

# Single Market news



## Small Business Act package launched for SMEs

### Special Feature

**Services Directive enters the  
decisive phase of implementation**



EUROPEAN COMMISSION



# CONTENTS



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# EDITORIAL

==== The Small Business Act - a far-reaching package of measures to support the EU's small and medium sized enterprises (SMEs) has been drawn up by the Commission. The SME sector was highlighted for priority action in the Single Market Review last November and the new package sets out a number of concrete actions together with a series of common principles to be adopted at the highest political level to guide SME policy at the national, regional and local levels across Europe. (See page 4).

==== As part of EU efforts to support the SME sector, a new type of company structure - the European Private Company (SPE) Statute - has been proposed by the Commission as part of the Small Business Act. It responds to the many calls from industry groups for the creation of an instrument tailored to the needs of entrepreneurs, start-up companies and expanding SMEs which allows them to set up subsidiaries across the EU operating on the same basis in every Member State. The SPE proposed by the Commission is a light and flexible company form. It is quick and less expensive to set up whilst offering full transparency to shareholders and business partners. (See page 6)

==== The three year implementation period for the Services Directive ends in December 2009. By that date, Member States will have to fully transpose its provisions into national law and put in place a number of practical arrangements such as 'Points of Single Contact' and a system of cross-border administrative cooperation. The comprehensive simplification programme set out by the Directive should be a major boost for the most important pillar of the EU economy – the services sector. In our Special Feature we take stock of the progress made as we move into the decisive phase of the implementation process. (See page 11)

==== A high-level conference *'The EU Internal Market for Postal Services – creating it together'* was organised in Brussels in June to mark the start of the final phase of EU postal market reform. Hosted by Commissioner Charlie McCreevy, the conference stimulated substantive discussion and debate among key stakeholders in the vital phase before full market opening which for most Member States will be the end of December 2010. (See page 8)

==== The Commission has proposed an important revision of the EU framework for investment funds known as UCITS (Undertakings for Collective Investment in Transferable Securities). The investment fund industry and its products play a particularly important role in an ageing society. Indeed, the total volume of UCITS at the end of last year stood at more than 6.4 trillion euro, equivalent to half of the Union's GDP. The enhanced regulatory environment will reduce unnecessary costs and bureaucracy in cross-border operations and improve investor protection. (See page 18).



Jörgen Holmquist  
Director General for  
Internal Market and Services,  
European Commission

A handwritten signature in blue ink, which appears to read 'J. Holmquist'.

# 'Think Small First' - Small Business Act package launched for SMEs

A package of measures to support the EU's small and medium sized enterprises has been drawn up by the Commission. Highlighted for priority action in the Single Market Review last year, the SME sector is of major importance to the EU economy and the Small Business Act sets out concrete measures of support and ten principles to guide future action.

The Commission's Single Market Review published last November highlighted the small business - SME - sector as a top priority for EU action to shape the economy for the future and meet the challenges of globalisation. After a wide-ranging public consultation including public hearings in February, the Commission has presented its strategic response in the form of a series of actions and guiding principles contained in its Small Business Act for Europe.

In the package entitled 'Think Small First: A Small Business Act for Europe' the Commission sets out a series of concrete measures that will make life easier for small businesses. It also lays down a set of common principles which should be adopted at the highest political level to guide SME policy and form the basis of action at national, regional and local level across Europe.



The Commission wants to reduce the costs and complexity of setting up and running businesses in a multicountry environment

### Strategic importance

The strategic economic importance of the SME sector has long been recognised. The days of large conglomerates driving growth have long gone and today it is companies of 250 employees or less which provide most jobs in the EU. In recent years, SMEs have created 80 % of the new jobs.

Despite the recognition of their importance to the EU economy, the growth and development of smaller firms is often hindered by bureaucratic obstacles and the Commission's Single Market Review paper called for positive action to be taken to ensure that SMEs can take full advantage of the Single Market.

### New legislation favourable to SMEs

Although 99% of companies in the EU are SMEs (companies with a maximum of 250 employees and a maximal turnover of 50 million euro), most legislation and administrative procedures do not distinguish on the basis of company size. As a result, 23 million SMEs often have the same administrative requirements as Europe's 41,000 large companies.

After consulting widely with businesses and their representatives, the Commission will propose new legislation in four areas that particularly affect SMEs.

### State aids - 'block exemption'

The Commission wants SMEs to be able to benefit more from state aids that can help them with their development. A new General Block Exemption Regulation on state aids is planned which will simplify procedures and reduce costs.

This it is believed will increase the volume of aid available to SMEs. It will also make it easier for small firms to benefit from financial support for training, research and development, environmental protection and other types of aid.

### New 'SPE' company statute

The Commission wants to reduce the costs and complexity of setting up and running businesses in the EU and is proposing a simplified and lower cost company form.

Known by its Latin name 'Societas Privata Europaea' (SPE) the new statute for a European Private Company will allow companies and subsidiaries to be created and operate according to the same uniform principles in all Member States (see article on page 6).

In practical terms, the SPE would mean that SMEs can set up their company in the same legal form, no matter if they do business in their own country or in another Member State. Opting for the

SPE will save entrepreneurs time and money on legal fees, management and administration.

## Reduced VAT

A proposal relating to Value Added Tax (VAT) is planned to make it financially advantageous to work with local SMEs.

The proposal will offer Member States the option to apply reduced VAT rates for locally supplied services, including labour intensive services, which are mainly provided by SMEs.

## 30 day payments limit

Cash flow is always a key issue for SMEs and getting paid on time can be vital. In 2009 the Commission is planning to introduce an amendment to the EU Directive on late payments. This will help ensure that SMEs are paid within the 30 day time limit stipulated.

## Procurement guidelines

As part of the Small Business Act the Commission has published new practical guidelines or a 'Code' for Member States on how to make public procurement more SME-friendly (see page 10).

Public procurement in the EU – i.e. the purchases of goods, services and public works by governments and public utilities - is a vast market, worth 1,800 billion euro in 2006, but the complexity of the award process has tended to favour larger firms.

An advisory document the 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts' sets out to help Member States and contracting authorities to change their procurement culture and to make it more SME-friendly.

This Code of Best Practices will propose solutions to the main difficulties encountered and reported by SMEs:

- Overcoming difficulties relating to the size of contracts
- Ensuring access to relevant information
- Improving quality and understanding of the information provided
- Setting proportionate qualification levels and financial requirements
- Alleviating administrative burdens
- Putting emphasis on value for money rather than on price
- Giving sufficient time to draw up tenders
- Ensuring payments are on time

## Guiding principles for Member States

A series of ten principles and targets have been drawn up to help guide the development and implementation of policies at EU and Member State level.

These covers issues such as granting a second chance for business failures, facilitating access to finance, and enabling SMEs to turn environmental challenges into opportunities.

The time needed to start a new company should be no more than one week, the maximum time to obtain business licenses and permits should not surpass one month.

The establishment of 'One-stop-shops' should facilitate company start-ups and recruitment procedures.

The SBA includes an ambitious set of measures to allow SMEs to fully benefit from the Single Market and expand into international markets by orienting more resources to their access to finance, Research & Development and innovation.



The SBA seeks new ways to stimulate interest in entrepreneurship and cultivate a more entrepreneurial mindset, especially among young people.

