



**EUROPEAN FREE TRADE ASSOCIATION
CONSULTATIVE COMMITTEE**

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Opinion on

A single market for the 21st century

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

On 20 November 2007, the European Commission published a comprehensive package reviewing the single market and setting out proposals to make it function more efficiently in the 21st century in the face of globalisation. The Review represents a new approach, moving away from multi-annual action plans and legislative programmes towards a broader and more comprehensive governance programme. A wide range of instruments, both legal and non-legal, are meant to make the single market more evidence-based and impact driven, more targeted and better enforced, more decentralised and network-based, and more accessible and better communicated. The key focus is on better regulation, implementation and enforcement, and on increased cooperation between Member States. The package also includes proposals on the social and external dimension of the single market, and on services of general interest.

While welcoming renewed attention and initiatives to improve the functioning of the single market, the EFTA Consultative Committee regrets strongly that EFTA and the EEA are not mentioned once in the entire Commission package. Much more attention is needed on the part of the Commission especially, but also by the EEA EFTA authorities to promote the EEA in Brussels and throughout the European Economic Area.

The EFTA Consultative Committee welcomes the aspiration of the Commission to bring more benefits to Europeans by empowering consumers, opening up for small businesses, and stimulating innovation in the single market. This requires a balance between consumer protection and competitiveness and more involvement of targeted groups, including the social partners, in developing new initiatives such as the Small Business Act and consumer scoreboards, and in further strengthening existing tools such as SOLVIT.

In its opinion the EFTA Consultative Committee looks closer at how a new EU approach to the single market might impact the EEA cooperation. While new instruments, methods and networks are welcome to the extent they make the single market work better in practice - a key priority for the EFTA Consultative Committee - the relevant EEA authorities need to look at how new, and especially non-legal initiatives can be integrated into a legal instrument such as the EEA Agreement, and how EEA EFTA participation in new networks and initiatives, which are meant to develop, implement and enforce more efficiently EEA law, can be ensured.

The increased focus on the social dimension of the single market in the Commission package, the stronger integration of the single market in the new cycle of the Growth and Jobs Strategy (Lisbon Strategy), and the increased need for synergy between single market and other policy areas will require increased and more substantial input and dialogue with the social partners in the EU, EFTA and the EEA. The Consultative Committee welcomes initiatives for more inclusive policies and underlines specifically the important role of the social partners who represent key stakeholders in the single market that might both benefit from, but potentially also suffer from an increasingly global economy. A well functioning, competitive and innovation-friendly single market is dependent on good market regulations but also on good regulations on social policy and well functioning labour markets.

The EFTA Consultative Committee asks the EEA EFTA authorities to follow developments with regard to the external dimension of the single market to the extent

this will have a bearing on the EEA. The single market is seen by the Commission as a key tool for Europe to perform better in the face of globalisation and to create a better basis for growth and employment in Europe. It is also presented as a vehicle for Europe to more actively set the global agenda and to spread European standards to non-EU partners. Although not necessarily EEA relevant in the legal sense of the word, this work should be of interest to the EEA EFTA States who share many of the same values, principles and rules as the EU, partly through the EEA cooperation.

Based on its analysis, the EFTA Consultative Committee would like to give the following **key recommendations**:

- Bearing in mind the importance of the Single Market Review for the EEA, the EEA EFTA States should present a joint position paper on it to the Commission as soon as possible, taking into account the below recommendations. The focus of the single market should be on EEA-30 rather than EU-27, and the views of the EEA EFTA States are thus important.
- All relevant EEA EFTA stakeholders need to step up their efforts to promote EFTA and the EEA in Brussels and in the other EEA Member States, to remind and inform their counterparts in the EU of the EEA relevance of single market initiatives, and to ensure that new proposals refer to the EEA-30 rather than the EU-27 only. It remains of utmost importance to ensure that stakeholders throughout the EU are aware of the fact that the single market also covers the three EEA EFTA States and that the rights and obligations vis-à-vis EU/EEA operators extend to these three countries and their citizens and businesses.
- As part of this effort, the Foreign Ministers and EU Ambassadors of the EEA EFTA States should raise their concern about the lack of attention and awareness of the EEA in the EU with their political and diplomatic counterparts in the EEA Council and EEA Joint Committee. The relevant EEA EFTA authorities should organise targeted information seminars for relevant EU officials in Brussels, along the lines of the information seminars currently being organised by the EFTA Secretariat twice a year for stakeholders in the EEA EFTA Member States.
- The EEA EFTA social partners also have to take their responsibility, by ensuring that position papers of their umbrella organisation in Brussels (e.g. BUSINESSSEUROPE, CEEP, and ETUC) include references to the EEA when relevant, and by raising the issue with their colleagues in the European Economic and Social Committee and in the Social Dialogue.
- With the single market taking on a fundamentally new approach, requiring broader and more comprehensive and inclusive policies, as well as increased synergies between single market and other policies, the relevant EU and EEA EFTA authorities need to strengthen their dialogue with the social partner organisations that largely represent the groups that will be hit by new policies and initiatives.
- It is important to continue to inform citizens and businesses about the opportunities of the single market. The Committee underlines the importance of out-of-court problem-solving mechanisms such as SOLVIT for increased trust

and transparency in the single market and of the help that the SOLVIT network can provide. To better assess the success of the national SOLVIT centres in the EEA EFTA States, the Committee requests that the EEA EFTA authorities provide an overview of the activities of each of the national EEA EFTA SOLVIT centres and urges them to provide the necessary staff to handle an increased number of cases.

