

Policy Department  
Economic and Scientific Policy

**IMPROVING THE INTERNAL MARKET SCOREBOARD  
AND THE CONSUMER MARKETS SCOREBOARD**

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## EXECUTIVE SUMMARY OF THE FIVE BRIEFING NOTES

### Background

The five briefing papers commissioned by IMCO look into the relevance of the current Internal Market Scoreboard and how it could be developed, especially with regard as to which indicators to elaborate. Another important issue concerns the relation between the Internal Market and the Consumer Markets Scoreboard and here the experts analysed how the two could support and reinforce the policy development work in the field as well as to what extent some of the same indicators could apply for both Scoreboards, or if different sets of indicators should be called for.

### Internal Market Scoreboard

A general remark from the experts is that more attention should be paid to indicators related to the **quality of transposition** of legislation. According to several experts, a related weakness in the Scoreboard is that it accords the same weight to the transposition of crucial Directives for the Internal Market, such as the Services Directive, as to less important Directives. Spot sample studies could, for example, be added to illustrate the quality of transposition where selected directives are proposed, to be monitored on an Article by Article basis. Further indicators based on **statistical data on the actual application of EC law** by the Member States (e.g. the number of references to the ECJ; the number of ECJ judgments stemming from preliminary references which hold national transposition measures to be incorrect) are recommended to be included in the Scoreboard. One expert suggests that indicators in relation to IM Scoreboard could be elaborated on the **cost incurred by citizens** as a result of a failure to transpose directives, or incorrect transposition, which affect the functioning of the internal market and consumer confidence.

Other experts hold that there is a need for access to **sector-specific and Member State-specific information** (it is suggested that at least the on-line version could provide this information) as well as the average delay for each category. Another idea raised is to make better use of the **SOLVIT Network**, for example, through adding information on key SOLVIT cases that would give readers a concrete understanding of how this network functions.

A topical issue stressed in the briefing papers is the **accessibility** of the IM Scoreboard to citizens. However, different views are presented concerning the **target audience**, where, on the one side, certain experts are stressing that it should be kept as a legal tool enabling the Commission and other institutions to monitor the national legislative activities, whereas others prefer to see the Scoreboard made more user-friendly. The latter suggest that in addition to access sector-specific information by links, the IM Scoreboard should provide a **glossary** of technical terms. Accessibility could also be improved by publishing the Scoreboard in more languages. Ideas were raised with regard to **renaming the Scoreboard** in order to better express its function (for example 'Internal Market Law Scoreboard').

## Consumer Markets Scoreboard

Concerning the Consumer Scoreboard, experts find that the current indicators<sup>1</sup> are relevant but at least would need to be complemented by other means of monitoring. Price levels and switching, in particular, came in for criticism. In general, the question of comparability arises since, for example, price levels are not seen as stable criteria. The indicators used by the Commission are also said not to properly take into account national/cultural differences which affect the reliability of the indicators. Moreover, reliance on 'soft data' is dominant (opinion polls on consumer attitudes, which, while illustrative have no empirical basis in the scoreboard, etc.) could be balanced with more 'hard facts'.

To improve the benefits monitoring mechanism provided to consumers by the single market, one expert proposes that indicators concerning the integration of the retail internal market could include **cross-border judicial cases**. Indicators such as the level of **consumer literacy** and skills are also relevant, notably with regard to the most recent Member States with often insufficient attention being paid to non-governmental consumer organisations. Furthermore, indicators displaying the **compensation for damages to consumers through judicial and extrajudicial (e.g. mediators etc.) means of defence** could also be valuable. One expert brings forward the idea of presenting the statistics by product group, in addition to the current thematic structure. It is also proposed to look more at the retail and service provision side.

Moreover, the Consumer Markets Scoreboard would gain from inserting an **executive summary** as well as a **conclusion** part and if possible shortening the length of the current text. It should also be made more accessible and better promoted and allow regular revisions of the indicators used. One expert also elaborates the possibility of including information with regard to the **SOLVIT Network** from consumer's point of view.

### The relation between the two Scoreboards

The majority of the experts find that the two Scoreboards are different from each other with regard to purpose and methodology; it is therefore not advisable to, at the moment, use the same indicators, nor to fully integrate the two. However, this does not preclude the possibility of developing criteria with a view to their use in both scoreboards in the future. At present there might, nevertheless, be several areas where both exercises could mutually benefit each other, e.g. should the Consumer Markets Scoreboard indicate a market failure in a specific sector, the IM could help to clarify whether this market failure might be due to a shortcoming in the transposition of a Directive and vice versa. A crucial element for both exercises is to better ensure a clearly defined purpose, target-audience as well as focus.

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<sup>1</sup> Complaints, Price levels, Satisfaction, Switching and Safety

# **IMPROVING THE INTERNAL MARKET SCOREBOARD AND THE CONSUMER MARKETS SCOREBOARD**

**BY PROFESSOR GARETH DAVIES**

## **EXECUTIVE SUMMARY**

The existing internal market scoreboard is widely discussed, and can suggest states which may have particular issues with implementation. Further than this it serves little other use. It may help shame Member States into faster implementation, but this effect is probably marginal. As a research tool or a basis for serious analysis of the internal market it is not particularly important; there is not enough information and no distinctions made between directives of different importance or type, or different degrees of non-implementation. It could be developed by providing this information. For example, the Commission could identify the ten most important directives of the previous period, and look at the implementation of these, or it could categorise directives (technical regulations, sector-specific liberalisation, consumer law, etc.) and provide data by category.