It will also make it easier for them to participate in the standards-setting process, win public procurement contracts and turn environmental challenges into business opportunities.

## Entrepreneurship

Finally, the SBA seeks new ways to stimulate interest in entrepreneurship and cultivate a more entrepreneurial mindset, especially among young people.

Young people, who want to start up a business, can now gain experience by spending time in an SME abroad via the recently launched 'Erasmus for young entrepreneurs' programme.

Commission President José Manuel Barroso said: "The Small Business Act is a crucial milestone in the implementation of the Lisbon Strategy for Growth and Jobs. It will mean more responsive public administrations, less late payment of invoices, access to more help with finance, innovation and training, lower VAT for services supplied locally and better access to public procurement contracts."

## An SME-friendly European Private Company Statute proposed by the Commission

A new company statute has been drawn up for SMEs and entrepreneurs wanting to set up local or pan-European companies. The proposed European Private Company Statute (SPE) is designed to be a light and flexible company form highly suitable for cross-border expansion. It will be quick and less expensive to set up and flexible and transparent to operate

**T**he SPE ('Societas Privata Europaea') is a new type of company which is particularly adapted to the needs of entrepreneurs, start-up companies and expanding SMEs.

This new company form which has been proposed by the Commission is based on EU law and is designed to enable entrepreneurs to set up individual companies or a parent company and subsidiaries across the EU which all operate under the same company law rules.

Due to the very different national systems of company law across the EU, the establishment of subsidiaries still entails serious difficulties and high costs.

Instead of setting up a 'GmbH' in Germany, an 'sp. z o o' in Poland and an 'SAS' or 'SARL' in France, an expanding SME will be able to opt for the SPE statute which will be identical in all countries. It will offer greater familiarity and be less expensive and complex to establish. It will also help with issues such as language barriers and cultural differences.

The SPE statute will allow entrepreneurs to set up their companies and subsidiaries with the same management structure, regardless of where they are located. They will all have a European label that is easily recognisable throughout the EU.

### Reduced legal costs

For various reasons, the existing European legal forms, such as the European Economic Interest Group (EEIG), the European Co-operative Society (SCE) and the European Company (SE), are not tailored to the needs of SMEs.

"The SPE statute will allow entrepreneurs to set up their companies and subsidiaries with the same management structure, regardless of where they are located."

The SPE company form is designed to be relatively quick to form and less expensive to set up, especially in terms of legal costs. The structure will also offer great flexibility for expansion whilst ensuring full transparency for shareholders and business partners.

### Who can set up an SPE?

The SPE may be set up by one or more founders, either individuals or companies. The creation of an SPE is not subject to any cross-border requirements (e.g. having shareholders from different Member States or evidence of cross-border activity). Any initial cross-border

requirements would significantly reduce the potential of the instrument, in particular for small companies.

There is no restriction regarding the method of formation. The SPE may be set up from scratch, created by transformation or division of an existing company, or by the merger of existing companies. An application to set up an SPE may be made online, and in the language of the Member State of registration.

### No minimum capital requirement

The minimum capital requirement for the SPE is set at one euro. Shareholder liability is limited to their contribution to the SPE's capitalisation.

This solution gives flexibility to companies in deciding what level of capitalisation suits their business needs, which can be very different depending on the type of activity and the economy in which the company operates.

The SPE is structured as a private company and as such its shares remain in private hands and may not be offered to the public or publicly traded.

### Articles of Association

The range of company law issues covered by the SPE Statute is much broader than under the existing European Company Statute (SE).

The SPE prescribes a minimum list of matters to be covered by the articles of association and leaves shareholders the freedom to decide how to regulate these matters, subject only to the rules of the Regulation, i.e. the provisions of the articles of association are not subject to national law. National law will only apply where this is specifically stated in the Regulation.

The Statute will cover those matters which are essential to the corporate life of the SPE. It also sets out a list of items that must be covered by the SPE's articles of association such as:

- name and initial capital of the SPE;
- the procedure and requirements for increasing or reducing the share capital;
- the method of adopting shareholder resolutions;
- the way the management of the SPE is organised etc.

## Application of national law

The SPE will be governed first and foremost by its Regulation and articles of association. Other matters are governed by the national law which applies to private limited liability companies in the Member State where the SPE has its registered office.

Both the SE and SPE are governed by national law as regards accounting and tax law, procedures for insolvency and cessation of payments, labour and social security law and criminal law.

The new Statute does not provide any special tax rules for the SPE. However, it is important to ensure that the SPE enjoys the same tax treatment as similar national legal forms.

## Cross border advantages

Whilst the SPE is primarily designed for small companies, it may also benefit larger companies, in particular cross-border groups.

The SPE's flexible rules on internal organisation would allow such groups to apply the same internal organisation model for all their EU subsidiaries.

## Registration in any Member State

An SPE is allowed to have its registered office and its headquarters in different Member States. This solution is a consequence of recent judgements by the European Court of Justice which allow companies to locate their registered office and headquarters in different countries.

An SPE will have the right to transfer its registered office to another Member State without losing its legal personality. The SPE could transfer its registered office with or without moving its headquarters at the same time.

## Creditor and shareholder protection

The proposal provides uniform rules protecting the SPE's creditors. In particular it requires that any kind of distribution of the SPE's assets to the shareholders (e.g. payment of dividend, purchase of the SPE's own shares) can only be made if, after the distribution, the SPE's assets fully cover its liabilities (the so-called balance-sheet test). Shareholders are free to introduce additional requirements (e.g. a solvency test) in the articles of association.

The SPE Statute also requires that the most important decisions in relation to the company's capital (e.g. capital increase or reduction, approval of accounts) are taken by the shareholders. The proposal also contains a number of mechanisms aimed at protecting minority shareholders. Shareholders may extend minority rights in the articles of association.



The SPE company form is designed to be relatively quick and less expensive to set up. It will enable entrepreneurs to set up individual companies or a parent company and subsidiaries across the EU which all operate under the same company law rules.

## Employee protection

The SPE will be subject to the employee participation rules of the Member State where it has its registered office.

Even though workers' participation exists in small companies only in a few Member States (e.g. Sweden, Denmark), the SPE will also be open to larger companies and, therefore, the SPE Statute has to provide a mechanism to ensure that workers do not lose their rights if an SPE moves to another country or takes part in a cross-border merger.

The proposed SPE Regulation will require approval by the Council of Ministers and the European Parliament before coming into force. The Commission proposes that the SPE Regulation enter into force on 1 July 2010.

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# Countdown to market opening in postal services

On 24 June 2008 Internal Market and Services Commissioner Charlie McCreevy hosted a high-level conference on postal market reform to bring together key stakeholders in the final phase before full market opening which for most Member States will at the end of December 2010.



The high-level conference 'The EU Internal Market for Postal Services – creating it together' which took place in Brussels in June marked the start of the final and decisive phase of EU postal market reform.

The recent adoption of the 3rd Postal Directive (2008/6/EC) in February 2008 by the European Parliament and Council means there will be full market opening by 31st December 2010 for the majority of Member States (95% of the EU postal markets) and by 31st December 2012 for the remaining Member States.

The Directive thus provides the basis for the accomplishment of the Single Market for postal services.

