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**COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL, THE EUROPEAN PARLIAMENT,  
THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE  
AND THE COMMITTEE OF THE REGIONS**

**Report on the implementation of the Internal Market Strategy (2003-2006)**

## TABLE OF CONTENTS

PART A: INTRODUCTION.....	3
PART B: THE STATE OF THE INTERNAL MARKET – WARNING LIGHTS ARE BEGINNING TO FLASH RED.....	5
PART C: ENLARGEMENT WILL GIVE MARKET INTEGRATION A FRESH BOOST, IF HANDLED WELL .....	8
PART D: THE INTERNAL MARKET STRATEGY - PROGRESS SO FAR.....	10
1. Facilitating the free movement of goods.....	10
2. Integrating services markets.....	10
3. Ensuring high quality network industries .....	11
4. Reducing the impact of tax obstacles.....	12
5. Expanding procurement opportunities .....	12
6. Improving conditions for business .....	12
7. Meeting the demographic challenge .....	13
8. Simplifying the regulatory environment.....	13
9. Enforcing the rules .....	14
10. Providing more and better information .....	15
ANNEX 1: IMPLEMENTATION REPORT SCOREBOARD.....	16
ANNEX 2: ACTIONS DUE FOR COMPLETION BY END 2003 .....	21

## **PART A:**

### **INTRODUCTION**

The Internal Market Strategy (2003-2006)<sup>1</sup> sets out what needs to be done to maximise the contribution which an enlarged Internal Market can make to increasing the EU's competitiveness, growth and prosperity<sup>2</sup>. The Spring European Council in March 2003 recognised the importance of the Strategy as one of the Union's economic policy co-ordination instruments. The European Council meeting in October this year highlighted the need for urgent progress in services, financial services, transposition and enforcement, all of which are key areas within the Strategy. The September Competitiveness Council endorsed the Strategy and committed itself to taking urgent action to deliver the necessary actions. It stressed its importance as part of an integrated approach to competitiveness.

The Strategy is part of the "Guidelines Package", alongside the Broad Economic Policy Guidelines (BEPG) and the Employment Guidelines (EG)<sup>3</sup>. In common with these two instruments, it has been given a three-year perspective in order to ensure a more comprehensive, efficient and coherent approach to economic reform in the EU.

This is the first report on the implementation of the Strategy. Similar implementation reports have been prepared for the BEPG and the EG. All three reports are presented as part of the Commission's Report to the 2004 Spring European Council.

Only 8 months have passed since the Strategy was adopted. The results so far are mixed. Over half of the actions which were due by the end of 2003 have been delivered on time. However, many of those which have been delayed are important legislative files which are crucial to the EU's future competitiveness.

Urgent action is required over the next 12 months on two fronts:

- First, fresh efforts are needed on the key legislative files which have run into delays, such as the Community Patent, the Directive on enforcement of intellectual property rights and the Directive on recognition of professional qualifications as well as on more recent proposals, such as the FSAP's investment services and transparency Directives. Legislation which is not complete by the final session of the present European Parliament (in April, 2004) risks being subject to further delays. This would in turn have a domino effect on all subsequent steps towards improving the operation of the Internal Market;

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<sup>1</sup> COM(2003) 238 final of 7.5.2003

<sup>2</sup> Recognising the Strategy's importance for the EU's competitiveness, the Commission called for the work programme set out in the Strategy to be implemented rigorously in its Communication "Some Key Issues in Europe's Competitiveness – Towards an Integrated Approach", COM(2003) 704 final, of 21.11.2003.

<sup>3</sup> See Commission Communication on streamlining the annual economic and employment policy co-ordination cycles, COM(2002) 487 final of 3.9.2002

- Second, the concept of "better governance" as set out in the Strategy needs to be developed and implemented. This means that Member States, as joint owners of the Internal Market, need to work together in partnership and perform the necessary tasks which are incumbent upon them. Member States have made a good start in helping each other solve cross-border problems<sup>4</sup>. This willingness now needs to be extended to other tasks such as faster and better transposition, preventing problems through stronger day-to-day co-operation between national administrations and the provision of more and better information to citizens and businesses.

Success in doing this will:

- Breathe new life into the Lisbon Strategy by demonstrating consistency between political declarations about the need to boost competitiveness, on the one hand, and decisions on economic reform measures, on the other;
- Strengthen the foundations of an enlarged Internal Market, boosting intra-EU trade and injecting greater competition into Member States' economies, thereby forcing companies to become more efficient and productive. This is important because in a relatively high-wage economy such as the EU, enhanced productivity is the key to boosting competitiveness and securing our long-term prosperity;
- Help increase the supply of investment capital and create the kind of barrier-free environment which is conducive to an increase in private-sector investments, including in Trans-European Networks and R&D, as envisaged in the "Growth Initiative"<sup>5</sup> and the research investment action plan<sup>6</sup>;
- Put the Union in a stronger position to deal with any additional competitive pressures arising from exchange rate developments between the euro and other major currencies.

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<sup>4</sup> Through the SOLVIT network <http://europa.eu.int/solvit>

<sup>5</sup> An initiative for growth in the European Union – Interim Report to the European Council, COM(2003) 579 of 1.10.2003

<sup>6</sup> "Investing in research: an action plan for Europe", COM(2003) 226 final

## PART B:

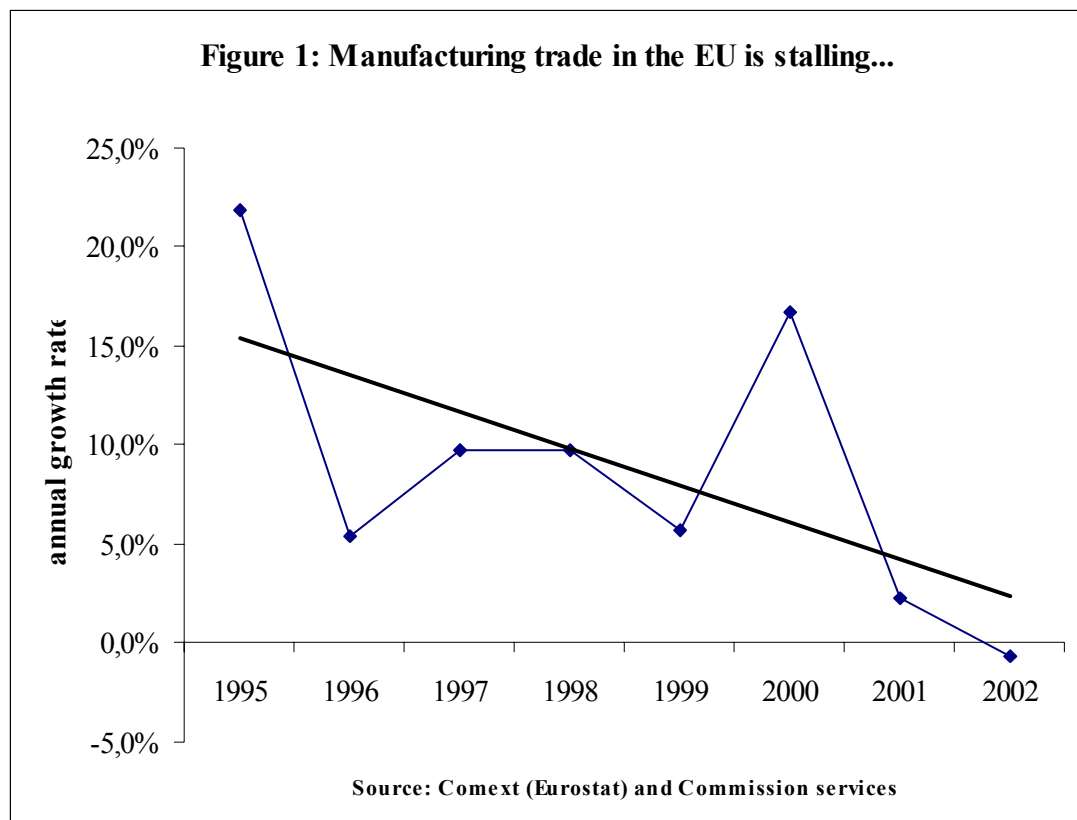
### THE STATE OF THE INTERNAL MARKET – WARNING LIGHTS ARE BEGINNING TO FLASH RED

Since the abolition of our internal frontiers ten years ago, the Internal Market has boosted EU economic growth by at least 1,8%, adding nearly 900 billion euro to our collective prosperity as well as helping to create 2,5 million extra jobs<sup>7</sup>.