The proposed consumer markets scoreboard is of a different type. Instead of measuring something very precise and quantifiable it looks at very subjective and difficult-to-measure factors; consumer satisfaction and market integration. The result is that its figures cannot be used to draw any objective conclusions about the state of the market. They are far too incomplete, and there is not enough background analysis to understand them properly.

On the other hand the potential for the consumer markets scoreboard is greater. If broadened out and accompanied by regular in-depth studies of particular fields it could be at least a good basis for further research. It is also accessible and interesting to a general public, and one should not underestimate the value of getting headlines and creating a discussion about these issues. However, there is a risk of a political backlash if the Commission is perceived to be using inconclusive data to justify new EU action. The problems which the scoreboard seeks to identify are often ones with national solutions, and roots in cultures and attitudes that cannot be changed by legislation. Even if they are real problems, that does not in itself justify new EU acts, merely further investigation to identify where the problems come from.

If the consumer market scoreboard becomes widely used, it is likely to attract criticism as being taken more seriously than its scientific value justifies. No doubts academics will also do research providing alternative views. However, there is something to be said for another institutional investigation of this matter – for example a parliamentary investigation of consumers and market integration - which could provide a balance and complement to the scoreboard, and prevent the impression that the Commission is the sole voice.

## 1. THE INTERNAL MARKET SCOREBOARD

### 1.1 Strengths and weaknesses

The internal market scoreboard provides information on how many directives states have not yet implemented, and how long their average implementation delay is. It also tells us how many infringement proceedings have been begun against each state, and in which sectors. Its major effect is probably in stimulating national experts to analyse the figures concerning their country, to understand where the delays come from and why. The scoreboard is very widely cited in academic writing, and indeed in the press, since comparison between states is always of interest.

One might hope that it has the same stimulating effect on national governments. Using feedback to encourage states to examine and solve their own problems can be a cost-effective and low-conflict way of moving forward. In reality the effect here is probably marginal, and indirect; states will not change policy as a result of the scoreboard itself, but if the scoreboard leads to criticism of the state from national experts, this may be harder for governments to ignore.

Scientifically, the scoreboard has relatively little value. Firstly, it does not indicate why implementation is not occurring. Yet the possible reasons are diverse, and may have their roots in national or EU procedures, and in politics or administration.<sup>2</sup> Awareness of non-implementation is useful, but does not indicate a structural solution. Secondly, it does not indicate the effects of non-implementation. Implementing a large number of relatively unimportant directives late may have far less impact on the internal market than failing to implement a single key directive, yet the first would attract a far worse figure in the scoreboard. Moreover, sometimes states may give implementation a low priority because national law is largely in compliance anyway, or because the directive is of relatively little importance for their country. By contrast, sometimes states may not implement specifically in order to avoid the significant effects which the directive will bring.<sup>3</sup> The second is a far worse problem than the first, but the scoreboard cannot distinguish the situations. As a result of matters such as these, the scoreboard cannot serve as a useful guide to further action, but only as a guide to areas for possible future research.

The infringement proceedings data give some clue as to how serious the Commission thinks that problems are, and these are probably a better guide as to how well states are actually performing. However, proceedings are often brought against multiple states for non-implementation, whereas the consequences are not equally serious in all of them. Repeated marginal offenders will still come out worse in infringement proceedings than occasional serious ones.

Secondly, doubts have been raised on certain aspects of the scoreboard's reliability.<sup>4</sup> Insofar as it relies on states informing the Commission of implementation, there is a risk that they interpret their own efforts over-optimistically; states may claim as 'implementation' what the objective observer would call 'partial implementation'. Moreover, the use of the 'transposition deficit' is controversial, as it compares unimplemented directives with the total number of directives concerning the internal market adopted since 1957 whose

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<sup>2</sup> Romeijn; Mastenbroek; Kaeding; Haverland and Romeijn.

<sup>3</sup> There is no evidence for this as a widespread practice (Haverland and Romeijn), but it seems likely that it occurs at least sometimes.

<sup>4</sup> Mastenbroek; Kaeding; Haverland and Romeijn.

implementation deadline has passed. Since the latter increases with time, this gives a decreasing deficit even if the number of unimplemented directives remains the same. There are different views on how reasonable this is, but given that many directives become obsolete with time one may doubt whether the total number adopted since 1957 is the most useful basis for calculation. In any case, the view that transposition problems are underestimated by the scoreboard is widely held.<sup>5</sup>

## **1.2 Developing the internal market scoreboard**

The scoreboard cannot become a complete guide to how thoroughly states are really accepting internal market rules. This is too complex, and involves factors that are difficult to measure, such as the speed, accessibility and efficiency of the legal and administrative systems. However, it would be helpful to see more distinctions between relatively unimportant failures and serious ones. I would suggest that the Commission list what it considers to be the 10 or 20 key directives of the last period, and also provide implementation statistics on these.