EU postal market reform was initiated



On the opening panel: Commissioner Charlie McCreevy, Guido Berardis, Director, DG Internal Market and Services, Kostas Hatzidakis, Greek Minister of Transport and Communications and Jörg Reinbothe, DG Internal Market and Services.

in the mid 1990s and is an important part of the Lisbon Agenda. But the EU's postal markets will not automatically open and work is not finished yet. The objective of the conference was thus to deliver a strong message that continued efforts at all levels are needed to achieve a competitive postal market bringing benefits to businesses and consumers.

Charlie McCreevy: "... a true Internal Postal Market cannot and must not be driven solely by Brussels but.... it requires all of us to work together"

## Key Single Market industry

Postal services account for some 1% of EU Gross Domestic Product (GDP) and 5 million people are employed in the sector. At the crossroads between communications, advertising and transport, postal services are a key industry that holds the Single Market and its citizens together. Without postal services, the Single Market would not work.

The conference brought together all relevant stakeholders in the postal sector. This ranged from governments to postal regulators, incumbent operators and competitors, consumers, trade unions and representatives of the European

institutions. The conference generated considerable interest and stakeholders were represented at the highest levels including government ministers, state secretaries, presidents of national postal regulators and CEOs, which demonstrated the importance of the event for the sector.

## Key-note speeches

The morning session was devoted to some selected, high-ranking key-note speakers. All key-note speakers acknowledged the importance of the postal sector to the proper functioning of the Single Market and its crucial role in communication and trade that is vital for many economic activities. Speakers stressed the importance of the liberalisation of the postal market as a means to improve the efficiency and quality of postal services and considered that liberalisation is indispensable for the postal services market to face competition from the ICT sector. They agreed that work is not yet finished and efforts have to continue.

Charlie McCreevy, Commissioner for Internal Market and Services, delivered a strong message to the conference that creating a sustainable internal postal market is a joint responsibility and that it takes more than abolishing the legal monopolies to meet this target.



“Your presence makes this conference not only very high level event but it shows that you agree with the basic objective that underpins this conference: That a true Internal Postal Market cannot and must not be driven solely by Brussels but that it requires all of us to work together;” he said.

Neelie Kroes, Commissioner for competition, supported Commissioner McCreevy in his commitment to effectively open up the postal markets.



The Conference brought together stakeholders in the postal sector ranging from governments to postal regulators, incumbent operators and competitors, consumers, trade unions and representatives of the European institutions.

Other key-note speakers included the Portuguese Minister for Public Works, Transport and Communications, Mário Lino, and the Greek Minister for Transport and Communications, Kostas Hatzidakis.

Minister Lino presented the Council's perspective on the negotiations for the 3rd Postal Directive. The political agreement on the Directive had been reached in the Council under the Portuguese Presidency in October 2007.

Minister Hatzidakis worked on the postal services dossier both as an MEP (from 1994-2007) and as rapporteur of the European Parliament's Internal Market and Consumer Committee, and now as Greek Minister responsible for postal services. He laid out the challenges ahead from a Member State's perspective.

Finally, MEP Markus Ferber explained the main issues of the EP in the context of the negotiations of the Directive.

Ferber had been the rapporteur for the 3rd Postal Directive in the leading TRAN committee on Transport and Tourism in the European Parliament and as such had played a crucial role in shaping the compromise for the 3rd Postal Directive.

### Panel discussions

The afternoon session of the conference saw two discussion panels involving representatives from the postal industry (incumbent operators as well as new competitors), customers, regulators and governments.

The first panel focused on users' needs and challenges and the opportunities for businesses and consumers. The discussion showed that liberalisation indeed does provide opportunities for newcomers in the postal market as can be seen by the new company Kiala, which is building collection point networks for the delivery of parcels. The panel also identified the desire of users of postal services to have better value services and more cost-oriented prices.

The second panel focused on how to cope with the regulatory challenges ahead and how to ensure that the benefits of the Single Market will be realised. The panelists agreed that a lot remains to be done to achieve effective competition in the postal markets and that work has only just started.

The panel session saw an interesting discussion on minimum wages in the postal sector which is a hot issue at the moment. Proponents of the minimum wage argued that it is needed to establish a level playing field between the



MEP Markus Ferber with Jörg Reinbothe, Head of Unit, DG Internal Market and Services.

incumbent operators and new competitors. Opponents argued that minimum wages should not be used to block entry to the postal market and to protect the incumbent postal operator from competition.

The conference provided a platform for a frank exchange of views among active participants as well as the audience. It was an important event to remind the participants that the work towards completing the Single Market for postal



Mário Lino, Portuguese Minister for Public Works, Transport and Communications, with Guido Berardis, Director, DG Internal Market and Services.

services has to continue and that this is the responsibility of all stakeholders.

The participants appreciated the strong commitment of the Commission and its availability to assist Member States in the implementation process. The Commission suggested holding a review Conference in due course.

## Code of Best Practice drawn up to make public procurement more SME-friendly

An advisory document - the 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts' - has been drawn up by the Commission to help Member States and contracting authorities to change their procurement culture and to make it more SME-friendly. The 'Code' forms a key part of the support measures for SMEs presented by the Commission in the Small Business Act. The Code has been very well received by stakeholders as addressing the main difficulties encountered by SMEs and in offering practical solutions.

Public procurement in the EU – i.e. the purchases of goods, services and public works by governments and public utilities – is a vast market which amounted to some 1,800 billion euro in 2006, corresponding to 16% of EU GDP.

Improved access to these markets for SMEs would, it is recognised, be of considerable benefit to the EU economy.

Stakeholders consulted during the preparation of this Code stressed that what is most needed to facilitate SMEs' access to public procurement are not legislative changes in the EU Public Procurement Directives, but rather a change in the contracting authorities' procurement culture so that they become conscious of the specific situation of SMEs, make increased use of the various possibilities offered by the EU Directives and design their award procedures in a way that SMEs can compete on an equal footing.

### The Code of Best Practices

While EC public procurement law ensures the opening up of markets for all economic operators, there are some provisions which are particularly important for SMEs, as they provide solutions for problems faced by SMEs or mainly by SMEs.

Against this background, the 'Code' has a twofold purpose: providing Member

States' contracting authorities with general guidance on how they may apply the EU legal framework in a way which enhances SME participation in contract award procedures; and highlighting a number of national rules and practices that also facilitate access to public contracts by SMEs. These are illustrated by useful experience taken from different Member States.

### Solutions

This Code of Best Practices deals with solutions to the main difficulties encountered and reported by SMEs:

- Overcoming difficulties relating to the size of contracts
- Ensuring access to relevant information
- Improving the quality and understanding of the information provided
- Setting proportionate qualification levels and financial requirements
- Alleviating administrative burden
- Placing emphasis on value for money rather than on price
- Giving sufficient time to draw up tenders
- Ensuring that payments are made on time

### Barrier of 'too large' projects

SMEs often feel de facto excluded from

public contracts because they perceive the project size as being too large in relation to their firm size. The Code explains how such "big contracts" can be made accessible to SMEs, e.g. by subdividing them into separate lots.

### Cutting red tape

Also, SMEs often complain about the high administrative burden brought about by public procurement procedures. It is therefore important to make contracting authorities aware of their obligations (made explicit by the Public Procurement Directives) to keep requirements relating to economic and financial standing or technical/professional ability proportionate to the contract to be awarded.