- The Commission proposal for a consumer scoreboard may be helpful to enhance consumer confidence in the single market. The Committee asks the EEA EFTA authorities to prepare consumer scoreboards also for the EEA EFTA States.

- The Committee urges the EEA EFTA authorities to take active part in initiatives related to SMEs, the new Small Business Act, and the promotion of innovation in the single market. These are aimed at making the single market more inclusive and to empower citizens and small businesses in the single market and should be fully supported by the EEA EFTA States.

- The Committee urges the EEA EFTA States to undertake an analysis of what it will mean for the EEA Agreement and cooperation that the EU is shifting its approach to the single market from integration through legal instruments to a mix of new and existing instruments, both legal and non-legal, including a stronger focus on market and sector monitoring, a more extensive use of impact assessments, and increased application of so-called “soft-law” measures, all instruments that technically do not fit well with a highly legal instrument such as the EEA Agreement, but which at the same time could offer both challenges and opportunities for the EEA EFTA States in terms of policy shaping. It is crucial that the EEA EFTA States ensure that they can take part in new exercises and initiatives on the EU side when relevant to the EEA cooperation.

- The Consultative Committee urges the EEA EFTA States to make the necessary efforts to immediately reverse the current tendency of increased transposition deficits in the EEA EFTA States and to return to a pattern of quicker transposition. Correct and uniform enforcement of existing legislation and standards remains one of the important challenges of the internal market.

- Finally, it is important that the EEA EFTA States actively apply new instruments, participate in new networks, and establish new centres which are meant to secure timely and correct transposition, implementation and enforcement of single market legislation throughout the EEA, such as single market “compatibility tests”, the Internal Market Information System (IMI), and “single market centres”. It is crucial that the Commission includes the EEA EFTA States from the start when developing new instruments, even if they are of a non-legal nature and will not be integrated as such into the EEA Agreement. The EEA EFTA States also have to continuously monitor new developments and ensure, through pressure if necessary, that they are included in new proposals for cross-border networks and other instruments aimed at improving the functioning of the EEA.

I INTRODUCTION

- 1.1 As a follow-up to its opinion from April 2006¹, which fed into the European Commission consultation on the future of the single European market, the EFTA Consultative Committee² in this paper comments on the European Commission Single Market Review³ which was published in November 2007 as a comprehensive package covering the different aspects of the single market for the 21st century. The Committee focuses on the areas in the package of pivotal importance to the EFTA social partners and to the future of the European Economic Area (EEA).
- 1.2 The single market, based on the four freedoms (free movement of goods, services, capital and persons), is a key pillar of the European Union and a key tool for realising the Lisbon Agenda. It is driving economic growth and has delivered real benefits for millions of Europeans for more than 15 years. Through the EEA Agreement, the EEA EFTA States participate fully in the single market which means citizens and businesses in the EEA EFTA States have the same possibility as their EU counterparts to live, work, study and do business throughout the EEA as well as to enjoy a wide choice of goods and services.
- 1.3 The single market has gone through considerable transformation since its inception in 1993. While the initial stages focused on removing cross-border barriers to trade through legal instruments, the latest Single Market Review presents a shift away from the traditional legislative agenda and calls for a more impact-driven approach to the single market based on new methods and instruments, legal and non-legal, linking it closer to the better regulation agenda of the Lisbon Strategy. The question is how to shape policies, with what instruments, in order to make markets work better on the ground and deliver better results for citizens. For the EEA EFTA States, whose participation in the single market is based on a purely legal instrument (EEA Agreement), this poses a challenge of how to adapt to a new EU approach, and for the EEA Contracting Parties as a whole of how to safeguard the homogeneity of the EEA Agreement.
- 1.4 While the single market has benefited citizens and economic operators in the EEA EFTA States, the latter have in turn made important contributions to the single market. From the beginning they have actively participated in the development of EEA relevant legislation and policies on the basis of provisions in the EEA Agreement. It is therefore greatly disappointing that the latest Commission package fails completely to refer to EFTA or the EEA in its eight, very comprehensive documents. This is even more surprising because the

¹ “A new strategy for the internal market”, opinion adopted on 26 April 2006 (Ref. 1062436)

² The EFTA Consultative Committee is a forum for social partner organisations in the four EFTA countries Iceland, Liechtenstein, Norway and Switzerland

³ A European Commission policy package on the single market package for the 21st century, published on 20 November 2007, which includes a communication on the single market, a communication on a new social vision for Europe, and a communication on services of general interest including social services of general interest; and several accompanying staff working papers on instruments, product market and sector monitoring, external dimension, retain financial services and review of achievements
http://ec.europa.eu/citizens_agenda/index_en.htm

Commission wants to expand the single market to third countries as part of the EU's external policies. This poses a challenge for all EEA EFTA stakeholders in terms of EFTA and EEA promotion both in Brussels and throughout the EEA.