It would also be helpful to see a breakdown per state of non-implemented directives by type – technical, framework, sector-specific, horizontal – and by policy area, as well as the average delay for each category. This should not be too burdensome, given that the Commission presumably knows not just how many directives are not implemented, but which ones these are. A further suggestion would be to categorise non-implemented directives by the decision-making process used to adopt them in the EU – there has been academic discussion over the extent to which this may influence ultimate transposition, and it would be worthwhile to have EU-wide data.<sup>6</sup>

The Commission could also provide, at least for selected key directives, an indication of whether it considers the existing national law to be entirely at odds with the directive, in some respects at odds, or only marginally at odds. This might entail much work for the Commission, and would also involve controversial assessments. However, it would provide the reader of the scoreboard with a much better understanding of what the real internal market situation is. Such discussion could be provided in additional in-depth reports, alongside the regular scoreboard.

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<sup>5</sup> Mastenbroek; Kaeding, and the many references in their articles.

<sup>6</sup> See Mastenbroek for an overview of the research.

## 2. THE CONSUMER MARKETS SCOREBOARD

### 2.1 Strengths and weaknesses

The consumer markets scoreboard is fundamentally different from the internal market scoreboard in that it seeks to measure much less quantitative and precise factors – consumer satisfaction and market integration. These are composite concepts, and even defining what they mean or how they should be measured is controversial.<sup>7</sup>

As it stands, the scoreboard provides food for thought, and could be successful in attracting press attention and stimulating debate. It could also, as with the other scoreboard, provoke further research which, by confirming or not confirming its suggestions, could have a useful policy impact. The scoreboard does not, however, provide a full enough analysis of either of the issues it addresses for any conclusions. Its statistics are too skimpy and not enough background is provided. For example; do Dutch consumers complain a lot because Dutch services are bad, or because complaining is easy, or because they have high expectations, or because they have great faith that their complaints will achieve something, or because they tend to buy complex and innovative products that may have more problems? Many complaints could be a sign of good treatment of consumers, bad treatment, or a more complex nationally specific picture. Greek consumers complain the least: because Greek services are excellent, because Greek consumers buy less complicated products, because complaining is difficult, because Greeks have low expectations, or because people in Greece do not think complaining will achieve anything? The simple statistics in the scoreboard do not tell us what the real problems are, do not provide a genuine comparison – because the situation in different states is different – and do not suggest any solutions. There is a danger that the headline numbers will however be taken too seriously and used to justify over-simple conclusions. The scoreboard could become a source of confusion and misperception.

Similarly, talking about integration of markets by considering how often there is a cross-border purchase tells us very little if we don't know how often there is a domestic distance purchase, what kind of products are bought, and how large the state in question is. In a genuine single market retailers would take advantage of the possibility of importing goods and ensure that a variety of goods are available locally. Many cross-border consumer purchases could be a sign of *failing* integration, because foreign goods are not available locally, or because price differences continue to exist. On the other hand, it could indicate that consumers feel comfortable about buying internationally and have the means to do so – integration success. In any case, whether the state in question is small or large, has an efficient post or internet infrastructure, or shares a language or culture with its neighbours, will all have a significant impact on results, and mean that figures from different states cannot be meaningfully compared.

In general, there must be some doubt about how meaningful or important an 'integration factor' is from the consumer perspective. In a well functioning market the retail side will take care of integration, so that consumers can obtain everything locally: in cities people buy food, music and books from all over the world in their local shops. In small towns one may have to order them from abroad. Are small towns therefore better integrated in international markets?

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<sup>7</sup> See Chechye et al

## 2.2 Developing the consumer markets scoreboard

The consumer markets scoreboard could be improved as a source of data by offering more background and more precise information. There could also be links to other sources of information, and analyses. There could also be more in depth discussion of the data, perhaps as additional papers alongside the scoreboard. I note that the introduction to the first scoreboard makes clear that the Commission's vision is along these lines, and it seems to me that the plans they have for broadening the scoreboard are useful ones.<sup>8</sup>

Certain changes in presentation could be made. At the moment statistics are largely presented thematically – complaints, integration, prices - but they could also be presented by product group, which would give additional insights - complaints about telecoms next to telecom prices next to cross-border telecom transactions next to types of telecom products. Many of the readers of the scoreboard will not be statisticians, and this would make the data and its meaning more accessible.

I also think that the report should look at the retail and service provision side, and investigate how retailers and service providers view foreign customers, whether they find it easy to import foreign goods, whether local shops find it easy to obtain a range of goods, whether service providers consider cross-border transactions important or difficult; one cannot separate consumer problems from retailer or service-provider problems.

However, even if it is expanded, there will always be significant dangers attached to this sort of overview statistical report. One is that it is interpreted too quickly as a justification for EU action. In fact many of the problems of integration and consumer behavior will have cultural roots, or roots in commercial traditions, and not in specific legal or organisational problems or internal market issues. Increasing travel, social integration, language teaching, and increasing income are likely to do more for consumer market integration than new laws (for this reason I do not think that there is a particularly strong link between the two scoreboards. Some individual directives may be particularly important to particular sectors, but in general consumer problems are more subtle than this.). However, these former matters are largely the result of Member State policies or of policies not directly connected to the internal market. It is worth analysing market data, but the presence of a problem does not necessarily mean that the solution should be sought in EU internal market measures.