The Code highlights best practices to avoid onerous paperwork, e.g. the one according to which contracting authorities should not ask for documents they can find in public registers.

### Promoting innovative SMEs

SMEs often feel disadvantaged by too strict technical specifications (e.g. references to particularly strict technical standards). The new Public Procurement Directives provide for the possibility to define the technical specifications of a contract in terms of performance or functional requirements. This new approach, which is not used to its full potential yet, could benefit SMEs generally and in particular innovative SMEs.

### Single document

This is the first time that the relevant procurement rules and practices are gathered in a single document, allowing Member States and contracting authorities to take advantage of useful experience gained in other Member States.

# Services Directive implementation enters the decisive phase



The final adoption of the Services Directive in December 2006 successfully concluded negotiations on one of the most ambitious Single Market projects in recent years. The ongoing three year implementation period of the Directive ends on 28 December 2009. By that date, Member States will have to fully transpose its provisions into national law and put in place several practical arrangements, such as the 'Points of Single Contact' for service providers and a system of administrative cooperation between the national administrations. If properly implemented, the comprehensive simplification programme set out by the Directive should make life easier for the 'end-users' and main beneficiaries of the Single Market - SMEs and consumers - and create more consistent and transparent framework conditions for the most important area of economic activity in the EU – the services sector.

At the mid-term of the implementation process, Single Market News takes a look at the progress achieved so far and the challenges ahead for this demanding process.



## A challenging implementation process...

Implementing the Services Directive constitutes a major challenge for the Member States. It not only involves changes in legislation – as is the case with all EU Directives - but also requires Member States to manage several large scale projects, involving important coordination efforts throughout all levels of the national administrations. Member States have to set up “Points of Single Contact” for service providers, allow for electronic completion of all administrative procedures, review and adapt their administrative and legal requirements and put in place a comprehensive system of administrative cooperation between national administrations. In most Member States, these projects require active participation of competent authorities, including professional bodies, at regional or even local level.

“One positive conclusion even before the end of the implementation period: the Services Directive has significantly increased the commitment of Member State administrations to the Single Market”

## ... managed in close partnership

Because of this complexity, the Commission has very early in the process taken the commitment to actively assist Member States in their efforts. Thus, since the final adoption of the Directive, significant efforts and resources have been deployed to facilitate and coordinate its implementation .



**Commissioner Charlie McCreevy: "...strong political backing and deployment of sufficient resources are key to making the Single Market in services a reality for businesses and consumers."**

An important achievement of the first half of the implementation process is that all Member States are 'on board', participating actively in work and taking ownership of this large project. Very close working relationships have been established between the Commission and the Member States based on both regular bilateral contacts and "expert group" meetings with all 27 Member States (and the three EEA countries). Intensive contacts are also taking place between the Member States themselves. Technical discussions and exchanges of best practices have proved to be vital to gain a common understanding on several aspects of the Directive and create a level playing field in implementation.

Contacts with Member States therefore allow one positive conclusion even before the end of the implementation period: the Services Directive has significantly increased the commitment of Member State administrations to the Single Market. This fact alone is remarkable given the difficult and often divisive discussions that accompanied the initial proposal.

#### **A political priority (at all levels)**

Proper implementation of the Directive is of crucial importance for revitalising the business environment in the EU, all the more so in the face of the current risk of economic slowdown. This has been emphasised on many occasions. The Spring European Council of March 2008 confirmed its consistent commitment to a "complete, coherent, and timely implementation of the Services Directive", which it highlighted as an immediate priority for action. The same holds true for the European Parliament, which is following implementation closely.

To ensure that the main beneficiaries of the Directive, SMEs and consumers, can fully reap its advantages, business and consumer organisations, as well as other stakeholders, keep a watchful eye on Member States' progress (see box below). The Directive also features among the key policy actions of the recently adopted 'Small Business Act' for Europe, which aims at improving and streamlining framework conditions for SMEs. In a general manner, the Directive underpins and complements the overall programmes of microeconomic reforms which are currently being implemented across the EU, including in the context of the Lisbon Strategy. In most Member States, the implementation process therefore enjoys a high political profile and is used as an opportunity to further push vital modernisation and simplification efforts.

#### **The need to free up services markets**

The economic evidence for this is clear. Services are the main driver of growth and jobs in Europe, representing around 70% of GDP and employment. They have been source of an impressive 95% of new jobs created in recent years.

Despite this exceptional economic performance, their significant growth potential largely remains untapped due to numerous barriers that hinder trade between Member States and the setting-up of new businesses in general. The most telling indicator for this is that services

#### **Stakeholder involvement in implementation**

Stakeholders are increasingly monitoring the implementation process, both at EU level and in the Member States, as they are the main beneficiaries of a borderless Single Market.

In July 2008, EuroChambers, the association of European Chambers of Commerce and Industry, published its third survey on the state of implementation of the Services Directive. The survey looks at progress achieved in the Member States on the key aspects of the Directive and points out areas in which efforts need to be enhanced to ensure timely and consistent implementation, in particular as regards the setting up of the 'Points of Single Contact'. EuroChambers carries out this exercise every six months.

BusinessEurope, the Confederation of European Business, is organising a high level event on the Services Directive, to be held on 24 November in Brussels. The results of a comparative study on implementation in the Member States will be presented at that event. National business, consumer and trade associations are generally in close contact with their respective governments to follow progress and provide their input.



still only account for around 20% of cross-border trade in the EU. Today, companies who want to set up an establishment or provide services in another Member State still face numerous legal and administrative barriers, involving substantial delays and costs in terms of legal fees and staff dealing with procedures.

Many requirements imposed on providers are excessive and contrary to EU law. This has a particularly dissuasive effect on SMEs - around 98% of all services companies in Europe - who very often abandon the idea of testing new markets.

The absence of a real internal market for services also harms recipients, not only consumers but also business, as existing barriers limit choice and lack of competition keeps prices unnecessarily high. Moreover, in a number of cases recipients are faced with discriminatory practices when they use services from other Member States, such as price discriminations or refusals to sell.

The Services Directive aims at knocking down these obstacles and releasing the unexploited potential of services. It sets out an ambitious programme of administrative and regulatory simplification that will allow providers and recipients of services to effectively exercise their rights and benefit from the advantages offered by the Internal Market.

The main tasks to be performed by Member States in implementation of the Directive can be articulated around three large scale projects.

#### Review and adaptation of national legislation

First, Member States have to carry out a comprehensive review of their legislation on services. The Directive basically requires them to 'clean their house', have a critical look at their existing regulatory framework and get rid of unjustified complications and red tape. Member States have to simplify their authorisation schemes for services and make them more transparent.

Furthermore certain particularly restrictive and discriminatory requirements have to be removed, such as the case-by-case application of economic needs tests (obliging the provider to prove the existence of an economic need or market demand for his service) or nationality or residence requirements imposed on the provider or his staff.

Member States also have to abolish requirements which they may currently apply to service providers established in other Member States, such as prior declarations or the obligation to obtain an authorisation in the Member State where the service is provided.