- 1.5 The single market does not and cannot function in isolation. How it develops depends on changes in Europe and in the world. A much larger and more heterogeneous EEA and the challenges of globalisation among others require broader and more comprehensive policies taking due account of the subsidiarity principle. This is reflected in the four main pillars of the package: citizens, consumers and SMEs; globalisation; knowledge and innovation; social and environmental dimensions. It is equally expressed in the intention of the EU to further enhance the role of the single market in the next phase of the Growth and Jobs Strategy (2008-2010) based on the latter's three equally important and interdependent dimensions: economic, social and environmental. The importance of the social dimension specifically for the functioning of the single market is underlined in the Communications on a social vision for Europe and on services of general interest which the Commission considers integral parts of the Single Market Review package. The strong link between social and economic policy will require increased and substantial input from the European social partners to new Commission initiatives.
- 1.6 The objective of new EU policy initiatives is sustainable growth and job creation. For this to succeed in the age of globalisation, the Commission is encouraging a new external dimension in which synergies between the EU's internal and external policies are strengthened and bold initiatives developed to respond to and shape the global agenda. By promoting European standards and values (including social and environmental) the aim is to raise standards globally, to have a head start in steering new technologies and creating jobs, and to fight elements such as social and environmental dumping. To the extent single market provisions and standards are exported beyond the EEA, this naturally has an impact on the EEA EFTA States, as well as on the EEA EFTA social partners, who represent economic operators and employees in the EEA EFTA States.

II KEY PRIORITIES FOR THE EFTA SOCIAL PARTNERS

The need to put the EEA back on the Brussels map

- 2.1 The EFTA Consultative Committee strongly regrets that in the Single Market Review the Commission does not recognise its obligations under the EEA Agreement by completely failing to mention the fact that the single market extends to the three EEA EFTA States. This sends a clear signal to all EEA EFTA stakeholders, including the social partners that more and continuous efforts are needed to promote EFTA and the EEA both in the EU institutions in Brussels and more widely throughout the EEA. It continues to be of utmost importance to ensure that stakeholders throughout the EU are aware of the fact that the single market also covers the three EEA EFTA States and that the rights and obligations vis-à-vis EU/EEA operators extend to these three countries and their citizens and businesses.

- 2.2 Since the EEA Agreement entered into force, the EU has gone through tremendous changes which have left EFTA and the EEA outside the main focus of EU policy and decision makers. With a much larger and more heterogeneous Union, much less time is available to accommodate specific EFTA concerns, and new and broader EU policies responding to challenges such as globalisation make it harder to distinguish single market, and thus EEA, from other EU activities, and to establish where and when to involve the EFTA partners. Also, a new generation of EU officials has taken hold since the EEA Agreement was negotiated, with little first-hand knowledge of EFTA and the fact that the single market does in fact represent the EEA-30 and not only the EU-27. What in a worst case scenario might be neglect and lack of interest, and more generally simply reflects a lack of knowledge, has led to much less attention being paid to the EEA EFTA States. For this to be rectified, considerable effort is needed on the EFTA side to continue to be respected as an integral part of the single market.

New approach to the single market; new focus, methods and instruments

- 2.3 In its opinion from April 2006, the Consultative Committee stated that the legal framework of the single market was largely in place and that the challenge was now to make the single market work in practice. This notion is fully reflected in the European Commission staff working document on instruments⁴ which accompanied the Single Market Review. Barriers to trade still need to be removed through legislation in some areas, as shown by the recently approved internal market package for goods whose objective is to remove the remaining obstacles in this field and is hoped to bring particular benefits to small and medium sized enterprises (SMEs)⁵. However, the consultation leading up to the publication of the Single Market Review showed that legal integration was no longer the key challenge to a well-functioning single market. Instead respondents pointed to problems of practical application and enforcement of existing legislation, and to the lack of involvement of a broad base of stakeholders.
- 2.4 Legal integration can no longer be the single market's sole ambition, and the key focus is shifting towards better governance of the single market to make it more evidence-based and impact driven, more targeted and better enforced, more decentralised and network-based, and more accessible and better communicated. With a more heterogeneous single market and increased economic importance of the services sector, the Commission looks at a range of possibilities to modernise, shape, govern and adapt the single market to the new realities of citizens and business in the 21st century. It proposes a single market policy which is intended to be "truly inclusive", to use a "mix of instruments", to respond to the "global context", and to call for "a stronger ownership by and partnership between authorities in charge of promoting, applying and enforcing single market rules".

⁴ European Commission Staff Working Document on "Instruments for a modernised single market policy", 20 November 2007, SEC(2007) 1518

⁵ The so-called Internal Market Package for Goods was approved by EU Member States on 23 June 2008.