However, despite its many successes, the Internal Market is still not functioning as it should. There are too many obstacles which continue to hold it back. There are also important areas, such as services, which have been barely touched by Internal Market policy.

There is particular cause for concern at the moment. After years of steady progress throughout the 1990s, some of the key indicators, which track the level of market integration, are beginning to point in the wrong direction.

First, the value of manufacturing trade inside the EU has begun to falter (figure 1). It barely grew in 2001 and then actually shrank in 2002.

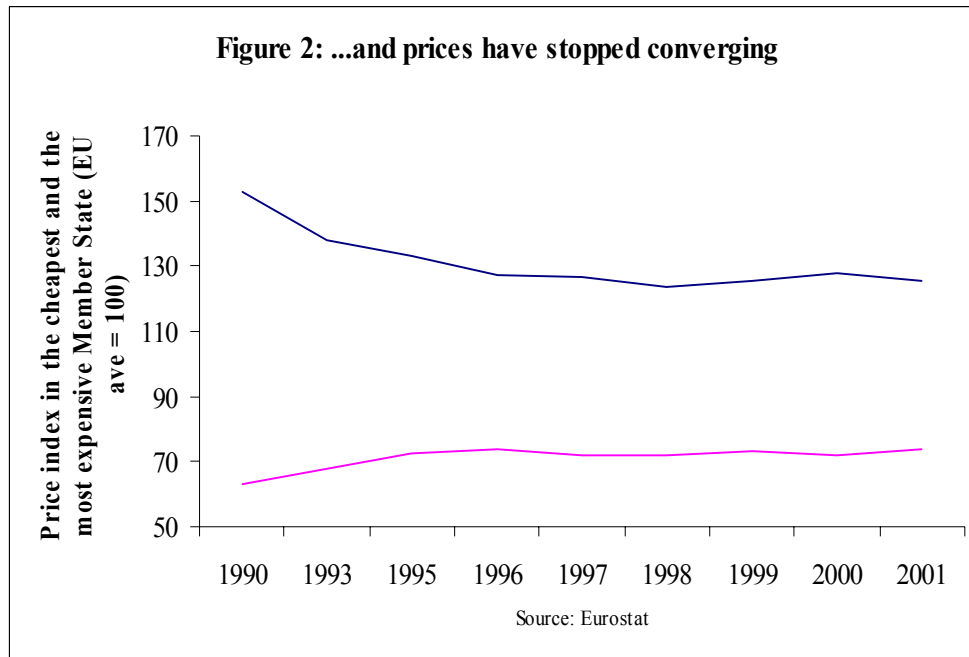


Second, prices across the EU are no longer converging (figure 2). Not all products are easily tradable but a large percentage of them are. Were trade between Member

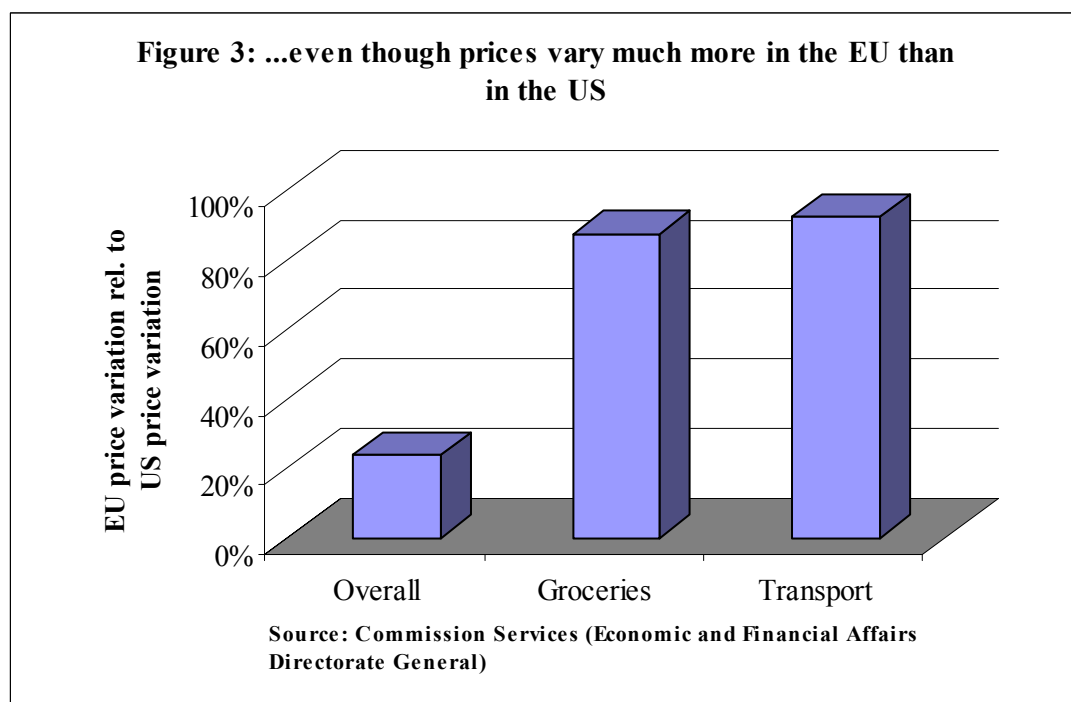
<sup>7</sup>

"The Internal Market – ten years without frontiers", SEC(2002) 1417 of 7.1.2003

States increasing then the prices of those products should converge because more trade makes price differences harder to sustain. It is a cause for concern then that price convergence in the EU has stalled.

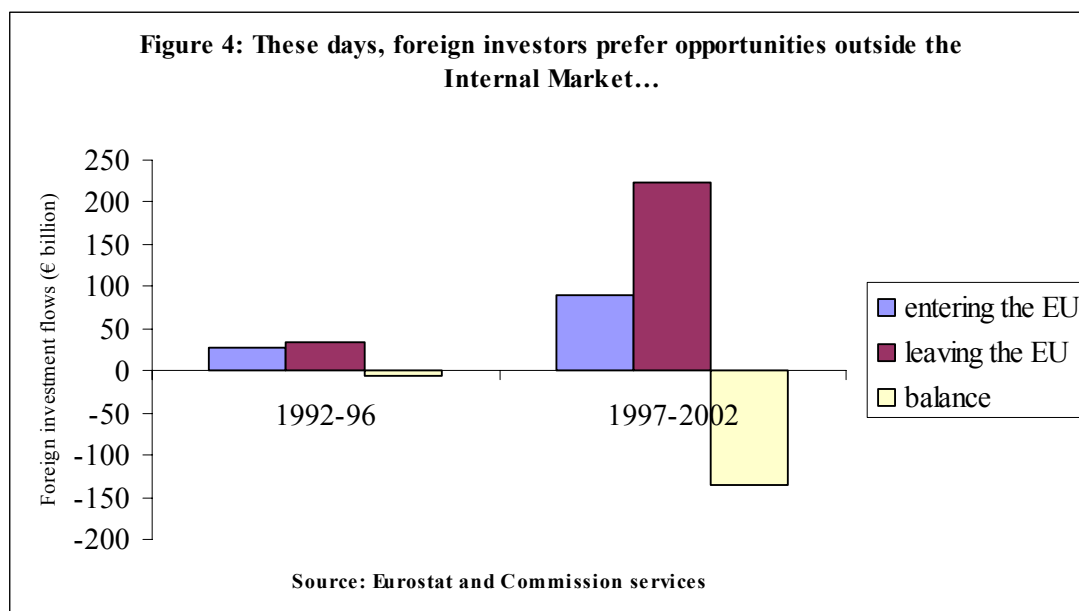


The picture is particularly worrying when viewed in comparison to the other big single market in the world – the United States. Price variation in the USA in 1998 was considerably less than in the EU (figure 3). As EU price convergence stopped before 1998, this gap cannot have narrowed.



Third, the EU is investing more in the rest of the world than the rest of the world is investing in the EU (figure 4). The difference has narrowed in the last two years, but not because of an increase in foreign investors' interest in the EU economy. Rather,

there has been an abrupt cut back in investment from the EU to the rest of the world. The reasons for the deteriorating investment picture in the EU are complex but disappointment about the general regulatory environment and the imperfect state of Internal Market integration may be one of the factors influencing the decisions of potential investors.



Some of the downturn in these indicators may be due to cyclical factors. It is, therefore, too early to draw conclusions. However, it would also be unwise to ignore these warning signs altogether. The best way to prevent further deterioration is to tackle remaining barriers in the functioning of the EU's product and capital markets, reduce the cost of trading across borders and get the process of market integration moving again.