This review and simplification of national legislation re-

### Priority Action presented to the Competitiveness Council, May 2008

- The setting up of "points of single contact" - the basic organisational decisions need to be taken without further delay in all Member States. Concrete solutions as to their architecture and practical functioning need to be developed during the remaining of 2008 so as to have sufficient time for their implementation and testing in 2009;
- The availability of electronic procedures and the possibility to use them across borders - a clear commitment to develop in 2008 a common approach on the key issues linked to cross border use of electronic procedures is crucial;
- The review of national legislation - it should be completed as early as possible in 2008 so as to allow for sufficient time for the drafting and adoption of the required legislative measures and for the preparations of the reports which need to be submitted to prepare the process of "mutual evaluation";
- The organisation of administrative cooperation - sustained efforts and the active engagement of Member States are required in 2008 to take all the necessary decisions for the running in 2009 of a Services Directive-IMI pilot project. Member States also need to start identifying the competent authorities that will participate in the administrative cooperation system and dedicate substantive efforts to their awareness raising and training.

quires a high degree of internal coordination within the Member States, as requirements may exist at central, regional or local level as well as in the rules of professional bodies. The resulting regulatory simplification will significantly reduce administrative burden, legal research and compliance costs for businesses.

To enhance transparency and enable the exchange of modernisation practices between Member States, the 'screening' process will be followed up - in 2010 after the end of the implementation period of the Directive - by an innovative exercise of 'mutual evaluation' between Member States. The idea behind this 'mutual evaluation' process is that all Member States, the Commission and stakeholders will work together to assess the depth and quality of the results obtained in the review and simplification of national legislation on services.

#### 'Points of Single Contact' and electronic procedures

Second, Member States have to set up so-called 'Points of Single Contact', destined to become the single interlocutors through which service providers can easily obtain all relevant information and complete all necessary procedures - without having to contact a number of administrative or professional bodies, as is the case today.



Member States are free to designate the bodies in charge of setting up the 'Points of Single Contact' and to decide on their number and financing. Their setting-up requires Member States, at all levels of their administration, to rationalise and modernise administrative procedures. This will considerably speed up procedures and reduce costs.

The possibility to complete all procedures through 'Points of Single Contact' has to be available at a distance and by electronic means, meaning that Member States will have to provide for eGovernment services that can also be used across borders – by applicants who reside and providers who are established in other Member States. It is the first time that Member States are under a legal obligation to put in place such eGovernment services and make their use possible across borders. This is a particularly challenging objective and the Commission is closely assisting Member States in finding a common approach to the key issues linked to it such as the cross border use of electronic signatures.

#### Administrative cooperation between Member States

A third large scale project is the setting up of a network of administrative cooperation between Member States' authorities. The aim is clear: enhance trust in the internal market by helping administrations work together on a regular basis.

The Internal Market Information system (IMI) is the electronic tool that will provide the basis for administrative cooperation. IMI is currently being developed by the Commission in close cooperation with the Member States. It will allow competent authorities to easily identify their counterparts in other Member States and exchange information with them, using pre-translated forms and comprehensive search facilities. A first version of IMI is currently being tested to support the administrative cooperation provisions of the 'Professional Qualifications Directive'. Work with Member States to prepare its use (including some new specific functionalities) in support of administrative cooperation under the Services Directive is underway. To make sure that the system will be fully tested and operational by the implementation deadline, a pilot project will be launched in the beginning of next year.

## A Framework Directive for services

The Services Directive covers a wide array of service activities as it applies to all services that are not explicitly excluded from it.

By way of examples, it covers services such as construction and crafts, retail, most of the regulated professions (such as legal and fiscal advisers, architects, engineers and accountants), business-related services (such as office maintenance, management consultancy and advertising), tourism, catering and accommodation services, real estate services or renting and leasing activities.

Several service activities are explicitly excluded from its scope of application, notably financial services, electronic communications networks, transport services, health services, audiovisual services, gambling activities and certain social services.

#### Moving on, now...

A substantial amount of work has been accomplished in the first half of the implementation period. But a lot remains to be done by the end 2009 deadline and efforts need to be stepped up in certain areas. On 29 May 2008, Commissioner McCreevy participated in the meeting of the Competitiveness Council to provide ministers with an overview of the state of implementation at mid-term stage.

On this occasion the Commissioner invited Member States to carry out four priority actions without further delay to be able to meet the Directive's implementation deadline (see box on page 13).

Looking forward, the Commissioner emphasised that "Member States need to make sustained and consistent efforts throughout the remainder of the implementation process," adding that "strong political backing and deployment of sufficient resources are key to making the Single Market in services a reality for businesses and consumers."



## Intellectual Property: Performer copyright term extended to 95 years

The Commission has proposed changes to copyright rules to allow performers to receive royalty payments for their work for 95 instead of the current 50 years. Additionally, the copyright rules relating to co-written music will be harmonised across the EU to ensure equitable treatment.

Under current EU laws, recorded musical performances are protected for a maximum of 50 years after which the performers cease to receive remuneration when work is played in public. The Commission is proposing to extend the term of copyright for performers to 95 years in line with other territories such as the United States.

This means that artists in Europe will be assured of a steady income from their performances during their entire lifetime.

This will benefit not only high profile artists such as Sir Cliff Richard or the Beatles, but also the thousands of anonymous session musicians, who contributed to the original sound recordings in the late fifties and sixties.

In this way the income gap that performers face toward the end of their lives will be bridged.

The Commission's impact study demonstrates that the proposal would give average performers additional income to the tune of anything ranging from 150 euro to 2,000 euro per year. These amounts, mostly attributable to airplay royalties, might not appear spectacular for those that have salaried jobs, but they are often considerable for musical performers.

With the copyright term extended, record producers also will receive additional revenue from the sale of records in shops and on the Internet. This should allow producers to adapt to the rapidly changing business environment which is characterised by a fast decline in physical sales (- 30% over the past five years) and the comparatively slow growth of online sales revenue.

### Co-written compositions

The Commission is also proposing to fully harmonise the copyright term that applies to co-written musical compositions.

Music is overwhelmingly co-written. For example, in an opera, there are often different authors to the music and to the lyrics. Moreover, in musical genres such as jazz, rock and pop music, the creative process is often collaborative in nature.

In different Member States, such co-written musical compositions are either classified as:

- A single work of joint authorship with a unitary term of protection, running from the death of the last surviving co-author; or
- Separate works with separate terms running from the death of each individual author.



This means that a single piece of music will have different terms of protection in different Member States. Harmonisation of copyright terms with respect to those works is therefore incomplete.

The Commission is proposing a uniform way of calculating the term of protection.

The Directive on copyright term, which will be amended by this proposal on term extension, already contains a special rule which solves a similar problem specifically for films.

The proposal would simply extend that rule to co-written music, in order to ensure that such music enjoys the same term of protection in all Member States.

# Commission launches strategy to drive innovation from the laboratory to the marketplace

A new strategy to strengthen the industrial property rights for Europe has been published by the Commission. It sets out to support inventors in making informed choices on the protection of their industrial property rights and calls for robust enforcement against counterfeiting and piracy.

The Commission has adopted a Communication on a new industrial property rights strategy for Europe. Together with the creation of a Community patent and integrated patent jurisdiction, the Communication outlines a number of actions as the keystone to maintaining a high quality industrial property rights system for the EU in the 21st century.