A truly inclusive single market policy

- 2.5 It is an overriding ambition of the Commission to bring more benefits to Europeans by empowering consumers, opening up for small businesses, and stimulating innovation in the single market. Citizens are central to the single market, both as consumers of goods and services and hence stimulus to growth and as individuals benefiting from the right to move freely across borders for studies and work. However, the notion of a central role for citizens and consumers is in stark contrast to the view held by a wide range of stakeholders that the single market is still mainly a framework for big business.
- 2.6 Many respondents to the public consultation on the future of the single market expressed concern with what they perceive as insufficient involvement in single market policies, highlighting a gap between what is intended and what is perceived or indeed experienced by citizens, consumers and small businesses. The Commission intends to solve this by developing methods and tools to ensure that single market policies more effectively respond to the concern of all, by strengthening dialogues with non-business stakeholders, and by seeking more synergy between single market and other EU policies, such as competition and social policies. From an EFTA Consultative Committee point of view, it will be specifically important to engage social partner organisations in closer dialogue both at the EU, EEA/EFTA and national level. It will also be important that new initiatives take due account of the principle of subsidiarity and to ensure that single market rules do not infringe on the democratic rights of EU citizens and their respective, duly elected governments.
- 2.7 The key objective is to harness opportunities for citizens, and to empower consumers by making the single market deliver more tangible results. This requires an appropriate balance between market opening and consumer policy, and a strong consensus among all stakeholders that the single market cannot function well without adequate consumer protection. The latter is key to the business community and without it companies could easily find themselves at a competitive disadvantage. It is therefore a mistake to consider competitiveness and consumer protection as two separate concepts operating independently from each other. The single market needs to be developed as one common market benefiting both business and consumers. This notion of a fair balance will be specifically important when the EU starts revising its consumer acquis and develops new initiatives on collective redress and harmonisation of national contract laws.
- 2.8 The Commission is also planning specific initiatives to empower SMEs in the single market, including a Small Business Act for Europe. This is meant to consolidate SME elements in existing policies and laws, reduce red tape and obstacles to cross-border trade, and increase participation in programmes and access to public procurement. It is a key objective to realise the innovation potential of SMEs and to increase their cooperation with other innovation partners such as research institutes, large firms, and universities. A more innovation-driven single market is a key element of the Lisbon Strategy. For the EFTA Consultative Committee it is important that the EEA EFTA authorities take an active part in EU initiatives related to SMEs, the Small Business Act and the promotion of innovation.

- 2.9 With regard to dialogues with non-business stakeholders, the Commission will more specifically introduce so-called “citizen studies” to assess the effects of single market policies on non-business players such as consumers, and for the society at large including its more vulnerable members. It also intends to publish consumer scoreboards, matching the already existing single market scoreboards, to identify how the single market performs in terms of economic and social outcome based on five indicators: complaints, prices, satisfaction, switching and safety. Like the single market scoreboard, the new consumer scoreboards are meant to raise standards through benchmarking and a “name and shame” process.
- 2.10 The social partners welcome the increased focus on the role of citizens, consumers, small businesses and society’s most vulnerable members, but emphasises that it is important to ensure that the tools developed to measure the benefits and costs of new initiatives for these groups are effective and based on relevant indicators. With regard to the consumer scoreboard, the Consultative Committee would like to ask the relevant EEA EFTA authorities to prepare this also for the EEA EFTA States. Currently, the EFTA Surveillance Authority (ESA) publishes the scoreboard measuring the EEA EFTA States’ performance in the single market (“Internal Market Scoreboard”), and the question is whether, on the basis of provisions in the EEA Agreement, it can also publish a consumer scoreboard for the EEA EFTA States matching that of the EU.
- 2.11 The Consultative Committee fully supports efforts to broaden stakeholder involvement through consultation and structured dialogue, and this way to involve both consumer organisations and SMEs more than is the case today. At the same time it is important to strengthen already existing dialogues, such as the Social Dialogue. With the single market taking on a fundamentally new approach, requiring broader and more comprehensive policies and increased synergies between single market and other policies, the social partner organisations, representing stakeholders which are central to the single market, will be even more important partners in shaping new initiatives. The Commission specifically calls for taking better account of the social implications of single market policies at the impact assessment stage, and to communicate better and more openly the adjustment costs of structural change and reform in the single market. The social partners, representing those who potentially will be hit by such changes, will, in addition to consumer and civil society organisations, have to be considered key partners to work with both at the EU and national level throughout the EEA.
- 2.12 In order for the single market to work as well in practice as on paper, a high level of trust also needs to be established. The various users - citizens, consumers, workers and businesses - need to be much better informed of their opportunities in the single market and to have a guarantee that the authorities implement correctly and in a timely fashion the provisions providing these opportunities; that the national courts take action if rules are not applied; and that out-of-court problem-solving mechanisms (e.g. SOLVIT) work efficiently and professionally. According to the latest SOLVIT report from the European

Commission⁶, the cases submitted to the network in 2007 increased by 75% compared to 2006. Of the total cases, 82% came from private persons and only 18% from businesses. More efforts are thus needed to inform enterprises of the services provided by the SOLVIT network. For many national SOLVIT centres, more personnel are needed to handle cases and provide information to citizens and businesses. With regard to the EEA EFTA States, the EFTA Consultative Committee would like the relevant authorities to provide an overview of the activities of the EEA EFTA SOLVIT centres in order to be able to better assess their level of success, including the number of employees and cases dealt with and type and outcome of cases.

- 2.13 Creating one-stop-shops for entrepreneurs, a key objective under the Lisbon Strategy, will also increase the practical use and trust among citizens and businesses in the single market, specifically among smaller businesses. Finally, the Commission is proposing to make better use of Commission representatives in the Member States to communicate and inform about the single market, and to foster closer contacts between Commission officials in Brussels and the representations by among others sending officials to the capitals to promote events such as “Single Market ambassadors”. When such promotion activities are developed, it is important that the EU representations in the EEA EFTA States are also taking part.