The effort needed may not be huge. The cost of trading does not need to fall much to increase intra-EU trade significantly. The substantial intensification of intra-EU trade over the last twenty years has been driven by an estimated fall in trade costs of only 2 to 5%<sup>8</sup>. All Community institutions and Member States must now work together to achieve similar results again.

As well as facilitating the cross-border supply of goods and services, it is also important to focus on the demand side (i.e. the consumer dimension). Where consumers feel uncertain about the safety and quality of imported products, or are unsure about their rights of redress, they will not buy as much from suppliers in other Member States. The best way to solve this problem is through strong competition in the marketplace, combined with measures at EU level to boost consumer confidence and proper enforcement of the rules.

<sup>8</sup> Cavelaars, P. (2001) International trade costs, home bias and Europe's single markets, Netherlands Central Bank, MEB Series 2001-8

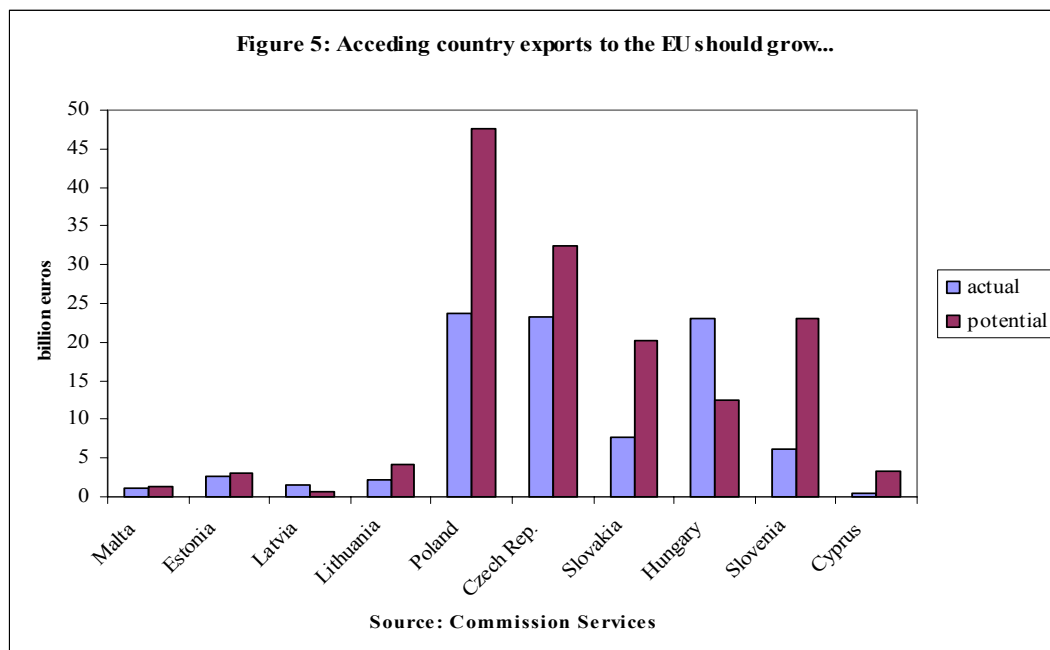
## PART C:

### ENLARGEMENT WILL GIVE MARKET INTEGRATION A FRESH BOOST, IF HANDLED WELL

Enlargement has the potential to provide the Internal Market with a significant new stimulus on top of the benefits which removal of existing obstacles would deliver. However, this is predicated on the assumption that (current and future) Member States work closely together and avoid action that could lead to fragmentation of the Internal Market. In this context, it is important that the Acceding Countries heed the conclusions drawn by the Commission in its Monitoring Report on their state of readiness<sup>9</sup>, and take immediate and decisive action to address the remaining weaknesses.

Trade between EU-15 and the Acceding Countries already increased more than eight-fold between 1995 and 2000 – in no small measure due to the impact of the Europe Agreements. And, despite these increases, their exports to the EU-15 could still almost double, even at current levels of development. Indeed, accession to the EU will lead to a further reduction in trade barriers for such countries.

Were today's Acceding Countries already Member States, a seminal economic model<sup>10</sup> of trade suggests that their exports to the EU-15 in 2000 were about 63% as large as they should have been. Some Acceding Countries, especially Cyprus and Slovenia, have a latent export potential which is even higher (figure 5). The biggest impact is likely to come from Poland, as the largest Acceding Country, whose exports to the EU-15 in 2000 were 54% of what would normally be expected for a Member State of its size and geographical location.



<sup>9</sup>

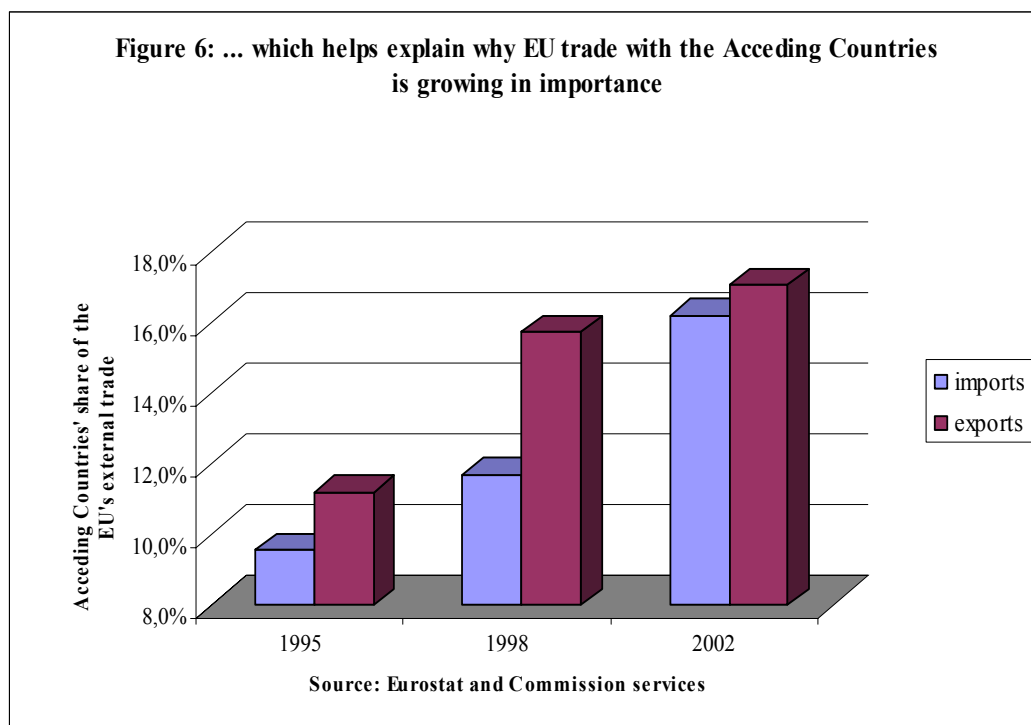
COM(2003) 675 final of 5.11.2003

<sup>10</sup>

Eastern Europe's International Trade, with Z. K. Wang, Manchester University Press, London, 1992



The fact that EU-15 imports from the Accessing Countries have been growing fast right up to the present (unlike EU-15 exports, which have slowed) suggests that the Accessing Countries do indeed still have further potential to expand exports to the EU-15 (see figure 6) – provided everybody plays by the rules and pressure to fragment the Internal Market is avoided.



EU-15 export expansion to the Accessing Countries has stabilised after a period of rapid growth during the second half of the nineties. However, as the Accessing Countries grow richer and as infrastructure connections improve, the current Member States will increasingly find them attractive outlets for their products and services.

A large part of the Accessing Countries' trade expansion with the current EU is the direct result of foreign direct investments.

In 1995, they received a combined inflow of just over €10 billion. In 2000, a mere five years later, this had more than doubled to just over €25 billion. These inflows have been critical in paying for the Accessing Countries' chronic trade deficits; approximately 75% of their trade deficits were covered by FDI inflows in the late 1990s.

It is also vital that the inflows continue. Without them, the Accessing Countries cannot catch up with current Member States; their domestic savings are inadequate to fund the required investments.

FDI generally flows to countries with stable, credible macro-economic environments, a predictable legal framework and a business-friendly culture. This is true for the Accessing Countries too. But, in their case, FDI is also driven by another factor – low production costs combined with the ability to export to the EU. Increased capital flows in future will therefore depend on full integration into the Internal Market and implementation of the rules on which it is based.