The Communication also aims to ensure that industrial property rights in Europe are of high quality and that they are accessible to all innovators, particularly small and medium-sized enterprises (SMEs).



Industrial property rights include rights such as patents, trade marks, industrial designs, plant variety rights, geographical indications etc. It is an important branch

of 'IPR' (intellectual property rights) the other being copyright and neighbouring rights which covers creations of the mind such as literary and artistic works such as films or books as well as sound recordings and performances.

### Why EU action

A strong and balanced IPR system is a driving force for promoting innovation

and improving competitiveness. In the 2008-2010 cycle of the renewed Lisbon strategy for growth and jobs, the investment in knowledge and innovation is one of the four priority areas for focused actions.

In order for Europe to respond to the challenges of the global economy, a strategy on industrial property rights is needed to ensure a high-quality, affordable, consistent and balanced system.

European businesses need strong industrial property rights to maintain their competitive advantage in the global market place through product innovation.

### Scope of the Communication

The Communication sets out a coherent framework for different categories of industrial property rights.

The subjects dealt with include:

- the quality of industrial property rights;
- support for small and medium-sized enterprises;
- the fight against counterfeiting and piracy.

These are covered in relation to action in the EU and the international dimension with third countries.

"Effective enforcement on the ground against counterfeiting and piracy is essential. This problem is reaching alarming levels...."

Along with the urgent adoption of the Community patent proposal and the creation of an integrated EU-wide jurisdiction for patents, the actions proposed in the Communication set out to ensure that Europe will have a high quality industrial property rights system in the years to come.

### High quality rights

Europe has to have high-quality industrial property rights. Such rights, that only offer rewards to inventions that meet the legal requirements, are essential to a well-functioning system, along with user-friendly access on information on these rights to business and society.

To this end, the Commission will undertake studies on patent quality and on the overall functioning of the trademark systems in the EU.

This would also include the Community trademark, which the Office for Harmonisation of the Internal Market has been successfully registering for over 10 years.



## Green Paper on Copyright in the Knowledge Economy

A consultative Green Paper about future copyright policy in the knowledge economy has been published by the Commission.

The aim of the consultation process is to have a structured debate on the long-term future of copyright policy in the knowledge-intensive areas.

In its Single Market Review package published last November, the Commission highlighted the need to promote free movement of knowledge and innovation as the 'Fifth freedom' in the Single Market.

The Green Paper which it has drawn up focuses on how research, science and educational materials are disseminated to the public and whether knowledge is circulating freely in the internal market.

The consultation document also looks at the issue of whether the current copyright framework is sufficiently robust to protect knowledge products and whether authors and publishers are sufficiently encouraged to create and disseminate electronic versions of these products.

The consultation document focuses on topics that appear relevant for the development of a modern economy, driven by the rapid dissemination of knowledge and information.

In particular, the Green Paper is an attempt to structure the copyright debate as it relates to scientific publishing, the digital preservation of Europe's cultural heritage, orphan works, consumer access to protected works and the special

needs for the disabled to participate in the information society.

### Future challenges

The Green Paper points to future challenges in the fields of scientific and scholarly publishing, search engines and special derogations for libraries, researchers and disabled people.

The Green paper focuses not only on the dissemination of knowledge for research, science and education but also on the current legal framework in the area of copyright and the possibilities it can currently offer to a variety of users (social institutions, museums, search engines, disabled people, teaching establishments).

info [http://ec.europa.eu/internal\\_market/copyright/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/index_en.htm)

### Exploitation of rights

It is important to facilitate the exploitation by SMEs of industrial property rights.

The Communication has outlined measures to facilitate access to industrial property rights and dispute resolution procedures, and to improve awareness among SMEs of the management of industrial property as an integral element within an overall business plan.

### Enforcement

Effective enforcement on the ground against counterfeiting and piracy is essential. This problem is reaching alarming levels with damaging effects to job creation in Europe and the health and safety of consumers.

In addition to improving coordination between key enforcement actors at a national level, the Commission will work towards effective cooperation between Member States in intelligence gather-

ing and rapid information exchange on counterfeit and pirated goods.

Furthermore, the Commission will help facilitate agreements involving both the public and private sector to crack down on blatant violations of intellectual property rights.

Charlie McCreevy, Commissioner for Internal Market and Services said: "This strategy will offer a springboard for European companies to compete in the global economy.

"Not only will it help inventors across Europe to protect their ideas with strong industrial property rights, but it will also provide a catalyst for cutting-edge inventions from companies of all sizes to become successful in the market.

"In addition, the Communication reinforces once more the point that the EU will strike hard at counterfeiting and piracy."

### Conference on 'Industrial Property Rights in the Internal Market'

In its recent Communications, the Commission has set out its vision for improving the patent system in Europe and for revitalising the debate on this issue. Patents are indeed a driving force for promoting innovation, growth and competitiveness, but the single market for patents remains incomplete.

To debate the best future direction a Conference on Industrial Property Rights is being organised in Strasbourg, 16 -17 October 2008, by DG Internal Market and Services in collaboration with the French Presidency of the EU.

The three main topics to be tackled by the Conference will be: a Jurisdiction for European and Community Patents, the Community Patent, and Counterfeiting. The third of these topics will be discussed from different aspects such as the economic stakes and implications for competitiveness and innovation, the consequences for the health and safety of citizens, and cross-border cooperation to strengthen enforcement of Industrial Property Rights.

info [http://ec.europa.eu/internal\\_market/indprop/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/index_en.htm)

# UCITS: Improved EU framework proposed for investment funds

The Commission has proposed an important revision of the EU framework for investment funds. The new provisions set out to increase the efficiency of the current legislative framework in a number of key areas and help provide consumers with access to professionally managed investments on affordable terms.

The Commission is proposing action in a number of key areas to increase the efficiency of the current legislative framework relating to investment funds that are authorised in the EU as 'UCITS' (Undertakings for Collective Investment in Transferable Securities). Such investment funds are of great strategic importance in the EU economy and the volume at the end of last year stood at more than 6.4 trillion euro in total, equivalent to half of the Union's GDP.

EU funds are currently on average 5 times smaller than U.S. funds and the cost of managing them is twice as high.

The proposed revisions will allow UCITS managers to develop their cross-border activities and generate savings consolidation and economies of scale.

Investors will also benefit from a greater choice of investment funds operating at lower costs.

The proposal also seeks to improve investor protection by making sure that retail investors receive clear, easily understandable and relevant information when investing in UCITS.

These improvements will help reinforce the competitiveness of UCITS on global markets. Currently 40 % of UCITS originating in the EU are sold in third countries, mainly Asia, the Gulf region and Latin America.

### Importance of UCITS

Investment funds are investment products created with the sole purpose of gathering assets from investors, and investing those assets in a portfolio of financial instruments such as stocks, bonds and other securities. In this way, small investors have access to a professionally managed and diversified basket of financial instruments at affordable costs.

"The current burdensome notification procedures can take several months before completed. They entail unnecessary red-tape and administrative costs estimated at around 45 million euro. The new notification procedure will be reduced to a simple, electronic, regulator-to-regulator communication."

Investment funds are a long-term savings product widely used by European households. They account for 11.5% of European household financial assets.

UCITS are investment funds established and authorised in conformity with the requirements of Directive 85/611/EEC.