An appropriate mix of instruments

- 2.14 While the legislative framework for the single market to a great extent is in place, this does not mean that no more legislative proposals are to be expected from the Commission. The public consultation on the future of the single market showed that gaps and barriers to trade still exist in several sectors. However, the Commission is proposing a more impact-driven approach to new proposals and more flexibility in terms of legislative procedure. This will require more systematic monitoring of the functioning of key markets in order to identify what instruments are needed to unleash the full potential of the single market.
- 2.15 In its staff working document on market monitoring⁷, the Commission presents a new methodology for the monitoring of markets and sectors including a screening of virtually all sectors according to economic importance, contribution to the adjustment capacity of the EU, and signs of malfunctioning markets; then, for a relatively limited number of sectors offering the greatest potential benefits for further monitoring, it proposes a more in-depth investigation. Not necessarily foreseen to cover the EEA EFTA States, the latter will have to consider if and how they could possibly be part of this exercise, and if so, what institution/authority on the EEA EFTA side would be responsible. Would it be natural for ESA to take on a wider monitoring role bearing in mind its existing competencies in the field of competition policy (i.e. sector inquiries)? Or would new and much wider competencies be required for ESA to do so, bearing in mind that the new initiatives from the Commission are much wider and earlier in the policy shaping process than existing activities in the competition field?

⁶ European Commission Staff Working Paper on “SOLVIT 2007 Report – Development and performance of the SOLVIT network in 2007”, 30 April 2008, SEC(2008) 576

⁷ European Commission Staff Working Document on “Implementing the new methodology for product market and sector monitoring: Results of a first sector screening”, 20 November 2007, SEC(2007) 1517

- 2.16 The new evidence and impact driven approach to the single market is closely linked to the better regulation agenda and means legislation will only be proposed if the impact assessment has concluded legislation is the best approach. Overall, this could lead to less regulation. While there might be different views among the social partners on how to approach better regulation, it is pivotal for both sides of the Committee that the quality of legislation is maintained and that the right balance is struck between introducing necessary and better legislation and avoiding unnecessary red tape.
- 2.17 The Commission is proposing to increasingly use so-called “soft law” (non-legal) instruments of both non-normative (e.g. consultation documents, technical guidelines, interpretative communications) and normative nature (recommendations, self- and co-regulation⁸). This is not unproblematic or uncontroversial in the EU, or for the EEA cooperation. In the EU, specifically the European Parliament has opposed increased use of soft-law instruments, fearing they could undermine its role as a co-legislator; other stakeholders have been concerned that the new soft-law approach will overall lead to “less” rather than “better” regulation and that quantity rather than quality is driving the agenda. An increased use of “soft law” instruments could also raise questions as to the role of the Court and the surveillance authorities (Commission and ESA) in the EEA and the extent to which these could possibly be undermined by the increased application of non-legal instruments.
- 2.18 The legal approach which established and developed the single market has served as the basis for the EEA Agreement into which new legal acts on the EU side concerning the single market are incorporated before implementation in the EEA EFTA States. The aim is to create a homogeneous economic area based on one set of legal provisions. The EEA Agreement has not been revised since it was signed in 1992 and entered into force in 1994. This poses a challenge of how to deal with new soft-law instruments of relevance to the single market. Can they as non-legal provisions be incorporated in the same manner as traditional legal acts? It is important that EFTA authorities carefully study this question. In this context it shall be recalled that in its opinion on “The Treaty of Lisbon and the EEA” (Ref. 1081125), the Consultative Committee touched upon the many challenges facing EFTA and the EEA cooperation as a result of the fundamental changes that have taken place in the EU since the EEA Agreement entered into force. It requested the EEA EFTA authorities to make an assessment of the impact of the Treaty of Lisbon on the EEA cooperation, including a broader analysis of the impact of new methods such as the Open Method of Coordination and new, non-legal instruments.⁹

⁸ As pointed out in the Commission Staff Working Document, self-regulation refers to the creation of common guidelines by economic operators and/or other stakeholders; co-regulation refers to the situation whereby EU secondary law sets the objectives and entrusts certain parties (economic operators, social partners, or associations) with the attainment thereof. They are both considered normative but it is other players than the Commission setting the norms.

⁹ Due to the No vote in Ireland on 12 June 2008, the ratification process of the Treaty of Lisbon is currently uncertain. It is therefore difficult to predict whether the Treaty will be ratified or not, and if, when that would be. The Committee asks the readers to take this into account throughout the text.