If the scoreboard is a success I would expect it to become controversial, because I am quite sure that it would be possible to find and present data suggesting very different conclusions – the matters at stake are complex. No doubt academics will do such research, but institutional official reports have a particular status and easily gain publicity. I think there would be much to be said for a 'second voice'; a yearly report from another EU institution that looked at the same issues of consumer markets and integration but asked different questions, and had a broader, less quantitative, remit: would you buy more from abroad if you spoke another language? Do you think you can buy products from all over Europe in your local town? Do you prefer to buy local products, and why? Do you think that your network services are good or do they need improving? These kinds of questions, following a more anecdotal research tradition, collating and organising different kinds of answers to open ended questions, are also not sufficient on their own for any conclusions, but could serve as a balance and complement to the consumer scoreboard.

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<sup>8</sup> See the first (2008) scoreboard, and Commission Communication SEC(2008)87

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**IMPROVING THE INTERNAL MARKET SCOREBOARD AND  
THE CONSUMER MARKETS SCOREBOARD  
BY PROFESSOR DAVID O'KEEFFE AND VASSILIS AKRITIDIS**

**EXECUTIVE SUMMARY**

Building a single market and ensuring the Four Freedoms (free movement of People, goods, services, and capital) is one of the central features of the European integration process.

The European Union (EU) adopts directives on various issues which the Member States need to implement into their national legal systems. In order to report on its activities in monitoring and ensuring proper transposition and enforcement, the European Commission ("Commission")'s Internal Market DG publishes the biannual Internal Market Scoreboard since 1997. The Internal Market Scoreboard examines whether the basic framework and condition are in place for the Internal Market to function well. Since January 2008, DG Health and Consumers publishes the Consumer Markets Scoreboard to monitor outcomes in the Internal Market from consumers' point of view.

The Internal Market Scoreboard is an admirable initiative and overall is an extremely helpful document. However, the Scoreboard is a bit formalistic in its current version, in that it does not qualify the substance of Directive transposition and related infringement proceedings but rather sets out numerical statistics. The same is true in respect of the new Consumer Markets Scoreboard. Nevertheless we believe there is room for improvement and our comments on these very useful publications are intended to be constructive and supportive.

We have the following comments as regards the Internal Market Scoreboard:

- Relevance of the publication: The Internal Market Scoreboard does not have a clearly focused target audience.
- User-friendliness of the publication: The Internal Market Scoreboard should enable readers to access sector-specific information by useful links. It should provide a glossary of technical terms and jargon to help readers understand and use the publication more effectively.
- SOLVIT Network: Although the Internal Market Scoreboard contains relatively clear information regarding performance of the SOLVIT network, information integrated in the Scoreboard in a separate section dedicated to key SOLVIT cases would give readers a concrete understanding of how the SOLVIT network actually functions.

We have the following comments as regards the Consumer Markets Scoreboard:

- Need to insert executive summary and conclusion.
- Excessive length of the report.
- Need to include information regarding SOLVIT network from consumer's point of view.

To summarise, we found that the current format of both the Internal Market Scoreboard and the Consumer Markets Scoreboard, while in themselves very useful documents, could be revised to ensure better public access and easier understanding of the issues. They have a valuable role to play in addition to the Commission's Annual Reports on the application of Community Law but should have a clearly-defined purpose, target audience and focus.

## **1. INTRODUCTION AND PURPOSE OF THE RESEARCH**

Building an internal market and ensuring the smooth implementation of the Four Freedoms (free movement of people, goods, services and capital) is one of the central features of the European integration process. The post-1992 completion of the single market is still ongoing, hence the need for a periodical publication like the Internal Market Scoreboard, informing the EU public on developments in this area of EU law and administrative practice, including infringement proceedings.

As a means of harmonizing the Member States' legal systems, the European Union (EU) adopts directives which must be transposed into the Member States' national law and enforced. Therefore, Member States have the primary responsibility to ensure the proper functioning of the internal market for the benefit of their citizens and businesses.

In order to report on its activities in monitoring and ensuring the proper transposition of EU law, the European Commission's ("Commission") DG Internal Market and Services ("DG MARKET") publishes the biannual Internal Market Scoreboard since 1997. The Internal Market Scoreboard examines whether the basic framework and conditions are in place for the internal market to function properly. DG Health and Consumers has also started publishing the Consumer Markets Scoreboard from 2008 to monitor developments in the Internal Market from the consumers' viewpoint.

This report attempts to set out some thoughts on both publications with a view to finding room for improvement. Part 2 of this report concerns the Internal Market Scoreboard. Part 3 concerns the Consumer Markets Scoreboard and Part 4 briefly addresses the issue of establishing common indicators in both these publications.

## **2. INTERNAL MARKET SCOREBOARD**

### **2.1. Usefulness of the Publication and Issues to be Addressed**

The Commission's DG MARKT has published the Internal Market Scoreboard since 1997. The *raison d'être* of this periodical seems to be twofold: (i) to provide a picture of the current state of play in the Internal Market; and (ii) to gauge the degree by which Member States, the Council and the Commission are meeting the priorities of the Lisbon Strategy and the targets laid down in the various Action Plans (such as the proposed Customs Action Plan or the Job Mobility Action Plan).

We wish to stress that we find the Internal Market Scoreboard a very useful publication. There is no doubt that statistical and substantive information concerning the degree of completion of the Internal Market and the infringements of EU law made by Member States is a powerful tool in the hands of European businesses and regulators and is also useful to any EU citizen who has a right to be informed on the current state of play, on an ongoing basis.

Such statistics and substantive information, preferably broken down per EU Member State and per area of EU law, form very useful information to such interested parties. So there is no issue about the usefulness of the publication. We believe that it is critically useful and should continue being published on a regular basis.