Once authorised, a UCITS fund can be distributed to investors across the EU upon notification to the corresponding national authorities.

The Directive has been key to the successful development of the European market for investment funds.

### New notification procedure

The proposed revisions to the UCITS Directive will remove administrative barriers to the cross-border distribution of UCITS funds.

The current burdensome notification procedures can take several months before completed. They entail unnecessary red-tape and administrative costs estimated at around 45 million euro. The new notification procedure will be reduced to a simple, electronic, regulator-to-regulator communication. The distribution of units of funds will start immediately after such communication.

### Framework for mergers

The proposed changes will also create a framework for mergers between UCITS funds and allow the use of master-feeder structures.

Fund mergers will be allowed, on both a domestic and a cross-border basis, and their authorisation procedure will be harmonised, as will the required level of information to be provided to investors.

Subject to approval and the appropriate information of investors, a UCITS fund (feeder) will be allowed to fully invest its assets into another fund (master).

It is estimated that these new management opportunities will allow UCITS to make up to 6 billion euro in savings and economies of scale. These could in turn be shared with investors in the form of lower investment costs.

"...these new management opportunities will allow UCITS to make up to 6 billion euro in savings and economies of scale."

investors or endanger the UCITS brand - traditionally considered to be a European 'gold standard' for investor protection.

The Commission has therefore decided to consult the Committee of European Securities Regulators (CESR) on these issues.

CESR will be invited to provide advice that will help the Commission to develop provisions permitting the introduction of a management company passport under conditions that are consistent with high level of investor protection.

In that regard CESR will be invited to advise the Commission by 1 November 2008 on the structure and principles which could guide potential future amendments to the UCITS Directive which may be needed to give effect to the UCITS management company passport.

Following that advice, the Commission will come forward with an appropriate proposal in time to allow for its adoption during the current legislature.

#### 'Breakthrough' proposal

Internal Market and Services Commissioner Charlie McCreevy said: "The UCITS proposal represents a real breakthrough for investment funds in Europe. The enhanced regulatory environment will reduce unnecessary costs and bureaucracy in cross-border operations and improve investor protection. We expect these benefits to lead to lower costs for investors.



This legislative package should ensure that the UCITS rulebook continues to be a success story in Europe and also in other parts of the world, like Asia or Latin America, where the UCITS brand is widely sold and highly valued."

As part of the Commission's Better Regulation Strategy and its firm commitment to simplify the regulatory environment, the new Directive will replace the existing 1985 UCITS Directive and its successive amendments with a single text.

The proposal now passes to the European Parliament and Council for consideration.

#### Key investor information

In the proposals, the Simplified Prospectus will be replaced by a new concept of Key Investor Information (KII).

KII will be contained in a short document conveying key facts to retail investors in a clear and understandable manner so as to assist them in taking an informed investment decision.

The new proposals also set out to improve cooperation mechanisms between national supervisors.

#### Management company passport

As regards the 'management company passport' (MCP) - i.e. the possibility for funds authorised in one Member State to be managed remotely by a management company established in another Member State - the most recent consultation process has revealed that there are a series of potential supervisory and investor protection concerns.

These need to be tackled if the MCP is not to lessen the protection of retail

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# Support from the Committee of the Regions for the Single Market Review

In the Autumn the EU's Committee of the Regions (CoR) will be presenting its opinion on the Single Market Review published by the Commission last November. Minister Volker Hoff of the Land of Hessen, CoR's rapporteur on the Single Market Review report, talks to SMN



Mr Volker Hoff (DE/EPP), Minister of the Land of Hessen and rapporteur for the CoR's opinion on the Single Market Review: "EU-level action must bring demonstrable value added"

"In today's Europe, some three quarters of EU legislation is implemented at regional or local level. And the job-creating and wealth-creating forces of the EU economy are recognised to be the small businesses - the SMEs - who are for the most part local operators. We at the Committee of the Regions thus have a significant perspective to offer on future policy to effectively develop the Single Market," emphasises Volker Hoff, rapporteur of the CoR's Commission for Economic and Social Policy (ECOS).

The Single Market Review package presented by the Commission last November has been closely examined by the members of ECOS and its report 'Single market, social vision and services of general interest' will be presented for adoption by the CoR in the autumn.

### Great achievements

"We recognise, like many others, that the Single Market is one of the EU's greatest achievements to date and is a key factor in enhancing the quality of life and prosperity of EU citizens," Hoff says.

"But the economic and political environment of the 1980s when the Single Market strategy was conceived is markedly different from today. The world economy is more globalised. There are major new players on the scene. The EU, as an economic bloc is faced with fierce competition from other often lower cost territories."

Against this background, the CoR sees the package of measures drawn up by the Commission as an important step towards meeting the challenges of the present and the future.

The globalisation challenge requires a strong response from the EU involving, among other things, the removal of barriers to the promotion of knowledge and innovation in EU countries. It must also incorporate a strong social and environmental dimension, the CoR stresses.

"While I am in full agreement with the broad sweep of the Commission's approach, there are many areas of detail which will have to be examined closely. Of particular concern to the CoR and the regions and local governments it represents is the issue of subsidiarity," Minister Hoff explains.

"We are convinced that the Single Market can only operate effectively if businesses are competitive and the subsidiarity principle is complied with. The European institutions cannot micromanage 500 million consumers. It should focus its efforts where it offers a clear value added to citizens and businesses."

The CoR points out that the Commission may, in line with the principles of subsidiarity and proportionality, only take action if the Member States alone are not sufficiently equipped to achieve

the objectives in question and on condition that EU-level action will bring a demonstrable added value.

### SME support and better regulation

The CoR shares the Commission's view that the Single Market must strengthen the position of SMEs and maximise benefits to consumers.

The Commission rightly points to the importance of the small business sector – the SMEs – to the EU economy. They now account for most of the job creation in the EU and are driving force of the economy, Hoff explains.

More indeed should clearly be done to facilitate access for SMEs to the Single Market to enable them to grow more effectively and to exploit their entrepreneurial potential to a greater degree.

"We fully support the Commission in promoting the 'think small first' principle and its initiatives to back SMEs," Hoff says. "The simplified company law structures that are in the pipeline are a good way of boosting the competitiveness of European businesses."

"We believe that simple, unbureaucratic and effective rules provide a direct conduit to a balanced competitive environment and to economic stability. Suc-

cessful measures in this field will have a direct and positive economic impact. Even reducing the costs and complexity of start-up advice is beneficial at the entrepreneurial level."

### Better regulation

The CoR welcomes the fact that the Single Market Review repeatedly draws attention to the importance of "Better Regulation", impact assessments, evaluation and simplification in respect of legal provisions; and the need to reduce bureaucracy.

The Land of Hessen Minister points out that the regionally-focused members of the CoR can play a useful role focusing EU efforts to cut bureaucracy. CoR members strongly believe the Commission and the Member States should consult local and regional authorities and industry to discuss which bureaucratic barriers can be dismantled in the interests of businesses, and SMEs in particular.

### Research and innovation

In the face of heightened competition from knowledge-based economies European businesses, the CoR recognises, need to be even more innovative and creative if they are to stay competitive. It is important therefore that the EU push-es ahead and raises research spending.