Increased ownership by and partnership between national administrations

- 2.19 In previous opinions, the Consultative Committee has underlined the importance of improving implementation and enforcement of single market legislation throughout the EEA, and to strengthen cooperation between the administrations in the 30 EEA Member States. While the EU institutions are responsible for producing better regulation based on improved impact assessments covering a broader range of issues, the 30 EEA Member States have to take more responsibility in ensuring correct and timely implementation and making sure rules are in fact applied correctly. They also have to work closer with administrations in the other EEA Member States to maintain a level-playing field throughout the EEA and guarantee that citizens have better and faster access to their rights.
- 2.20 The Commission and ESA biannually publish an internal market scoreboard which monitor how well the EU and EEA EFTA States transpose internal market directives into national legislation. In the most recent scoreboard from ESA published in February 2008, the EEA EFTA States show disappointing results. In six months the average transposition deficit of the EEA EFTA States has increased from 1.2% to 1.7% and bypassed the current interim target of 1.5%. At the same time, the EU Member States have reduced their average from 1.6% in July 2007 to 1.2%. This ranks Iceland 27th (down from 18th), Liechtenstein 24th (down from 6th), and Norway 22nd (down from 11th) in an EEA-30 context. After having performed well for many years, these are not only disappointing but also worrying trends which require the EEA EFTA States' immediate attention.
- 2.21 The Commission proposes different measures to secure timely and correct transposition such as giving priority to regulations over directives and imposing obligations on Member States to undertake so-called "compatibility tests", i.e. to screen legislation and administrative systems in order to see whether these are fully compatible with EU rules. In addition, the Commission will work with senior national officials to identify the best ways to help Member States implement and enforce EU policies, for instance through "single market centres" at national level. To ensure equal transposition, implementation and enforcement of single market legislation throughout the EEA, it is important that also the EEA EFTA States introduce "compatibility tests" and establish "single market centres".
- 2.22 The Commission also proposes new measures to improve cross-border cooperation between administrations. This includes creating efficient IT based networks such as the Internal Market Information System (IMI) to support the implementation of the Services Directive and the Professional Qualifications Directive. The Commission hopes to extend cooperation and the use of such networks, and to support this by among others mapping the various network-building exercises, introducing administrative cooperation in secondary legislation, creating incentives for information exchanges, and promoting personal contacts between administrations.
- 2.23 Since these centres and networks are established to make the single market work better in practice, it is important that the EEA EFTA States participate fully in

all of them. The networks do not necessarily have a legal basis which can easily be incorporated into the EEA Agreement, and EEA EFTA participation therefore depends on the Commission pushing for it and consciously supporting an EEA wide approach. If support is not forthcoming, the EEA EFTA States will have to remind the Commission of the importance of including them in order to improve implementation, enforcement and cooperation throughout the entire European Economic Area, or to bring it up in the EEA Council. This will require extra attention on the part of the EEA EFTA States both to identify new networks and to secure EEA EFTA participation in them.

The broader context: the social dimension of the single market

- 2.24 The European Union has over the last decade experienced huge societal changes, caused partly by fundamental changes to its demographics, partly by changes set in motion by globalisation. In addition, EU enlargement has made the Union a more heterogeneous place in which opportunities and challenges linked to globalisation are not necessarily evenly shared. In order to respond to these changes, new policy initiatives will have to be much broader and more comprehensive than in the past and seek stronger synergies between different policies. The Single Market Review package reflects this and presents a much broader approach to EU policy than its predecessors. It pays specific attention to the social dimension of the single market and launches, through the Communication on a new social vision for 21st century Europe¹⁰ a public consultation on the renewed Social Agenda.
- 2.25 In this Communication, the Commission presents a new social vision with the aim to create an environment of equal opportunities and to fight social exclusion. This is primarily to help each individual enjoy a better life, but also, through strengthening social inclusion and integrating more people into the European labour market, contribute to job creation and growth, the key objective of the Lisbon Strategy, and a more competitive single market. This makes the social dimension key to the success of the single market. The Treaty of Lisbon also reflects this, in the article stating that the “EU shall establish an internal market” where it underlines that the Union shall work for “a highly competitive social market economy, aiming at full employment and social progress”¹¹. Missing out on these objectives could put European competitiveness, growth and job creation in jeopardy.
- 2.26 The Commission points to some of the investments which will be needed to fulfil a new social vision: in youth, labour market reforms (e.g. flexicurity), health, gender equality, active inclusion and non-discrimination, mobility and integration, and civic participation, culture and dialogue. Most of these policy areas are the competence of the Member States and will continue to require cooperation between them based on best practice, benchmarking and open coordination, with the EU providing policy frameworks for action and coordination. In some fields, the EEA EFTA States will participate in these processes through the horizontal provisions relevant to the four freedoms and the provisions on cooperation outside the four freedoms in the EEA Agreement. It

¹⁰ European Commission Communication on “Opportunities, access and solidarity: towards a new social vision for 21st century Europe”, 20 November 2007, COM(2007) 726 final

¹¹ New Article 2(3) to the Treaty of European Union, as amended by the Treaty of Lisbon Article 1 4)

will be important that they take an active part in all cooperation of relevance to the EEA, both to learn from but also to share best practice with the EU side.