## **PART D:**

### **THE INTERNAL MARKET STRATEGY - PROGRESS SO FAR**

Although there have been some notable successes, progress in implementing the Strategy has generally been disappointing. Of the 45 actions due before the end of 2003, only 27 have been delivered on time. Moreover, many of those which have been delayed are important legislative files. More details on the individual actions can be found in Annex 2. Below is a short summary of progress in each of the ten priority areas set out in the Strategy.

#### **1. Facilitating the free movement of goods**

The implementation of 2003 actions under this heading is on track. However, many of the key actions announced in the Strategy to facilitate trading in goods will come to fruition only over the next twelve months. Chief among them is the proposal for a new Regulation to improve the operation of mutual recognition by introducing new disciplines (such as mandatory notification in cases where market access is denied, declaration of reasons for denials and appeal procedures for companies).

This proposal will be based on the extensive co-operation between national administrations which the Commission hopes will develop as part of the ongoing efforts towards "better governance" in the Internal Market.

Another key action is also underway in the harmonised product area to strengthen further the operational efficiency of the so-called "new approach" directives. The Council has responded positively to the Commission's Communication<sup>11</sup> on this subject. It has invited the Commission to develop a clearer framework for conformity assessment, accreditation and market surveillance and to take steps to clarify and promote the use of CE-marking. The Commission intends to present a legislative proposal by the end of 2004.

#### **2. Integrating services markets**

There is no genuine Internal Market for services yet; 53.6% of the European economy is still not integrated. The resulting fragmentation and lack of competition harms the productivity of EU service providers, which grew at 0.6% between 1996 and 2000, compared with productivity gains in the US of 1.5% over the same period. In addition, cross-border consumption of services is hampered by a lack of consumer confidence.

The Strategy committed the Commission to come forward with a proposal for a Directive on Services in the Internal Market by the end of 2003. The Commission has now presented this proposal and calls on the Council and Parliament to deal with it as a matter of priority.

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<sup>11</sup> COM(2003) 704 final of 21.11.2003

Progress is also required on the Sales Promotion Regulation – due for adoption in 2003 but now delayed – as well as on the Directive on Unfair Commercial Practices and on the Professional Qualifications Directive. These are essential if the Internal Market for services is to become a reality.

Financial markets in the EU could and should be more integrated. If they were, the gains could be sizeable. Studies<sup>12</sup> suggest that one expected source of benefit – narrower equity and corporate bond spreads – would allow:

- a potential increase in EU GDP of 1.1% over the next decade;
- an increase in employment of 0.5%;
- an average reduction in the cost of capital by 0.5%.

36 of the original 42 measures in the Financial Services Action Plan have now been adopted<sup>13</sup>, including the Prospectuses Directive. These measures provide for a coherent and market-responsive regulatory framework. Effective implementation and enforcement is now the key to reaping the benefits.

### **3. Ensuring high quality network industries**

The Internal Market Strategy stressed that market opening in the network industries (energy, transport, telecommunications and post) has brought significant benefits for both businesses and consumers<sup>14</sup>.

The Commission is therefore determined to pursue the process of market opening in full respect of universal and public service obligations – i.e. the provision of services of a specified quality to all consumers and users throughout the territory of a Member State at an affordable price<sup>15</sup>.

There has been good progress over the past six months. A final push is now needed on measures to open freight services in the railway sector.

In addition, the Commission is presently conducting an analysis of the legal and administrative arrangements relating to the provision of water services, including wastewater treatment, and the application of EU competition and Internal Market rules to these sectors. The aim is to assess whether there are gains to be made from further modernisation of the sector. The Commission expects to complete its analysis in the near future.

The Strategy also highlighted the growing importance of public-private partnerships (PPPs). These are essential if we are to find innovative funding solutions for the Trans-European Networks and the research and innovation projects which are central to the "Growth Initiative." The Commission's Green Paper on PPPs and Procurement Law is expected in spring next year.

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<sup>12</sup> "Quantification of the macro-economic impact of the integration of EU financial markets", London Economics study for DG Internal Market

<sup>13</sup> "The FSAP enters the home straight", ninth FSAP implementation report, 25.11.2003

<sup>14</sup> See footnote 6

<sup>15</sup> COM(2003) 270 final of 21.5.2003

#### **4. Reducing the impact of tax obstacles**

Tax obstacles significantly hinder the functioning of the Internal Market and generate unnecessary compliance costs for business which are often passed on to consumers.

The Commission has stuck to all its deadlines in this area. For example, it has presented proposals amending the Parent/Subsidiary Directive and the Merger Directive. However, for progress to be achieved, Member States will have to set aside positions of principle and work more pragmatically towards results which are good for competitiveness in the Internal Market. The Commission continues to hold the view that qualified majority voting will have to replace unanimity in the Council for tax matters which are essential for the functioning of the Internal Market. Without this, making progress in a Union of 25 or more Member States will become virtually impossible.

#### **5. Expanding procurement opportunities**

A recent study<sup>16</sup> shows that the difference between applying or not applying EU public procurement rules can be as high as 34% of total costs. Saving just 10% of current public procurement expenditure would allow all Member States to conform to the Stability and Growth Pact.

Yet many public administrations continue to award contracts without effective competition. Member States must urgently tackle this problem. To help them to do this, the Commission will present a proposal in 2004 to strengthen the Remedies Directive.

The major target for 2003 was adoption of the procurement legislative package. This is now on track. The new package will enable Member States to press forward with e-procurement in the public and utilities sectors. The savings to be made from this are enormous. In Italy, for example, the government estimates that €3.7 billion has already been saved in 2003 out of a total of €23 billion of purchases. Revised estimates in Ireland put potential savings over the next 5 years at €1 billion – double the initial estimates.

The Strategy commits the Commission to producing an Action Plan to boost electronic procurement. Work on this has already started and will accelerate once the right legal conditions (provided by the legal package) are put in place.

#### **6. Improving conditions for business**

This chapter focuses particularly on the protection of intellectual property rights and company law – two issues which are directly relevant to promoting entrepreneurship and innovation in the EU and have a strong Internal Market dimension.

In the field of intellectual property, the focus is on three important legislative proposals – the Community Patent, the Directive on the patentability of computer-implemented inventions and the Directive on the enforcement of intellectual property

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<sup>16</sup> COWI. "Monitoring Public Procurement in the European Union using Public Authorities Panel Data". Lot 2. Final report July 2003

rights - which aim in different ways to ensure that the system remains relevant to the needs of industry and consumers.

Progress on these proposals has been slow. Without an up to date legal framework in this field, research investment, innovation and creativity, which underpin a strong knowledge-based EU economy, will suffer.

The Commission has now launched its Action Plan on "Modernising Company Law and Enhancing Corporate Governance in the EU"<sup>17</sup>. This is an important initiative which will help companies to operate efficiently in the Internal Market and boost confidence in capital markets following recent corporate scandals.

In addition, the Commission has presented a proposal for a 10<sup>th</sup> Company Law Directive on cross-border mergers. The Council has reached agreement on a Take-Over Bids Directive, although this agreement provides for less harmonisation than the original Commission proposal.

## **7. Meeting the demographic challenge**

The actions foreseen in the Strategy relate to two areas where the impact of demographic changes will be felt most keenly: pensions and health services. Only one action was due for delivery in 2003: an analysis by the Commission of the Member States' compliance with ECJ case law relating to cross-border provision of and access to health services.

This analysis has been completed. It concluded that the Internal Market in health services is not functioning satisfactorily and that European citizens are encountering unjustified or disproportionate obstacles when they seek reimbursement of medical costs incurred in another Member State. The Commission is determined to tackle this problem. In doing so, it will take account of the 19 recommendations set out by the High Level Reflection Group on patient mobility and healthcare developments<sup>18</sup>.

## **8. Simplifying the regulatory environment.**

Progress is being made towards meeting the goals set out in the Commission's Better Regulation Action Plan<sup>19</sup>, although there is still some way to go before significant results will begin to be felt on the ground.

In particular, the Commission is subjecting an increasing share of its work programme to extended impact assessment and is systematically consulting stakeholders at an early stage. In addition, the three major EU institutions have recently signed<sup>20</sup> an agreement aimed at improving the quality of Community legislation and its transposition into national law.

A better regulatory environment also depends on similar efforts at national level where the majority of rule-making still takes place. Progress has been made, but by

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<sup>17</sup> COM(2003) 284 final

<sup>18</sup> The Commission plans to issue a Communication in March 2004 setting out its response to these recommendations.

<sup>19</sup> COM(2002) 278 final of 5.6.2002. See also the 2003 Annual Report on Better Law Making, COM(2003) 770

<sup>20</sup> On 16 December 2003

no means all Member States, for example, are carrying out impact assessments on their proposals as the Commission is now doing<sup>21</sup>.