We also believe that the biannual pace of publication is sufficient, having regard to the length of the relevant proceedings (implementation of Directives and infringement proceedings).

As regards the content of the Scoreboard, it must be recognised that the part relating to transposition of Directives into national law is to some extent formalistic - it only shows figures for implementation or lack thereof, and not whether the transposition has been correct or not. The issue of incorrect transposition and application of internal market rules is picked up in the Infringement section of the Scoreboard.

The implementation part of the Scoreboard has, however, an inherent weakness in that it accords the same weight to the transposition of crucial Directives for the Internal Market such as the Services Directive as to the transposition of significantly less important Directives. Therefore the numbers regarding transposition or non-transposition are not a perfect or, otherwise, meaningful indicator: Member States may transpose relatively less important directives while delaying the transposition of the key liberalisation directives. The "fragmentation" figure could therefore be much more serious than indicated when it comes to actual consequences for the market. One way to cure this would be for the Commission to weigh the importance of each directive, and attach a score for transposition or non-transposition in each case. In many ways this would resemble the current practice of the Commission with regard to infringement actions requesting a monetary penalty for failure to implement directives. However, it may be that the Commission would prefer not to adopt this approach, which could give the impression that some directives were less important than others, which is not the case in a formal sense.

The Internal Market Scoreboard has a valuable role to play in addition to the Commission's Annual Reports on the application of Community Law but to distinguish itself it needs to have a clearly-defined purpose, target audience and focus. The Annual Reports are clearly for a specialist audience and are comprehensive, but they are less timely. The latest Annual Report refers to 2006.

Against this background, the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) has requested us to explore whether there is room for improvement of the publication. We have identified the following relevant issues:

- Relevance of the publication – Issues related to the target audience;
- User-friendliness of the publication; and
- Other issues.

## **2.2. Relevance of the Publication**

As stressed above, the Internal Market Scoreboard is a very useful tool in the hands of interested parties. However, having examined all issues of the publication, we believe the Internal Market Scoreboard does not appear to have a clearly defined target audience.

Not all potential readers are likely to be experts in EU law jargon or be aware of the EU legislative maze. In this respect, the Internal Market Scoreboard does not define its target audience clearly enough. As a consequence, its tone and contents may not always provide its readers with the information they would seek in a publication of this type. This applies to both expert readers and the general public.

We presume that a plausible target audience would be composed by the following categories of readers:

- National authorities of the EU Member States;
- Community industry and associations thereof;
- Professionals active in the area of EU law and practice, such as lawyers, accountants, business consultants and lobbyists;
- EU-based trade unions;
- Third-country undertakings who want to enter the Community market;
- Third-country authorities and diplomatic missions in Brussels; and
- Any other part of the EU and non-EU general public that has an active interest in European integration.

Among the above target audience categories we consider that, in its current form, the Internal Market Scoreboard is probably most useful to national authorities of the EU Member States, as they are already familiar with the EU legal system and the importance of proper implementation of Community Directives into their respective legal orders. Whilst it is important to keep on informing this target audience, it is, in our view, essential that it becomes more substantive in nature and friendlier to the Internal Market general public. One should not presume that all readers of the Internal Market Scoreboard are as familiar with this legal system and related terminology as national authorities are. One should also presume that national authorities are at all times fully aware of the nature of the missed Directives and related infringement proceedings. The EU general public needs to also know how important these missed Directives are or what the consequences of proceedings (such as hefty daily fines) may be for its own or other Member State(s). We, therefore, believe that many readers may face problems in understanding the issues and the facts described in the Internal Market Scoreboard due to the excessive use of technical terms and Community jargon. There is also a lack of more extensive sectoral information that would be of interest. These concerns are detailed below.

## 2.3 User-friendliness of the Publication

- Introduction

In recent years, governments face increasing pressure to adopt a “user-friendly” attitude towards the general public when they issue publications, conduct research or drafting studies. The term “user-friendliness” refers not only to the visual format of a given publication, but also to the provision of a clear picture of the current state of affairs from the consumer’s or, more generally, citizen’s point of view. In this regard, we believe that there is room for improvement in the “user-friendliness” of the Internal Market Scoreboard in its present form.

- Issues with terms and glossary

First of all, the Internal Market Scoreboard does not appear to have a clearly defined target audience, as mentioned above. This is probably the main source of any issues that we identify in this report. The publication lists figures and charts related to an abstract picture of transposition of directives and performance rate of the Member States without providing more information on the nature of the transposition requirements in various Member States or the field in which infringements have taken place. In this regard, we found that most of the charts, figures and terms such as “1.5% transposition deficit” or “fragmentation factor” or “1.0% deficit target” (see for example the last issue No. 16bis) do not provide readers with a clear understanding of the picture that the Scoreboard attempts to draw concerning the completion of the Internal market. This will not present problems to experts who are already highly familiar with the relevant EU legal system and developments per Member State. But we presume that experts are not the only target audience of the periodical. The average citizen and many other readers may find the Scoreboard complex and unnecessarily difficult.

As a result, we propose that the Internal Market Scoreboard should be written with a clearly defined target audience in mind, and should reduce its reliance on technical terms and Community jargon to the indispensable minimum. It should contain a glossary to help readers understand the key terms in the publication and the relevance of each term used for the objectives sought by the Commission in the Internal Market.