- 2.27 In addition to the involvement of the EU and the EU Member States, the Commission in its Communication also underlines the role of the social partners and the local and regional authorities, which are both considered “part of the political, economic and social fabric of the Union”. In a meeting with Commission representatives in Oslo on 6 December 2007, however, the EFTA Consultative Committee pointed out that the Communication did not make sufficient reference to the social partners and the social dialogue and failed to point out how the social partners could contribute to a better-functioning single market, growth and job creation. The Communication also lacked a reference to the joint analysis of the social partners on European labour markets from October 2007¹² which had proved a great achievement without which the Member States would have struggled to agree on a common set of principles for flexicurity in December 2007. The latter’s implementation through national reform programmes is seen as a key instrument to achieve the Lisbon goals, and the Member States are expected to work closely with the social partners to develop strategies that will at the same time enhance flexibility and security in the labour market.
- 2.28 While the social partner organisations, including those in the EFTA Consultative Committee, might sometimes disagree on specific issues (e.g. Services Directive, the Laval case), the joint analysis on European labour market from October 2007 underlines the importance of the Social Dialogue and proves its considerable impact on EU policy shaping when the social partners join forces on issues of pivotal importance to them. This should encourage both the social partners and the relevant authorities to strengthen the Dialogue considerably in the future and establish it as the key policy process for labour market reform in Europe. For the EEA EFTA social partners the Social Dialogue offers exclusive access to a structured EU policy-shaping process and a channel of influence that their own authorities are excluded from. It should also be in their interest to strengthen this process further.

Services of general interest

- 2.29 As part of the overall Single Market Review package, the Commission published a communication on services of general interest including social services¹³ in which it concluded that it currently sees no justification for horizontal measures (i.e. directive) in this field. This is partly based on the belief that there is no incompatibility between single market rules and services of general interest, and partly on the belief that the new protocol on services of general interest in the Treaty of Lisbon¹⁴ will increase the legal clarity concerning these services. The protocol, which for the first time introduces the notion of services of general interest in primary EU law (so far the EC Treaty has only referred to services of general *economic* interest), underlines the

¹² “Key challenges facing European labour markets: A joint analysis of European Social Partners”, by BUSINESSEUROPE, CEEP, ETUC/CES, and UEAPME, October 2007

¹³ European Commission Communication on “Services of general interest, including social services of general interest: a new European commitment”, 20 November 2007, COM(2007) 725 final

¹⁴ Protocol 26 to the Treaty of Lisbon

essential role of national, regional and local authorities in providing services of general interest; the diversity between the various services; and the importance of their high level of quality, safety and affordability. The EFTA social partners stress the importance that the local, regional or central authorities themselves, as the case may be, are and will remain in a position to define the scope and offer of public services. While ruling out further horizontal measures through secondary legislation, the Commission commits itself to adapting existing, and adopting new sector-specific legislation where necessary. It also recognises the need for clarity and help with regard to the application of existing provisions and has already published Q&A documents on state aid and public procurement, and an interactive service system to further assist users.

- 2.30 While the position of the Commission is supported by many political groups and social partner organisations, it is disputed by others who are calling for a horizontal legal framework for public services at the EU level to guarantee that the general interest in their view will prevail over market rules and that services of general (economic) interest are governed by common public services principles. They believe that the sectoral approach limits the freedom of Member States to categorise or define services of general (economic) interest and encourage the Commission to start work on an EU action programme on quality public services based on the new protocol in the Treaty of Lisbon with the aim to define specific objectives and targets for improving public services at different levels.
- 2.31 While the organisation and financing of services of general interest remain the sole responsibility of Member States, the services of general *economic* interest will continue to be covered by single market or Treaty provisions, and for the EEA EFTA States, by provisions under the EEA Agreement. In as far as provisions and new initiatives in the field of services of general interest thus fall within the EEA Agreement this naturally becomes relevant also for stakeholders in the EEA EFTA States. While the Commission does not for the time being consider proposing new binding legislation, it may consider an EU action programme on quality public services based on the new protocol as well as guidelines and communications of non-binding character. To the extent such possible guidelines cover the competition and state aid area, they would on the EFTA side most likely fall under ESA's competences. It will therefore be important that the EEA EFTA authorities engage in a close dialogue with the competent authorities on new EEA relevant initiatives. At the same time, they should involve the relevant stakeholders in the EEA EFTA States more closely and engage in a dialogue with them on the application of existing rules and on the possible inclusion of EEA EFTA authorities and stakeholders in new EU tools such as the interactive service system.

The broader context: the external dimension of the single market

- 2.32 A key notion in the Commission's plans for the future of the single market is the need to take on a more proactive external dimension. The staff working document elaborating on this notion¹⁵ followed the so-called "vision paper"¹⁶

¹⁵ European Commission Staff Working Document on "The external dimension of the single market review", 20 November 2007, SEC(2007) 1519

from October 2007 in which the Commission sets out its ideas on how to succeed in the age of globalisation. Since the adoption of the Lisbon Strategy in 2000, globalisation has moved to the heart of the EU policy agenda showing that EU policies can no longer exist in isolation from external developments. The objective is no longer “just” to respond to an international context which is changing rapidly, but to actively shape this context. The single market is presented as one of Europe’s key assets to meet the challenges and opportunities of globalisation and as an area where, in addition to further developing internally, the EU could actively expand its competitive and regulatory space beyond its borders while ensuring that European citizens benefit from this openness and interaction with third parties.