For 2003, the Strategy promised two actions – a mechanism for reporting on particularly complex rules and a Council working group on "better regulation". Neither has been delivered on time, although work on the mechanism is well underway.

The Strategy also stressed the need to introduce greater logic into the use of (legal) instruments and policy actions, particularly in EU-25. The choice between mutual recognition or harmonisation, self-regulation or co-regulation, directives or regulations should result from a careful assessment of how best to achieve the objectives rather than be a matter of political expediency. The Commission will set out its ideas in this area during 2004, including on an Internal Market "compatibility test" to be applied to all legislation adopted at national level.

## **9. Enforcing the rules**

The Internal Market can only work if its rules are correctly implemented by the Member States and effectively applied in practice. This is not yet the case (see Annex 1 for more details).

This is a serious problem. The Internal Market is built on trust. Trust that everybody will be playing by the rules. With the EU increasing in size and diversity after enlargement, this trust needs to be reinforced, not undermined.

The Strategy suggests a number of actions for improving the situation. Of the four actions due in 2003, two have been delivered on time – the initiation of "preventive" dialogue between the Commission and Member States and the proposal for a Regulation on co-operation between national authorities responsible for the enforcement of consumer protection legislation.

Two others – more ambitious transposition targets and a website setting out the various redress procedures available to citizens and businesses – are now late. It is not realistic to set more ambitious transposition targets as long as only a few Member States are meeting the present targets. Work on pulling the different redress mechanisms together in a seamless service is well advanced.

More generally, political pressure, for example through the Internal Market Scoreboard, will to some extent help improve the situation or prevent it from deteriorating. But real success in an Internal Market composed of 28 countries will require a different attitude and different working relationships. Member States must take full ownership of their Internal Market and work in partnership with each other and with the Commission to make it work in practice.

This means, for example, avoiding transposition delays, learning from each other how best to implement EU directives and assisting in the resolution of cross-border problems (through SOLVIT). The Commission is now working with Member States to translate this vision into reality.

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<sup>21</sup> Report to the Ministers responsible for Public Administration in the EU Member States on the progress of the implementation of the Mandelkern Report's Action Plan on Better Regulation. Athens, May, 2003

## **10. Providing more and better information**

Providing information to citizens and business as to how they can exercise their rights is another element of "better governance" in the Internal Market. It is very much an area where effective results will depend on Member States taking on a lot more responsibility in partnership with the Commission.

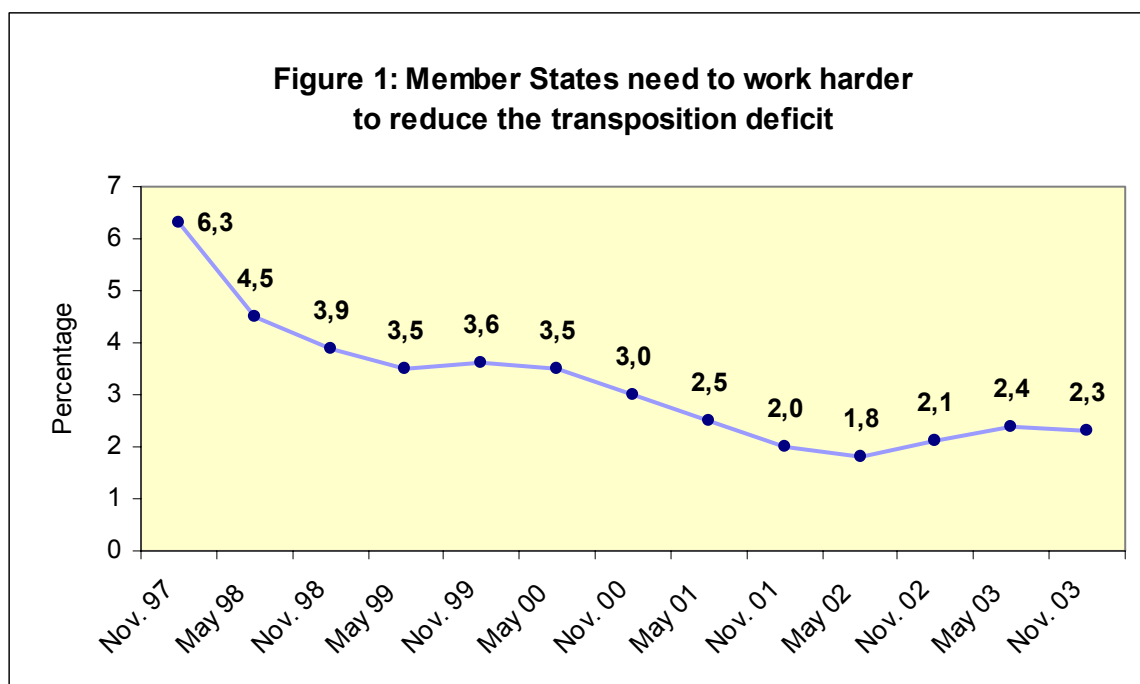
The Strategy calls on Member States to draw up national plans to raise awareness of Internal Market opportunities among their own citizens and businesses and commits the Commission to organising regular high-level discussions of these plans. It also calls on Member States to take more responsibility for the national-level information provided through the Commission's Dialogue with Citizens (<http://europa.eu.int/citizensrights>), a new version of which will be online early in 2004. There has been progress in both these areas, although there is still some way to go.

## ANNEX 1

### IMPLEMENTATION REPORT SCOREBOARD

#### 1. Problems persist with implementation by Member States of Internal Market rules into national law

With few exceptions, Member States are failing to implement a large number of key Internal Market directives into national law by the deadline they have themselves agreed. As Figure 1 shows, their performance has marginally improved but is still disappointing. The current 'transposition deficit' is now 2.3%, far from the 1.5% target set by successive European Councils. Concretely, this means that the Commission is still awaiting 527 notifications of national implementing measures. As many as 131 Internal Market directives have not been implemented into national law in all the Member States. This represents around 8.5% of all Internal Market directives<sup>22</sup>, and is a principal cause of fragmentation of the Internal Market.



Of those countries that met the 1.5% target set by the European Council:

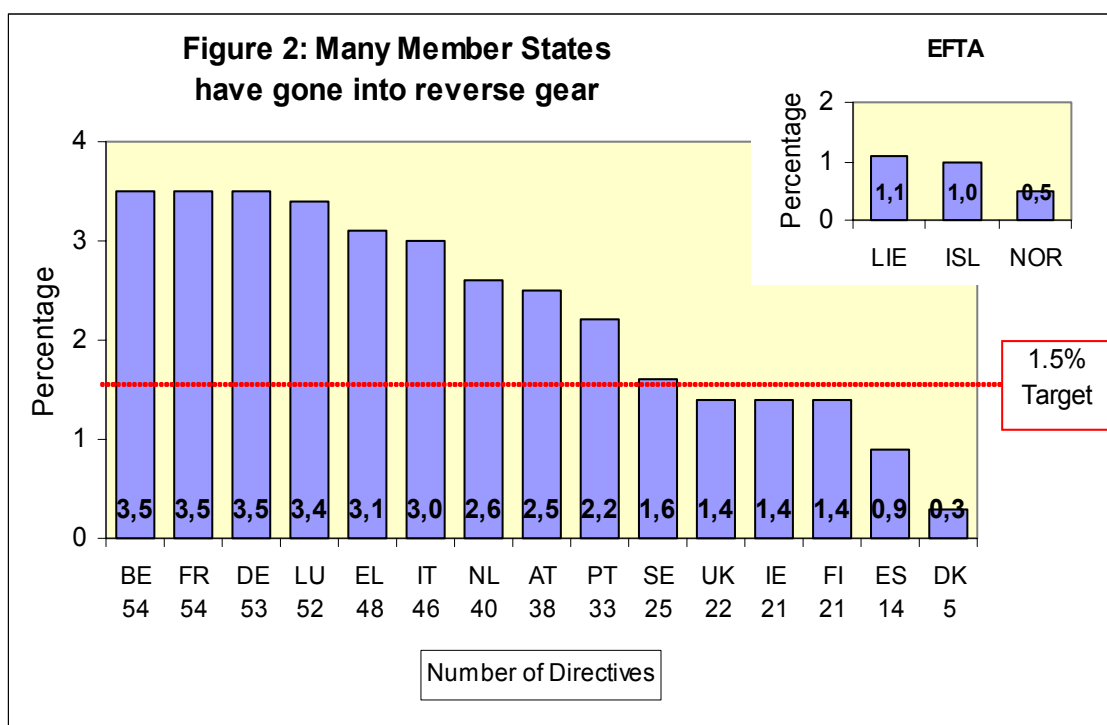
- Denmark and Spain are to be especially commended for having the best performance records (figure 2), and for having shown the commitment and organisation to improve on their already good records;
- Ireland has made giant strides in more than halving its transposition deficit since May 2003, and should be congratulated on the commitment it has shown to doing so;

<sup>22</sup>

As at 31 October 2003, 1,535 directives and 429 regulations concerned the Internal Market, as defined by the EC Treaty.