- Need for access to sector-specific and Member State-specific information

The current format of the Internal Market Scoreboard does not direct readers to links or means to access sector-specific information related to either the implementation of Directives or infringement proceedings against EU Member States. It is our view that there may be many readers who wish to find more sector-specific or country-specific information of transposition/infringement of Community Directives. In particular, as far as infringements are concerned, the Scoreboard should include sector-specific information in order to provide a clearer picture of which Member State is lagging behind (or is a pioneer) in a given sector of activity. This could also function as a tool to provide momentum for the Member State governments to correct their conduct. As a consequence, we propose that at least the online version of the periodical should include hyperlinks to sector-specific information available in DG MARKT’s website. The Scoreboard could also include sector-specific information by providing a brief history of key infringements and brief non-confidential summaries of the defence put forward by Member States in the context of infringement proceedings. EU citizens and those who have a vested interest in the Internal market, are entitled to know why infringements take place and how the Commission remedies the situation. In addition, such information would give EU citizens a better understanding of their rights. In an era when decentralisation and subsidiarity are key issues for a successful functioning of an enlarged Europe, EU citizens should receive more detailed information on these critical issues. We believe that this can be done without significantly lengthening the Scoreboard.

- Information on the quality of implementation by Member States

The Internal Market Scoreboard contains several graphs and tables related to the implementation of Directives by EU Member States. Although such statistics are extremely useful, readers are likely to be curious to learn whether such implementation was correct or not. In this regard, the statistics set out in the Scoreboard are rather formalistic in nature as they do not contain substantive information on the quality of implementation. This is to some extent remedied by the information contained in the Scoreboard concerning infringement proceedings. Even so, the Scoreboard could include certain comments on the quality of implementation of Directives and the typical problems that the Commission faces in its interaction with authorities of Member States, such as whether Member States manage to reach in full the objectives sought by Directives through proper implementation in their national legal orders, degree of disparity between different Member States in the quality of implementation and ensuing infringement proceedings, judicial control culture of national judicial authorities in applying EU law and providing remedies to their citizens through direct application of EU law provisions, etc. In the absence of such information or, as a minimum, some general comments by the Commission's internal market experts, the Scoreboard's implementation statistics risk to be looked at as overly formalistic.

## **2.4 Other Issues**

- SOLVIT Network

The SOLVIT network, which is not always explained in the Internal Market Scoreboard (please refer, for example, to the last issue No. 16 bis) is interesting as it is designed to provide a fast and effective non-litigious solution to handle complaints concerning the incorrect application of EU law by public authorities of the Member States. However, we believe that the Internal Market Scoreboard needs to contain at least one paragraph in each issue to introduce the SOLVIT network, as some readers will have no idea about the contents of past Internal Market Scoreboard issues and the purpose and working of the SOLVIT network. In addition to any general introduction of the SOLVIT network, it would be positive to provide hyperlinks or other means to access sector-specific information related to the activity of the SOLVIT network. In particular, it would be positive to make brief reference to some key cases of the SOLVIT network during the period covered (last 6 months). This would give readers a concrete understanding of how SOLVIT works in practice.

### **3. CONSUMER MARKET SCOREBOARD**

#### **3.1 Purpose of the Publication and Issues to be Addressed**

The Consumer Market Scoreboard is a brand new publication by DG Health and Consumers of the Commission. The first issue was published in January 2008. The purpose of the publication is to monitor Internal Market developments from a consumer's viewpoint. The Commission acknowledged that there was no publication to evaluate the performance of the Internal Market for consumers and thus it designed and published this new publication after public consultation. Our brief analysis on the Consumer Market Scoreboard has a similar approach to the above analysis on Internal Market Scoreboard, composed of the following 3 parts:

- Relevance of the publication;
- User-friendliness of the publication; and
- Other issues.

#### **3.2 Relevance of the Publication**

The Consumer Market Scoreboard clearly targets the EU consumers and those who are interested in understanding the big picture of the Internal Market for consumers. In this regard, one may consider that the publication has a better audience focus than the Internal Market Scoreboard and provides very relevant information from the viewpoint of EU consumers and other market actors. As a result, this memo does not raise the target audience/relevance/focus issues raised with regard to the Internal Market Scoreboard but rather content and length issues.

#### **3.3 User-friendliness of the Publication**

- Introduction

The Consumer Market Scoreboard is only in an infant stage as DG Health and Consumers has just published the first issue. We found that the language and the narrative of the publication were clearer than that used in the Internal Market Scoreboard. However, we found a number of issues that could improve the user-friendliness of the publication.

- Lack of Executive Summary

It is striking that the Consumer Market Scoreboard does not contain an executive summary. An executive summary of 3-4 pages would be of great help to readers enabling them to get a clearer idea of what the publication wants to present and would also save time and effort in finding out what they exactly want to know.

- Lack of Conclusion

The Consumer Market Scoreboard contains many facts and figures in one document. However, as it does not contain a conclusion to summarize the principal findings of the Scoreboard, readers may have difficulty in identifying which parts of the publication are of most relevance to them. It would certainly be productive to add a conclusion at the end of the publication, highlighting the outcomes for consumers in the period examined (1 year).