"The European Council has set the objective of raising research expenditure in the EU to 3% of GDP. This in our view is a key element in the competitiveness and future sustainability of European industry," Hoff emphasises.

"In addition to increased competition, entrepreneurship, innovation and investment, these factors are a driving force of enhanced productivity."

### Education and training

The Committee of the Regions also accords great importance to education and training – and thus skills development. "This is the major challenge facing the EU, Member States and the regions," Hoff says.

"The capacity of the Member States, regions and local authorities to invest in human capital needs to be improved so that the concept of lifelong learning does in fact become a reality.

"CoR recognises the key importance of education and skills acquisition for young people as a sine qua non of job creation, social integration and thus the success of the Single Market."

### Managing change

Whilst there can clearly be benefits to globalisation, Europe's response to meet the challenge will require significant changes to the economic and social landscape of the EU in order to ensure the long term international competitiveness of EU industry.

CoR agrees with the Commission that many of the requisite innovative economic and social policy solutions will have to be found primarily at local, regional and national levels. This, the CoR says, highlights the important role to be played in this context by local and regional authorities, and the social partners.

### Perception

"The EU, we recognise, does have a perception problem at the grass roots level," Hoff cautions. "People are more aware of EU rules trying to regulate the shape of bananas than the global economic benefits which the Single Market has brought about.

"In my own Land of Hessen we had a short-lived but heated dispute with Brussels over a threatened change to the EU classification of our famous and centuries-old 'Apfelwein'. Though the Commission finally accepted that our apple-based drink could continue to be called 'wine', such disputes do no good for the reputation of the EU at the popular level."



The Committee of the Regions (CoR) is the political assembly that provides local and regional authorities with a voice at the heart of the European Union. The CoR, whose seat is in Brussels, is composed of 344 representatives of regional and local governments and aims at increasing the participation of European regions in community life.

The Land of Hessen indeed is very proud of its work in removing bureaucracy, Hoff explains, and the last thing it wants is more paperwork ordered from Brussels in the search for greater regulation.

"Support for the EU will increase only when people personally experience the benefits which it offers them. There is clearly a need for Member States to communicate, in a more focused way, the links between the Single Market, on the one hand, and consumer protection, the expansion of employment, economic growth and price stability, on the other hand."

Minister Hoff believes that the regions can play a more prominent role in improving communications about Europe.

In an earlier report ('The future of the single market and stocktaking of European society') the CoR has given its view that the Commission, the Member States and local and regional authorities should, in order to allay the concerns of citizens and businesses, better communicate how to manage economic and social adjustment that results from globalisation and increased competition.

## SINGLE MARKET INFRINGEMENTS

### Hydroelectric concession system: France

The Commission has decided to refer France to the European Court of Justice over its legislation giving preference to outgoing concession-holders when concessions for works using hydraulic power come up for renewal. By benefiting companies which already hold a concession and which are thus already established in France, this

system is consequently incompatible with the principle of the freedom of establishment which prohibits restrictions on the cross-border exercise of economic activities, including in particular any form of direct or indirect discrimination between Community operators.

### Award of contracts for the supply of helicopters: Spain

The Commission has decided to send a reasoned opinion to Spain concerning the conclusion of two framework agreements with the company Eurocopter for the supply of helicopters respectively to the Ministry of the Interior for national police and "Guardia Civil" and to the

Ministry of Agriculture, Fisheries and Food for missions of surveillance and support of the national fishing fleet. Based on these framework agreements both Ministries have already awarded two contracts for the supply of helicopters.

### Andalusian rules on commercial premises: Spain

The Commission has decided to send a letter of formal notice to Spain because of restrictions on the establishment of commercial premises in the Autonomous Community of Andalusia. The Andalusian provisions on set-

ting up commercial premises could be contrary to what Article 43 of the EC Treaty lays down regarding freedom of establishment.

### Liquidity reserve obligations: Austria (closure)

The Commission has closed the infringement procedure initiated against Austria on legislation requiring banks in the cooperative and savings banks sector to keep a liquidity reserve exclusively with their central institution in Austria. Following an amendment made to the

Austrian legislation in question, these banks are offered the possibility to keep the liquidity reserve with another bank in the EU if they join a scheme of joint liquidity compensation and keep that reserve to provide liquidity in case of need.

### Restrictions on provision of services by networks of audit firms: France

The Commission has decided to refer France to the European Court of Justice over its national independence rules relating to international networks of audit firms. The Commission considers that Articles 24 and 29 of the 2005 French Code of Ethics for auditors unduly restrict

the freedom to provide services as guaranteed by Article 49 of the Treaty. This follows a reasoned opinion sent in October 2007, after which the French authorities failed to amend the relevant Articles accordingly.

#### INFRINGEMENT PROCEDURES

If the Commission obtains or receives convincing evidence from a complainant that an infringement of EU law is taking place, it first sends the Member States concerned a letter of formal notice.

If the Member State does not reply with information allowing the case to be closed, the Commission sends a reasoned opinion, the second step of the infringement proceedings under Article 226 of the EC Treaty. If there is no satisfactory response within two months, the Commission may then decide to refer the case to the European Court of Justice in Luxembourg.

## Contracts for Dundalk bypass motorway and animal identification tags: Ireland

The Commission has decided to refer Ireland to the European Court of Justice over the award of a works contract for the Dundalk bypass motorway and its national legislation in the field of public procurement remedies.

The Commission has also decided to send Ireland a reasoned opinion concerning the award of a contract for the supply of animal identification tags.

## Regional bus transport services: Czech Republic

The Commission has decided to send a reasoned opinion to the Czech Republic concerning the procedure followed by the Czech Region of Usti nad Labem for the

award of a contract to a private undertaking for the provision of regional bus transport services.

## Free movement of services: Estonia and Portugal

The Commission will refer Portugal to the European Court of Justice over its rules on the provision of construction services. The Commission will also formally request Portugal to amend its rules on the provision of es-

tate agent services. Finally the Commission will formally request Estonia to amend its rules on the recognition of medical prescriptions by pharmacists. These formal requests take the form of reasoned opinions.

## Investment restrictions on statutory pension funds: Slovakia

The Commission has decided to formally request Slovakia to remove its investment restrictions on statutory pension funds, which in the Commission's view consti-

tute an infringement of Article 56 Treaty EC prohibiting restrictions on free movement of capital. This formal request takes the form of a reasoned opinion.

## Law on public project contracting: France (closure)

The Commission has decided to halt infringement proceedings against France arising out of a judgment of 20 October 2005 in which the Court of Justice held that, by reserving the task of delegated project contracting to a named list of legal entities under French law, France had failed to fulfil its obligations under Directive 92/50/EEC on public service contracts and under Article 49 of the

EC Treaty. The Commission has concluded that the assurances received from the French authorities and the clearer wording of some key texts demonstrate that the judgment has been fully complied with and that the legal framework for delegated project contracts now provides adequate legal certainty.

More information on infringement proceedings relating to the Single Market is available at:  
[http://ec.europa.eu/internal\\_market/infringements/index\\_en.htm](http://ec.europa.eu/internal_market/infringements/index_en.htm)

The latest information on infringement proceedings concerning all Member States is available at:  
[http://ec.europa.eu/community\\_law/eulaw/index\\_en.htm](http://ec.europa.eu/community_law/eulaw/index_en.htm)

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