Council of the
European Union

Brussels, 19 February 2015
(OR. en)

6117/1/15
REV 1

COMPET 33
MI 78
ECOFIN 89
POLGEN 13

NOTE

From:	Presidency
To:	Council
Subject:	Preparation for the Council meeting "Competitiveness" on 2 and 3 March 2015 EU Single Market policy - Policy debate

Delegations will find in Annex a Discussion Note on Single Market policy for the Competitiveness Council on 2 March 2015.

DISCUSSION PAPER FOR COMPETITIVENESS COUNCIL

EU Single Market policy

The Single Market is widely recognised as an important cornerstone for the European Union`s economic competitiveness and a powerful driver for new growth and jobs. Its further integration is our task that needs political priority as well as common effort both at the EU and national level.

The need for action

In the face of slow growth and high unemployment across many parts of the EU, there is a clear need for further structural reforms. The current momentum at the beginning of the new institutional cycle should be used to reinvigorate the further development and delivery of EU Single Market policy. The European Commission`s work programme for 2015[1] clearly shows the importance it attaches to the Single market through the two important work strands with regard to the *Internal Market strategy for goods and services* which will *"set out new approaches for capturing that (Single Market) potential"* and the *Digital Single Market Package* which will *"identify the major challenges to complete a secure, trustworthy and dynamic Digital Single Market."*

Further reinforcing the Single Market through actions at national and at EU level is a priority under the Commission's *Investment Plan for Europe*[2] which states the need for:

> *"providing greater regulatory predictability, removing barriers to investment across Europe and further reinforcing the Single Market by creating the optimal framework conditions for investment in Europe."*

[1] 5080/15, COM(2014)910
[2] 16115/14, COM(2014)903

In its Annual Growth Survey[3] the Commission identified a renewed commitment to structural reforms as one of three pillars of an integrated growth-friendly approach, alongside a coordinated approach to investment and pursuing fiscal responsibility. Because the uneven pace of structural reforms has been identified as one main reason for low growth expectations, the Commission has recommended focusing attention on a number of key reforms including:

> *„(i) disproportionate and unjustified authorisation requirements in some Member States, notably legal form and shareholding requirements; (ii) lack of clarity of domestic legislation as to the rules applicable to businesses providing cross-border services; (iii) lack of mutual recognition; (iv) cumbersome administrative procedures, with scope for improving the performance of the Points of Single Contact; (iv) uneven progress on the ongoing mutual evaluation of professional regulations and reforms of regulated professions; (v) remaining obstacles to the free movement of goods."*

Generally it is fair to say that completing the Single Market requires continuous effort focused on a range of issues. Therefore, it is encouraging to see that the Commission is committed to work delivering further Single Market integration, notably in sectors where the economic potential is greatest and that is planning to announce a package of measures to do this.

Single Market for services

Services make up more than 70% of the EU economy and account for most job creation. The existence of regulatory and non-regulatory barriers considerably hamper both the cross-border establishment and the cross-border provision of services. A recent Commission assessment of progress in national services reforms in 2012-2014[4] concludes that the pace and ambition have been more uneven in recent years. A more ambitious implementation of the *Services Directive* is therefore among the key structural reform priorities, and further policy actions should be based on sectorial approach starting with sectors of key economic importance, such as:

[3] 15985/14, COM(2014)902
[4] Commission Presentation to the Economic Policy Committee on 29 January 2015.

- business and professional services (12% of EU GDP);
- construction (6% of EU GDP);
- retail services (11% of EU GDP).

Horizontal (non-sectorial) reform in the Single Market for services should be explored in two key areas: notification, and proportionality. Firstly, the role of notification is critical to the smooth functioning of the Single Market. It imposes an obligation on Member States to notify the Commission when they intend to introduce new requirements for the provision of goods and services. There is already an effective notification procedure for new requirements relating to goods.[5] It works because the system is open to other Member States, businesses and citizens, and includes a "stand-still" period, which allows time for stakeholders to assess the implications of a proposed new requirement before it comes into force[6]. However, the notification principle is far less developed for services, and does not include "stand-still". Whilst acknowledging that what works in one area of the Single Market may not be directly transferable to another, there is surely merit in examining whether there are lessons that can be learned and, where suitable, applied more widely.

Secondly, the Services Directive obliges Member States to verify that their respective legal systems do not impose disproportionate requirements on service activities. However, while Member States have provided this verification to the Commission, the aforementioned Annual Growth Survey clearly indicates that some service providers are still finding it difficult to operate across EU borders. One explanation for the persistence of certain disproportionate barriers to the Single Market in services is a lack of guidance on how proportionality should actually be assessed. Such guidance would reduce the likelihood of 28 different interpretations of this part of the Services Directive, and the potential entrenchment of these barriers.

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5 As introduced under Directive 98/34/EC.

6 A stand-still period is set by Article 9 of Directive 98/34/EC and determines that Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission.

Implementation issues

The effectiveness of EU level harmonisation largely depends also on Member States efforts in transposing, implementing and enforcing this harmonisation legislation. The results show that there is still room for improvement, for example, reducing transposition delays which in 2014 increased to 7.5 extra months[7]. Therefore, there is a need to strengthen and prioritize enforcement of existing EU Single Market rules, and to strengthen national implementation efforts across Member States, so as to ensure the desired harmonisation benefits are indeed delivered on the ground. The Commission has expressed the need for a zero-tolerance approach in their Communication on the implementation of the Services Directive, a partnership for new growth in services 2012 – 2015[8]. The Commission`s REFIT programme should be further used to make EU law lighter, simpler and less costly for the benefit of citizens and enterprises alike.

Mutual recognition

The mutual recognition principle, originally introduced by the famous *Cassis de Dijon* judgement[9], should enhance trust and ease cross-border business in the EU. However, it is not used to its full potential and the latest estimates show different shortcomings in its application. For example, an insufficient level of awareness, both for entrepreneurs and competent authorities is a major issue. The Commission, as supported by ECJ case law[10], has concluded that "*Mutual recognition clauses introduced in the legislation of one Member State allow the acceptance on the territory of this Member State, in an individualised way, products which are in conformity with the legislation of another Member State*" which could be a way towards increasing visibility, awareness and certainty.

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[7] Single Market Scoreboard: http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm#maincontentSec4

[8] COM (2012) 261 final

[9] Judgment of the Court of 20 February 1979. - Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein. - Case 120/78

[10] Judgment of the Court of 22 October 1998. - Commission of the European Communities v. French Republic - Case C-184/96

By taking into account the above, the Council could discuss measures needed to boost the integration of the Single Market including priority actions and instruments that could be taken thereof, for example:

- strengthening the effectiveness of notification procedures in services (e.g. introduce a stand-still period);
- ensuring an understanding for proportionality assessment of rules (e.g. clear interpretation of proportionality);
- ensuring firm and determined enforcement of Single Market rules (e.g. zero-tolerance approach);
- improving application of mutual recognition (e.g. mutual recognition clauses in legislation);

Considering the above and based on the discussion on priorities for future Single Market policy at the previous Competitiveness Council in December 2014, Ministers are invited to express their views on the future policy of the EU Single Market while considering the following questions:

1. While taking into account the Annual Growth Survey 2015 and the Investment Plan for Europe, what would you name as the main barriers and bottlenecks in the Single Market and which policy actions and instruments should be taken up by the Commission in the „Internal Market strategy for goods and services" and the „DSM package" to remove those?

2. Would you agree that the Member States and the Commission should pursue determined further policy measures, including action along the lines indicated above? What in your opinion are the EU's main weaknesses in our common task of building the Single Market and how to overcome those?