### **3.4 Other Issues**

- Length of the Publication

We consider that the Consumer Markets Scoreboard is far too long (80 pages) compared to the Internal Market Scoreboard but also to any reasonable length for this type of publication. The non-expert reader is likely to get lost in 80 pages. Whilst we appreciate the complexity of the task of summarizing all necessary information related to consumers, the publication should be more concise and executive in nature.

- SOLVIT Network

Unlike the Internal Market Scoreboard, the Consumer Markets Scoreboard does not contain information on the SOLVIT network. Although the SOLVIT network's primary task is to solve disputes arising from violations of Community law by public bodies within the Community, it could be productive to include information on the SOLVIT network and summary of key cases relevant to consumers during the covered period.

#### **4. CONTRIBUTION OF BOTH SCOREBOARDS TO POLICY-MAKING**

IMCO is also enquiring on whether the two Scoreboards could be of mutual support to policy development work relating to Internal Market and Consumer Protection Policy and to what extent could some of the indicators apply to both Scoreboards or are distinctly different sets of indicators called for.

We consider that whilst the two Scoreboards fulfil different functions, as they are relevant to different aspects of the Internal Market, it could be productive to establish a number of common indicators in view of establishing, for example, Member State compliance benchmarks.

However, overall, the two publications serve distinct purposes: the first focuses on implementation of all Directives and related infringement proceedings in the Internal Market whilst the second addresses issues specifically relevant to consumers, a sub-total of the functioning of the Internal Market. In this context, each Scoreboard should probably also develop its own benchmarking indicators, in addition to any common ones.

## 5. CONCLUSION

Both the Internal Market Scoreboard and the Consumer Market Scoreboard are extremely useful publications that attempt to provide a meaningful monitoring of the Internal Market and the Member States' developments related to the accomplishment of the internal market. They contribute to dissemination to the general and specialist EU and non-EU public of critical information on the completion of the Internal Market. However, despite their undisputed usefulness, we highlighted issues for improvement as follows:

Internal Market Scoreboard: (i) clearly defined target audience; (ii) need for glossary and explanation of technical terms; and (iii) access to sector-specific and Member State-specific information, including information on the quality of implementation.

Consumer Market Scoreboard: (i) need for executive summary and conclusion; and (ii) need to reduce the publication's size.

The Internal Market Scoreboard and the Consumer Market Scoreboard have valuable roles to play in addition to the Commission's Annual Reports on the application of Community Law but to do so they need to distinguish themselves from the Annual Reports by having a clearly-defined and timely purpose, target audience and focus and avoid to the extent possible overlaps between these two publications in order to acquire more appealing individual character and to complement each other.

# **IMPROVING THE INTERNAL MARKET SCOREBOARD AND THE CONSUMER MARKETS SCOREBOARD**

**BY PETER DYRBERG**

## **EXECUTIVE SUMMARY**

The object of the following note is the Internal Market Scoreboard, including its relation to the Consumer Markets Scoreboard. The two Scoreboards contain indicators on the functioning of the Internal Market. Indicators can be likened to instruments/tools by which one seeks to take the temperature of the Internal Market. The purpose of the note is to seek to identify other indicators that can be developed, included whether there could be some fruitful interplay between the indicators of the two Scoreboards. In approaching this question, the note insists on the need of being aware of some fundamental issues that must be addressed for such endeavours to be fruitful, such as: What exactly does one want to measure? The Internal Market is a complex entity and its functioning depends on numerous factors. The note seeks to give a very brief inventory of such factors. Another fundamental issue to be addressed is: For which exact purpose is the measure developed and which is the targeted group of addressees? The note seeks to raise awareness of this, in the first place by outlining the different category of actors that are relevant for the functioning of the Internal Market and in the second place, by identifying the groups targeted by the two Scoreboards.

Against this background, the note concludes, first, that the Internal Market Scoreboard and the Consumer Markets Scoreboard – as it currently stands – can only with difficulty be brought on a common denominator. Next, the note suggests that an indicator can be developed as to the quality of the transposition of Directives, and that prices should be developed as an indicator as to whether markets are really integrated. Incorrect transposition is anathema to the Internal Market and price differences along national borders amount to a clear symptom that the markets are not integrated.

## 1. PREFACE

This note is going to explore the following questions:

*What is the relevance of the Internal Market Scoreboard and how could it be further developed as tool to identify barriers and obstacles to the Internal Market as well as to improve the quality of implementation.*

*Which issues could be covered by the Scoreboard and how develop a new of improved benchmarking system relating to those issues. Which indicators could be developed?*

*How could the two Scoreboards on Internal Market and Consumer Markets be of mutual support to policy development work relating to Internal Market and Consumer Protection policy? To what extent could some of the indicators apply to both Scoreboards, or are indistinctly different set of indicators called for.*

In order to address those questions properly we hold that it is useful to set out briefly factors that influence the well functioning of the Internal Market and other existing measures that provide information on the Internal Market, i.e. the background and the context.

## **2. THE SCOREBOARDS AND THE INTERNAL MARKET**

### **2.1. The Internal Market Scoreboard and the Consumer Markets Scoreboard**

The most striking features of the Internal Market Scoreboard are probably its simplicity, its efficiency, its narrow function – to report instances of non-transposition, included failure to notify transposition - and its narrowly targeted group of addressees.

