partners. The work of the Committee of Experts on Posting of Workers will be instrumental in this respect.

In addition, the European social partners are currently analysing the impact of the ECJ rulings. The report will be finalised and presented in early 2010.

## VI. SHORT TERM PRIORITIES

### 1. A true opening of the single market for services

High quality, uniform and timely transposition of the Services Directive is key to create real benefits for citizens and companies.

The transposition deadline ended on 28 December 2009, business is worried to observe that transposition is progressing at different pace and that the quality of transposition work varies widely from country to country. This could compromise the expected benefits of the directive.

Areas where problems are observed concern:

- completeness and quality of the legislative screening;
- functioning of the Points of Single Contact (PSCs);
- interoperability of electronic instruments;
- information and communication tools envisaged.

The mutual evaluation process programmed in 2010 is of paramount importance to assess the quality of the transposition and identify gaps and areas for improvement. It has to be well structured with Member States and consultation of the private sector should be effectively ensured.

Information and communication on the directive's advantages and opportunities especially for SMEs should be envisaged at both EU and national level.



## **2. A European framework for financial markets**

Financial markets should be regulated in a smart way ensuring companies' access to finance and should be based on comprehensive impact assessments taking into account the global nature of financial markets. The following should be pursued:

- Support for regulatory initiatives to reduce risks and improve risk management including systemic risk absorbers;
- Pro-cyclical amplifiers in capital requirement and accounting rules should be mitigated;
- Transparency should be strengthened;
- Regulation should cover all operators conducting financial activities that have a systemic impact;
- Remuneration policy should be aligned with sound risk management and long-term objectives and there should be no reward for failure at an international level;
- European financial supervision should be improved to restore confidence and improve financial stability management. National supervisory structures should be respected and securities, insurance and pension supervisors should be able to make an effective contribution to decision-making;
- In order to enhance further the effectiveness of cross-border supervision, there is a strong need for political decisions on cross-border burden-sharing in the event of a crisis and lender of last resort issues.

## **3. Further improvement of goods circulation**

The principles and regulation for ensuring free movement of goods within the single market are broadly speaking in place. However, experience has shown that in practice many barriers continue to exist so efforts must therefore continue to remove the remaining technical and administrative obstacles to the free movement of goods. The following issues should be pursued in the development of future policy in this area:

- The Commission should now focus its efforts on ensuring proper implementation of the new legislative package for goods particularly regarding the application of the mutual recognition principle and market surveillance; It should also ensure that relevant provisions of the package are used in future product legislation.
- The principles of the New Legislative Framework should also be promoted in other areas of product legislation (e.g. setting environmental requirements, the expansion of the New Approach to other areas, the link between legislation and standardisation).
- The overall goal for business is to have "one standard – one test – accepted everywhere". This means that, except for certain areas that present specific regional characteristics, standardisation should primarily start at the international level and international standards should be fully transposed, without national deviations, and applied globally.



- As for the legal framework of standardisation, the benefits of the present system need to be preserved. In particular, standards intended to provide a presumption of conformity with EU regulatory requirements need to reflect the full consensus of all interested parties and undergo public enquiry.
- A prerequisite for extended use of standards is that the European standardisation system produces good quality and market-relevant standards in a timely and efficient manner.
- A dynamic internal market in energy-efficient goods is central for the transition towards an eco-efficient economy. Future policy development should help to harmonise the minimum levels of performance for which energy-efficient goods can receive national tax incentives and which must be specified in public procurement orders.

#### **4. Further completion of the Trans European Networks**

Further liberalisation of European network industries is key for European competitiveness and innovation. Network industries (electricity/gas, transport, telecommunications, urban transport, water, etc.) are essential components of the EU single market's economic efficiency and competition.

Special attention should be given to strategic areas such as energy and transport, improve the possibilities for both the private and the public investment in these industries and be revived in areas where interest has lapsed.