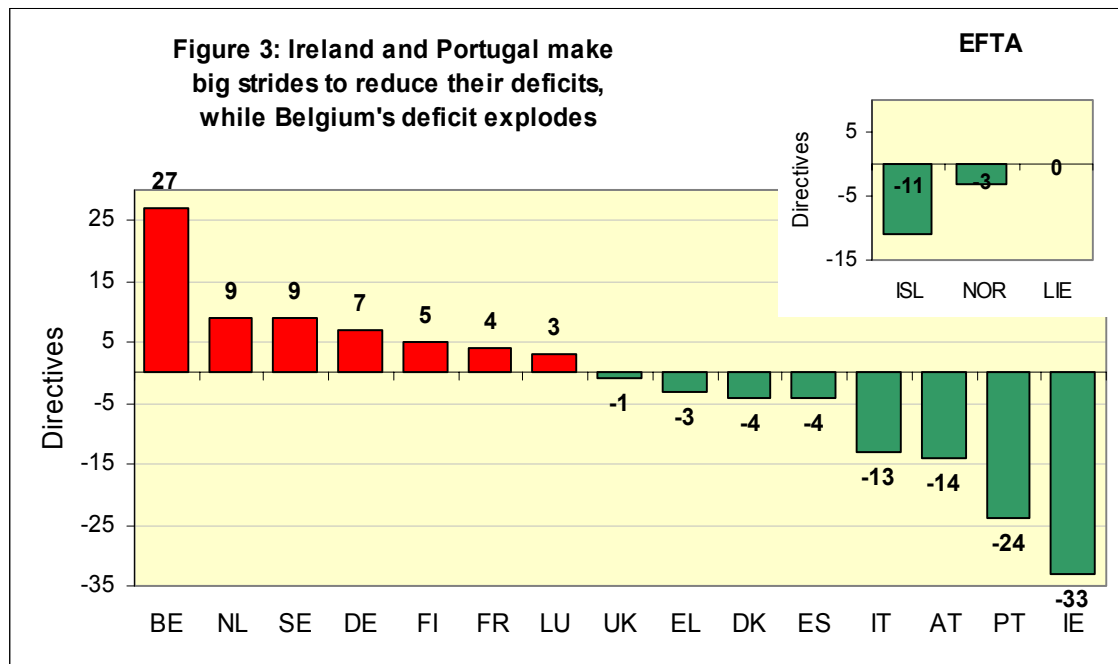
- Finland and the UK are also to be congratulated, but should follow the example of Denmark and Spain in further improving their performance.



*Transposition deficit, by Member State, as at 30 November 2003*

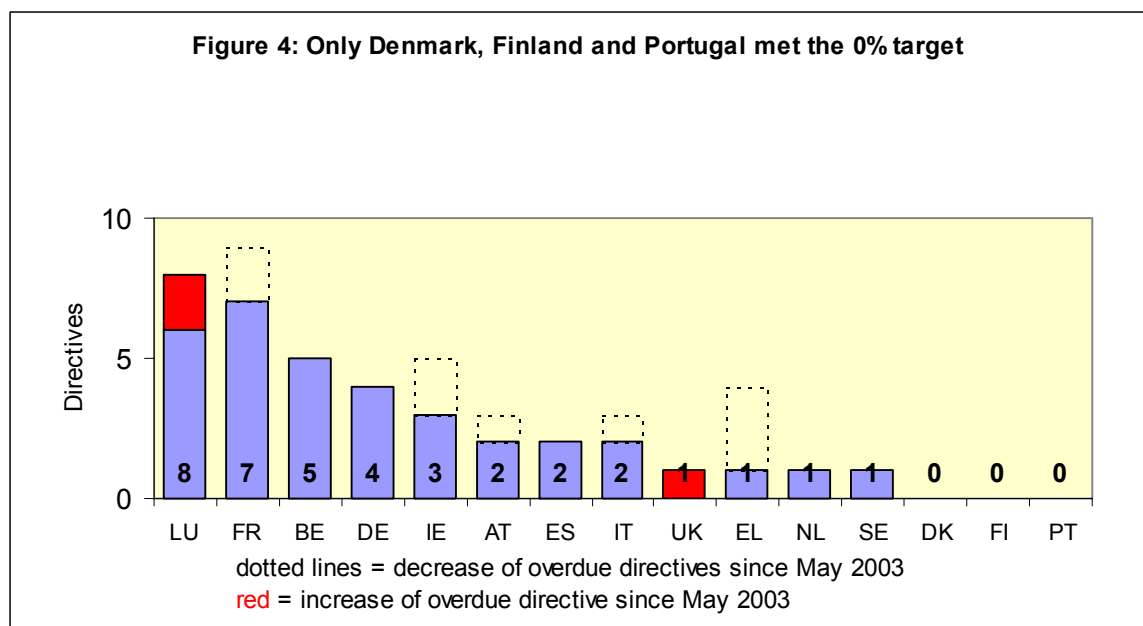
Of the Member States that did not meet the 1.5% target:

- While Sweden just missed the target, its performance is its worst since 1999;
- Portugal, Austria and to a lesser extent Italy have made efforts to reduce their deficits (figure 3), although in Italy's case its deficit is still double the 1.5% target;
- The deficits of Belgium and the Netherlands have got considerably worse recently, in Belgium's case almost doubling since May 2003, which is a matter for concern;
- France, Germany, Luxembourg and Greece continue to be among the worst performers and, with the exception of Greece, their deficits have got worse. This is regrettable given the commitment and organisation shown by other Member States to improve their performance and to meet the target. It is also regrettable that these countries (together with Belgium and Italy) again appear to consider that it is acceptable to have a transposition deficit that is (more than) double the 1.5% target set by the European Council.



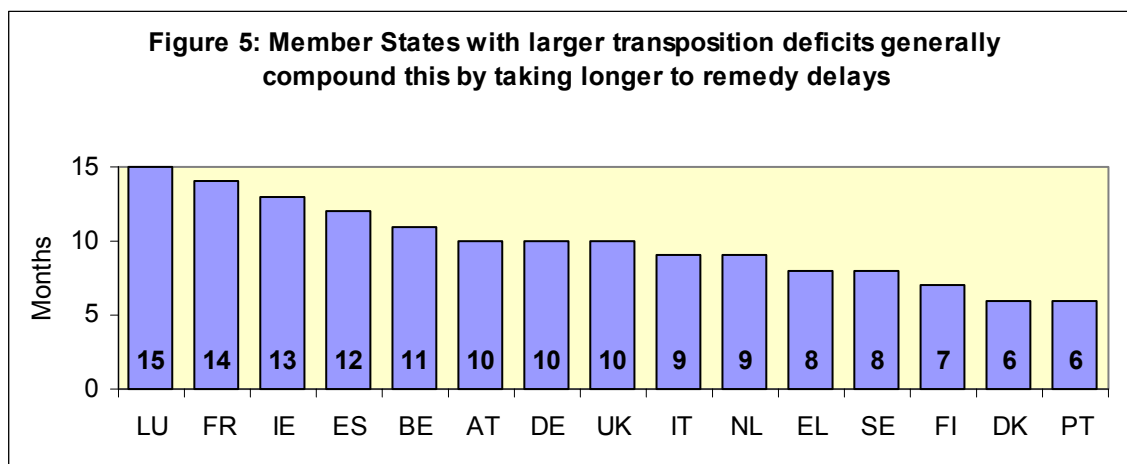
*Change in number of outstanding directives, by Member State, since May 2003. For example, Belgium has increased its backlog by 27 directives, while Ireland has reduced its backlog by 33 directives.*

Ensuring that delays in implementing Internal Market directives into national law do not go on indefinitely is also important. This is why the Barcelona European Council of March 2002 added a 'zero tolerance' target for directives whose implementation into national law is two or more years overdue. As Figure 4 shows, only Denmark, Finland and Portugal met this target, as they had in the May 2003 Scoreboard. France, Ireland, Austria, Italy and Greece all improved their performance, while the United Kingdom and Luxembourg had a worse performance than in May 2003. It is disappointing that a target set for all Member States has only been met by 3 of them.