- 2.33 With regard to the competitive space, the idea is to open new markets to give economic operators in the EU greater opportunities to exploit the strengths already developed in the single market. This would include the successful conclusion of the Doha Round and of more free trade agreements as set out in the Global Europe strategy in 2006¹⁷. When it comes to expanding the single market regulatory space, the EU can already show to some success stories in encouraging international standards in areas such as food safety, public health, climate change, maritime safety, and financial services, and it is the aim to achieve this also in other sectors. With more than 50 years of experience in integrating and extending markets and regulatory frameworks, the EU should be well-equipped to contribute to new international standards in fields of importance to EU citizens and economic operators. This should be helped by the fact that, as the EU has developed into the world’s largest import market, complying with EU rules has become a prerequisite and asset for non-European operators.
- 2.34 The importance of expanding the EU competitive and regulatory space is not only about making economic gains, but also about fighting challenges linked to social and environmental aspects of globalisation, such as the threat of social and environmental dumping when standards are only developed in some, and not all parts of the global economy. In order for European citizens, consumers, workers and industry to benefit from the opportunities of globalisation, it will thus be essential to reach international agreements in order to create a level playing field for industry, and to avoid production and jobs going to countries or regions where social and environmental standards are much lower than in Europe (EU and EFTA).
- 2.35 The EU’s external relations are not part of the EEA Agreement and as such not formally EEA relevant. However, the Consultative Committee reiterates the importance of the EEA EFTA States monitoring new developments and activities on the EU side and using the opportunity in the EEA Council to discuss the challenges of globalisation with their EU counterparts. Sharing similar values and principles as the EU, it should be advantageous for the EFTA Member States to follow to what extent the EU succeeds in exporting European values, rules and norms while fully respecting the independence of its partner

¹⁶ European Commission Communication on “The European Interest: Succeeding in the age of globalisation“, 3 October 2007, COM(2007) 581 final

¹⁷ European Commission Communication on “Global Europe: Competing in the world”, 4 October 2006, COM (2006) 567 final

countries. It will be particularly important to monitor to what extent the standards and provisions regulating the internal market, in which the EEA EFTA States fully participate, will become standards also outside the EEA. Also, when the EU expands its competitive space through free trade agreements, this will have an impact on EFTA's third-country strategy of which one of the priorities is to ensure that the EFTA operators are not put in a competitive disadvantage to their counterparts in the EU and to thus engage in trade talks with partners that the EU has or is planning to negotiate with. With regard to the content of these bilateral agreements it is important that EFTA is not less ambitious than the EU with regard to including a reference to ILO core conventions.

- 2.36 Other developments of relevance to the single market include recent initiatives by the European Commission in the field of migration and specifically the proposal for a so-called EU "Blue Card" system which is meant to make it easier to attract high-skilled third country nationals to Europe by giving them access to the entire EU labour market after an initial two-year period in the first country of entry. The contracting parties to the EEA Agreement have stated in a joint declaration¹⁸ that immigration policy is not covered by the EEA Agreement, which will presumably mean that the recent migration proposals by the European Commission are not considered EEA relevant. However, the EFTA social partners believe that it is still important and highly relevant for the EEA EFTA States to follow EU developments in this area and to engage in a dialogue with the EU side on new initiatives, specifically to the extent that these ultimately will have a bearing on the single market and the free movement of persons within it.

Specific proposal in the Commission package: retail financial services

- 2.37 The Commission staff working document on initiatives in the area of retail financial services¹⁹ provides both a concrete and structured plan of action in this area as well as more broad recommendations for steps forward. The fundamental problem is that there are still numerous obstacles to cross-border trade and retail financial markets still remain national in scope rather than EU-wide. The Commission intends to launch a series of initiatives aimed at improving customer choice and mobility within the single market. It attempts to strike a balance between the interests of consumers and the industry as a whole. In setting out concrete plans for 2008, the Commission plans to publish a White Paper on ways to ensure product diversity and consumer protection in the field of mortgage credit, in light of the mortgage credit crisis in the US. An expert group will be established to explore ways in which to circulate credit data among institutions for the benefit of both consumers and banks. The Single Europe Payments Area (SEPA) was launched at the start of the year and the Commission will produce a scoreboard for car insurance premiums. A communication is expected by the end of the year on redress, including how to improve mechanisms in the field of financial services. Furthermore, a communication during the course of the year will be released on financial education.

¹⁸ Joint Declaration by the Contracting Parties to Decision No 158/2007 incorporating Directive 2004/38/EC of the European Parliament and of the Council in the EEA Agreement

¹⁹ European Commission Staff Working Document on "Initiatives in the area of retail financial services", 20 November 2007, SEC(2007) 1520

- 2.38 Less concrete specifications are given in other areas within the field of financial services, including tackling the issue of financial inclusion, ensuring all citizens have access to a basic bank account. A review into the need for product transparency and distribution requirements for retail investment products has been launched and the issue of national rules that impede product diversity will also be investigated. Lastly, the responsibility of setting common rules and abolishing existing discriminations and obstacles to cross-border banking is first given to the EU banking industry before the Commission will take any action.
- 2.39 The staff working document is a typical example of the Commission's new approach to the single market, whereby it will use a mix of legal and non-legal instruments in new initiatives. Most of the Commission's proposals and initiatives in the field of retail financial services and consumer policy will be of EEA relevance and will therefore make it possible for EEA EFTA authorities to provide input at the policy-shaping stage. It is important that they monitor developments on the EU side and engage actively with their EU counterparts in expert groups and committees to ensure that the right balance is struck between consumer rights and an environment in which European business and industry can thrive and create growth.