In this context, providing guidance to regulators to support approaches that foster investment, competition and access to further develop networks is of paramount importance. Regulation needs to stimulate investment and innovation, optimising legal certainty for investors and infrastructure competition where feasible.

In particular, action is needed to:

- Improve enforcement of legislation and coherence and cooperation between EU and national levels.
- Commit to increase public investment in network infrastructure.
- Promote high quality public services through Public-Private Partnerships.
- Make it easier for new entrants and innovators to access networks.
- Focus on removing bottlenecks, ranging from infrastructure to administrative, operational and environmental bottlenecks.

Special efforts are needed to complete the internal market for transport to ensure:

- further opening of the rail transport market to competition, improve the interoperability and safety of national networks and develop rail transport infrastructure
- faster implementation of already agreed EU initiatives in the maritime sector and the Single European Sky (SES-II). Efforts should also continue to open port





services to competition and apply competition rules to maritime transport must continue

- support for worldwide freedom of air services and investment in bilateral and multilateral negotiations
- removal of barriers to the internal market for road
- equal treatment of all transport modes in order to ensure fair competition.

## **5. Creation of a digital single market**

A digital single market is key for growth and competitiveness and can drive up productivity and innovation in many other sectors. ICT in Europe represents 4.5% of EU GDP and accounts for about 4% of EU jobs, with more than 5 million workers. It is an essential driver for competitiveness, job creation and growth in Europe.

The future EU single market policy should foster research and innovation in ICT, taking advantage of the contribution that ICT can make to Europe's competitiveness, both within the Internal Market and globally.

In practical terms this means encouraging and incentivising investment in deployment of new ICT infrastructures, and competition and choice in the supply of innovative new services. We believe these priorities should be identified in:

- strengthening the knowledge economy, as a driver of future wealth, growth and employment;
- boosting confidence in the online environment and driving up demand for the next generation of ICT infrastructures and services.
- developing broadband internet by balancing investment with competition;
- fully exploiting the potential of innovative ICT solutions;
- accelerating interoperability and standardisation respecting the principle of technological neutrality;
- encouraging and supporting innovation in new technologies;
- promote Joint Technology Initiatives.

## **6. Increasing cross-border opportunities for companies**

There are still a number of obstacles for companies either to develop their business, sell goods or provide services and settle in EU Member States. In this context the following actions should be adopted urgently to remedy this situation:

- Adoption of a European Private Company Statute. This statute is one of the most important legislative initiative targeted by the Small Business Act which aims to reduce administrative and financial burdens faced by companies. The potential



savings on legal costs for setting up a company could be up to €10,000 and up to €8,000 could be saved on day-to-day operating costs annually. The Commission proposal should not be changed in particular on three elements: maintaining a very low minimum capital, absence of cross-border element and on the referral of employee participation rules to Member States.

- Adoption of a common patent court system and a cost-effective EU Patent. This would bring cost savings to companies of up to € 300 million and do away with the excessive costs and legal uncertainty of the current divergent national systems.
- Public procurement represents an annual turnover of more than 2000 billion Euros or around 17% of EU GDP. Given the immense importance of these figures with a view to tax payers, public purchasers and suppliers, public procurement must be governed by the principles of fair competition, equal treatment, non-discrimination and transparency. The relevant Procurement Directives 2004/17/EC and 2004/18/EC provide a sound regulatory framework serving the above-mentioned principles. Consequently, the evaluation of these directives in 2010 should be handled with great care. Regarding the use of the related services concessions, some guidance may be needed in practice. Nevertheless one should abstain from a legislative approach regarding this item, since any new legislation on concessions might hinder the necessary flexibility regarding the future innovative shaping of concessions.
- Public-private partnerships should be promoted and the EU should remove barriers that restrict partnership between the public and private sectors on a cross-border basis. Stronger partnership between the public and private sectors can help respond to today's environmental, demographic and economic challenges and generate added-value for society in the form of wider choice and innovative solutions, better value for money and new sources of financing.

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