*Number of overdue directives with a deadline for implementation into national law before 31 October 2001 which have not been implemented by 30 November 2003*

Figure 5 shows that, in general, Member States that have the best performance in implementing directives on time have also organised themselves in such a way as to react more quickly once the deadline has passed to ensure that they do not remain in breach of their obligations for long periods of time. Regrettably, Member States such as Luxembourg and France that are often late in implementing directives compound this by taking the longest to remedy the situation.



*Average delay in months of directives which have passed the implementation deadline*

## 2. Problems with application of Internal Market rules: Infringements

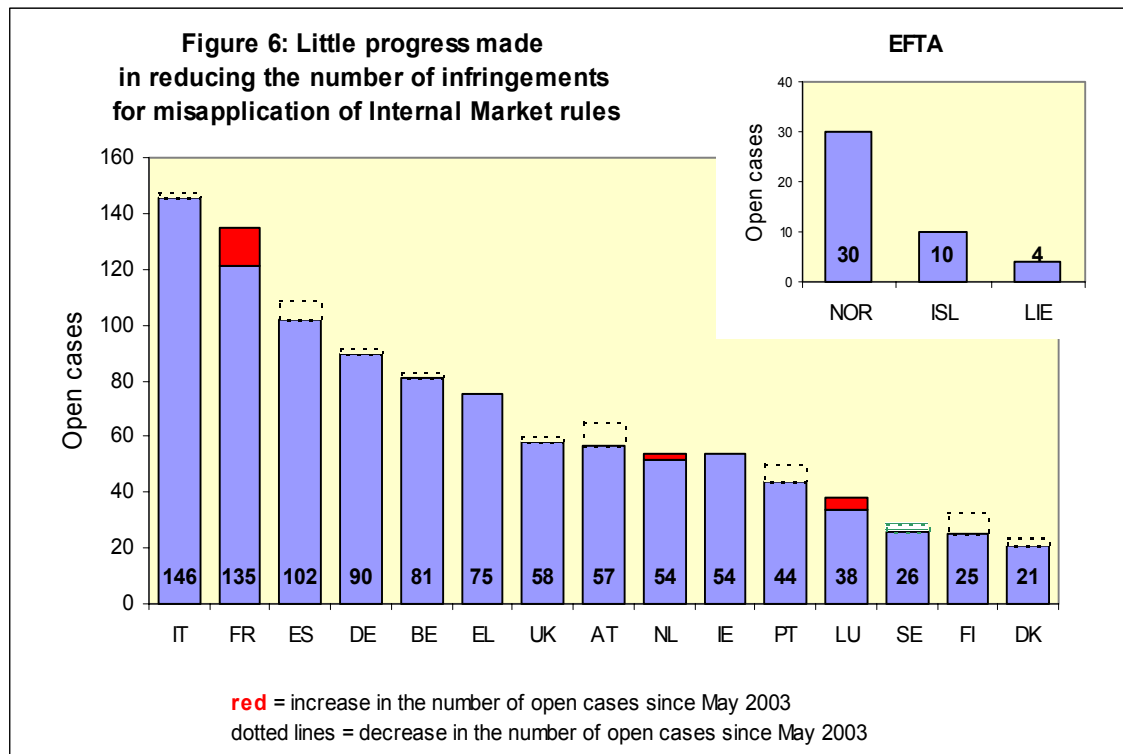
When the Commission considers that Internal Market rules are not applied correctly, it takes infringement proceedings against the Member State in question. Every infringement is one too many; they are costly and can take a long time to be resolved. In the Internal Market Strategy, the Commission urged Member States to reduce the number of infringement cases by at least 50% by 2006. This is a bold objective, but achievable.

Regrettably, as Figure 6 shows, Member States have made little progress, as the number of cases has only gone down by less than 3% - from 1033<sup>23</sup> cases to 1006. While as many as ten Member States appear to have heeded the Commission's call by reducing the number of infringements against them, France, the Netherlands and Luxembourg have seen the number of infringement cases against them increase.

France and Italy together account for some 28% of infringement cases, more than Denmark, Finland, Sweden, Luxembourg, Portugal, Ireland and the Netherlands combined. Action by France and Italy to reduce the number of infringements would have a proportionately bigger impact on reaching the 50% target, and they are therefore called on to redouble their efforts.

<sup>23</sup>

This figure, which is smaller than earlier published statistics, excludes so-called 'joined' cases which concern infringement proceedings based on multiple complaints.



*Open infringement cases, by Member State, as at 31 October 2003, compared to corresponding figures as at 30 April 2003 when the Internal Market Strategy was adopted*

## ANNEX 2

### ACTIONS DUE FOR COMPLETION BY END 2003

#### 1. Facilitating the free movement of goods

Action	State of play	Costs/benefits
Commission Communication on the correct implementation of the mutual recognition	DONE.	This aims to reduce uncertainty among economic operators and national administrations about their rights and obligations under the existing system.
Legislative proposal on enhancing the implementation of the New Approach Directives	ONGOING.	This aims to reinforce further the levels of confidence, transparency and cooperation among Member States in order to facilitate the mutual recognition and acceptance of certificates and the free movement of goods. The Council has invited the Commission to develop a clearer framework for conformity assessment, accreditation and market surveillance in the European Union and to take steps to clarify and protect CE marking.
Contracts with European standardisation organisations	DONE.	New performance-based contracts are expected to help speed up the standard-setting process.
Commission Communication on integrated product policy (IPP)	DONE.	This aims to integrate environmental performance requirements into products' life-cycles at EU level, so reducing the pressure to adopt national measures which could fragment the Internal Market.
Commission Communication on the integration of environmental aspects into the standardisation process	(ALMOST) DONE.	This aims at ensuring that greater account is taken of environmental considerations at all stages in the standardisation process.

Proposal for a Directive on unfair business to consumer commercial practices	DONE.	If adopted, this will establish a single, common, general prohibition of unfair commercial practices. It will give consumers the same protection against unfair business practices and rogue traders wherever they shop in the EU.
Commission to implement its Action Plan on European Contract Law	ONGOING.	The consultation on the Action Plan has generated about 130 responses so far from Member States and stakeholders. The Commission will soon publish a first summary of these responses and outline the next steps to be taken. Both the European Parliament and the Council adopted Resolutions supporting the Action Plan in September 2003.
Proposal to recast the framework Directive on motor vehicles and their trailers	DONE.	If adopted, this proposal will extend the (highly successful) EU Whole Vehicle Type-Approval system for cars to other types of vehicles.
Negotiation by the Commission of a series of bilateral agreements with Acceding Countries to facilitate the notification of their draft technical measures within the scope of Directive 98/34/EC	DONE. The agreements will soon be ratified by the Acceding Countries.	This will smooth the integration of new Member States into existing procedures and structures aimed at preserving the integrity of the Internal Market legal framework.
Extension, implementation and conclusion of PECAs (Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products) with Acceding Countries	DONE. New PECAs have entered into force with Slovenia, the Slovak Republic and Estonia. New sectoral annexes to the PECAs with the Czech Republic, Hungary, Latvia, Lithuania, Slovenia and the Slovak Republic have also been developed.	PECAs are a particular form of agreement based on the adoption of Community legislation on industrial products and the creation of the appropriate administrative infrastructure in Accession Countries. They are useful instruments for integrating these countries into the Internal Market.

## 2. Integrating services markets

Action	State of Play	Costs/benefits
Proposal for a Directive on Services in the Internal Market	DONE.	If adopted, this will remove legal barriers in the Internal Market thus helping to free up the immense economic and job creation potential of the services industries.
Adoption of the Regulation on Sales Promotion	NOT DONE. Delays have been incurred in Council. The Irish Presidency foresees a possible political agreement in May.	If adopted, this will make it easier for businesses to use sales promotions to draw attention to their products in new markets. It is an essential accompaniment to the Services Directive.
Adoption of Directive on the recognition of professional qualifications	NOT DONE. Substantial delay due to slower than expected progress of work in Parliament.	If adopted, this will create clearer and simpler conditions for recognition, particularly for cross-frontier service provision. This will facilitate free movement, create more competitive markets and ensure better services for users.
Commission Communication on the competitiveness of business services	DONE.	This sets out non-legislative measures designed to complement the Services Directive. These include the development of European standards and measures to improve statistical coverage of services sectors.
Adoption of the Prospectuses Directive	DONE.	This will make it easier for companies to raise money on an EU-wide basis while at the same time providing adequate protection for investors.
Communication on clearing and settlement	NOT DONE. Discussions with financial institutions are still ongoing.	Improved clearing and settlement arrangements are essential to an efficient and integrated securities market.

## 3. Ensuring high quality network industries

Action	State of play	Costs/benefits
Single European Sky for air traffic management	NEARLY DONE. Conciliation procedure completed on 9 December 2003.	This should help to reduce air transport delays and costs as well as increasing safety.

Second package of measures to revitalise European railways	NOT YET DONE. Conciliation due to start in January 2004.	This should result in more competitive rail freight services, promoting a shift from road-to-rail by offering business better conditions and a higher-quality service.
Council mandate to the Commission to negotiate an open skies agreement with the US	DONE.	The current system, based on bilateral agreements between individual Member States and the US, places a significant brake on restructuring in the EU air transport industry and hinders the functioning of the Internal Market. Negotiations with the US are now underway.
Adoption of legislation completing the Internal Market for gas and electricity	DONE. Member States must transpose the legislation by 1 July 2004.	Gas and electricity markets will be completely opened up for non-household customers by 2004 and for household customers by 2007.

#### 4. Reducing the impact of tax obstacles

Action	State of play	Costs/benefits
Proposals amending the Parent/Subsidiary Directive and the Merger Directive	DONE.	These Directives eliminate double taxation and allow companies organising their operations on a cross-border basis to defer payment of certain taxes. If the proposed amendments are adopted, these benefits will be made available to more companies.
Communication examining different options for providing companies with a consolidated tax base for their EU-wide activities	DONE.	A consolidated base could be achieved without harmonising corporate tax rates and would go a long way towards solving the problems faced by companies.
Communication setting out further steps to modernise and simplify the VAT system	DONE.	This envisages the introduction of a single place of compliance for all businesses trading in Member States where they have no establishment. This will lower compliance costs and make it easier to do business across borders.



Communication on the effect of case law of the ECJ on dividend taxation systems	DONE.	This aims at eliminating discrimination in some Member States who impose a higher tax on cross-border dividends than on domestic dividends. Such rules are a strong disincentive to the cross-border holding of shares and slow down the creation of pan-European equity markets.
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## 5. Expanding procurement opportunities

Action	State of play	Costs/benefits
Adoption of the "legislative package"	NEARLY DONE. Political agreement reached in conciliation. (Final adoption due in January 2004).	This will pave the way for greater use of electronic procurement, and will put in place a legal framework which is sufficiently flexible for the complex contracts which can arise in the context of the Trans-European Networks.
Interpretative Communication on the implications of recent ECJ rulings regarding exceptions under the Treaty for essential security interests in Member States	POSTPONED.	This will be integrated into the Green Paper on defence procurement (due in 2004).

## 6. Improving conditions for business

Action	State of play	Costs/benefits
Regulation on the Community Patent	NOT YET DONE. Adoption expected by the end of 2003.	The proposed system will establish a single EU-wide patent, bringing important benefits for innovators in terms of obtaining, enforcing and managing their rights. It will provide protection in 25 Member States for around the same price (or slightly less) as is currently paid for protection in just 8 countries.
Directive on the enforcement of intellectual property rights	NOT DONE. Parliament likely to vote its first reading in January 2004.	This will create a level playing field for the enforcement of intellectual property rights in different EU countries. It is an essential part of the fight against piracy and counterfeiting which causes immense damage to the EU economy.

Directive on the patentability of computer-implemented inventions	NOT DONE. Member States did not reach a common position in time to allow a second reading in Parliament during the current legislature.	This will clarify and make more transparent the boundaries of patent law in this field. It will stimulate innovation and benefit software developers and suppliers as well as the users of patentable technology.
Take-over bids Directive	DONE. The agreement reached in Council falls short of what is required to create a genuinely level playing field.	A Directive ensuring a high degree of harmonisation at EU level would have facilitated pan-European restructuring.
Legal endorsement of existing International Accounting Standards	(NEARLY) DONE. All endorsed, except IAS 32 and 39.	All EU-listed companies are now required to prepare their consolidated accounts in accordance with IAS from 2005. IAS are established by the International Accounting Standards Board but have to be endorsed for use within the EU.
Communication on statutory audit	DONE.	This sets out priorities for 2003 and beyond aimed at improving and harmonising the quality of statutory audit in the EU. It will ensure that investors can rely fully on the accuracy of audited accounts, prevent conflicts of interest for auditors and enhance the EU's protection against Enron-type scandals.
Proposal to modernise the 8 <sup>th</sup> company law Directive	NOT (YET) DONE. Expected in the first quarter 2004.	If adopted, this will strengthen access to and regulation of the audit profession.
Proposal for a 10 <sup>th</sup> Company Law Directive on cross-border mergers	DONE.	If adopted, this proposal will make cross-border mergers simpler for all companies with share capital. However, it will be especially useful for small and medium-sized businesses who want to operate in more than one Member State, but not throughout Europe, and thus are not likely to seek incorporation under the European Company Statute.

**7. Meeting the demographic challenge**

Action	State of play	Costs/benefits
Analysis of Member States' compliance with ECJ case law relating to cross-border provision of and access to health services	DONE.	The analysis shows that the Internal Market in health services is not functioning satisfactorily. It provides a useful basis for discussions with Member States.

**8. Simplifying the regulatory environment**

Action	State of play	Costs/benefits
Ex-ante impact assessment	ON TRACK. Some 50% of Commission initiatives will be subject to extended impact assessment in 2004, compared to 17% during last year.	If carried out properly, impact assessment introduces greater transparency, provides an objective basis for decision-making and improves the quality of any new rules.
Simplification of existing EU rules	ON TRACK. 18 of the 23 planned simplification exercises completed on time. Less progress in removing obsolete legislation.	This will result in less and simpler regulation. The Commission is committed to reducing the Community acquis (of around 96.000 pages) by 25% by 2005.
Mechanism for reporting on particularly complex rules	NOT YET DONE. This mechanism will be launched during the first quarter of 2004.	Respondents will be able to identify particular (Community or national) measures through a permanent online facility and point out why in their current form they are an obstacle to the Internal Market and to competitiveness. These problems will then be drawn to the attention of the responsible authorities for their consideration/action.
(Competitiveness) Council working group on "better regulation"	NOT YET DONE.	The Commission believes that it is important that better regulation be given a permanent "home" within the Council structures to ensure that any best practices, such as conducting impact assessment on Council amendments to Commission proposals, are promulgated to all Council formations. It regrets that the Council has not yet been able to agree on such forum.

## 9. Enforcing the rules

Action	State of play	Costs/benefits
Meet transposition targets set by the Spring European Council	NOT DONE.	Transposition deficits have been increasing since May 2002, and the EU average now stands at 2.3% (see Annex 1).
"Preventive" – dialogue between the Commission and Member States upon adoption of Directives.	ONGOING. This covers a wide range of Internal Market Directives.	This will ensure faster and better transposition by allowing potential problems to be detected at an early stage.
Internet facility setting out the various redress procedures available to citizens, consumers and businesses.	NOT (YET) DONE. The Commission is working with Member States to integrate national redress systems into this facility.	This will allow citizens, consumers and businesses to see the whole range of possibilities available to them and the time and costs involved in each option. It will enable them to choose the means of redress most suited to their needs.
Proposal for a Regulation on co-operation between national authorities responsible for the enforcement of consumer protection laws.	DONE.	If adopted, this will link up national enforcement authorities and enable them to take co-ordinated action against rogue traders who abuse the freedom of the Internal Market in order to deceive consumers.

## 10. Providing more and better information

Action	State of play	Costs/benefits
Member States to draw up national information plans	ONGOING. The Commission has invited Member States to report on their Internal Market information activities, identifying best practices as well as any gaps in information needs.	Better information will lead to more people taking advantage of the manifold Internal Market opportunities. It could lower the threshold for companies who want to sell to and/or import from other Member States.

Member States to take responsibility for national-level information made available through the Dialogue with Citizens	NOT YET DONE. Member States agree with the principle, but practical arrangements will need to be established to make this work in practice.	The Dialogue provides citizens with targeted, practical information. It is based on a series of EU level guides dealing with different areas (e.g. living, working and studying in another Member State) and national fact sheets providing detailed instructions on how to exercise Internal Market rights in individual Member States. In order to ensure that information is correct, Member States should take ownership of the fact sheets and keep them up to date.
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