The Scoreboard idea traces its origins back to 1997 and the first Scoreboard came out in November the same year. It showed that the overall rate of non-transposition of Internal Market directives varied from a little over 3 % to 10 %. The most recent Scoreboard shows that at the end of 2007 the transposition deficit for directives was 1.2 % for the 27 Member States. It is obviously not mathematically measurable whether this improvement in the timely transposition is linked to the Scoreboard, however, most stakeholders do hold that the Scoreboard has contributed to that end.

The Scoreboard operates through the idea of ‘naming and shaming’. It lies in the very nature of such an exercise that it does not work if it is kept confidential. Naming and shaming requires, all things being equal, some publicity to work; at least, publicity increases its effects. It is therefore of importance to ensure that the press maintains an interest in the Scoreboard. So far, that appears to be the case. The interest is probably linked to what we call the simplicity of the Scoreboard. The results of the Scoreboard are presented in a very easy format, figures, and they are easy to relate to, for instance: This or that Member State is the ‘bad boy of the class’, with a default figure of 3 %. The reports in the press contribute to create a certain pressure on the Member State at issue to improve its performance.

This leads us to another feature of the Scoreboard, and that is its reliability. Its results are not disputed. If the results were disputed, this would reduce the effect of the Scoreboard. If Member States X, Y and Z would start disputing their ranking in the class, the pressure upon them to improve will decrease, let alone the question whether the press would keep a sustained interest in the technical details of such a dispute.

The addressees targeted by the Scoreboard appear primarily to be the Member States, and within the Member States, the persons in charge of implementation of Directives. The targeted group can be narrowed down further. As the Scoreboard does not report on the question as to whether the transposition is correct, the persons targeted are those who are concerned by the timely transposition of Directives. In practice we are talking - not only but to a large extent - about servants in the ministries of foreign affairs or whatever ministry in a Member State that has the responsibility for the overall relations with the Union. The Scoreboard brings pressure on these persons to ensure that procedures, internal deadlines and other organisational factors are such as to ensure timely transposition.

The drawback of the Scoreboard is that it does not give information on a whole range of factors that are relevant to the Internal Market. For instance, having read the Scoreboard, one still ignores whether the transposition of the Directives is correct and whether the Internal Market is functioning.

The Consumer Markets Scoreboard (hereinafter: CMS) seeks to address some of these drawbacks. This Scoreboard is still in its infancy. However, it is clear that the ambition is to take the temperature of the Internal Market, seen from the consumer’s perspective. It would appear that the audience targeted is much wider than the one targeted by the Internal Market Scoreboard:

If for instance the CMS shows that the Internal Market is not working very well in a given sector, the reason may be that consumers or business are not sufficiently making use of the possibilities offered. In that case, information campaigns or other forms of dissemination of information may be an adequate tool to consider for improving matters. If the reason is for instance that the rules in practice turn out to be insufficient or inadequate, this will be input to policy and decision makers in Brussels to consider further legislative action. The lack of a specific message and a specifically targeted audience will with all probability make it more difficult to make the presentation of the CMS a press event, at least with the current format of the CMS.

By the very fact that the CMS and the Internal Market Scoreboard aim at monitoring different aspects of the well-functioning of the Internal Market, the indicators used cannot be fully concurrent. There are numerous indicators that are of relevance in monitoring the Internal Market from a consumer's point of view, such as switching, safety, redress, transparency, exploitation of trade potential and access to risk capital that will not be very useful for monitoring the ability of the Member States in relation to transposition of EU-legislation.

Before we turn to the question of developing further indicators, we hold it to be useful to make just a very brief outline of factors that condition the functioning of the Internal Market.

## **2.2. The Internal Market**

The functioning of the Internal Market depends on numerous factors that can be divided into some groups. The *first one* concerns the Community legislation. The well functioning of the Internal market depends for instance of the quality of the legislative activities in Brussels. Relevant questions here for instance concern the relevance of the subject matter regulated, the timing of the legislation, the quality of the drafting and the readability of the legal instruments. The legal instrument par excellence to bring about the Internal Market is the Directive. As is known, the Directive requires implementation into domestic law, be it national, regional or local.

This leads us to a *second group of factors* which relate to the domestic legal order. In the first place the transposition of the Directive has to be timely and correct. This requires that the actors dealing with implementation have the knowledge and skills required to that end.

Next, the domestic legal environment has to be such as not to hinder but rather further the Directive. In the first line comes of course the domestic judicial system. In short, the institutional, procedural and organisational set-up must be such that it enhances citizens' possibilities for exercising their rights.

The *third group of factors* relate to the humans that populate the institutional, procedural and organizational machinery and are expected to apply the law. If those persons ignore the law or have insufficient knowledge of the law, the *application* will, all things being equal, be faulty. In practice, there are reasons to believe that in particular the proper application may be ailing. The persons at issue may for instance have scarce knowledge of the law. They may ignore the Community origin of the domestic legal instrument at issue, or they may be unfamiliar with the interpretation style of Community law. Or they may find the contents of Community law so unfamiliar that they simply do not grasp it.<sup>9</sup>

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<sup>9</sup> A interesting case study in for instance how the legal establishment in one Member State was blind to the possible consequences of Community law in an area of law has been made by Halbhuber, "National doctrinal structures and European company law" (2001) 38 C.M.L.Rev. 1385.

Moreover, application errors are not the most likely candidates for infringement actions by the Commission.<sup>10</sup> The Commission's surveillance of national legislation through the infringement procedures is to a large extent related to what one may term 'system failures', for instance that the wrong rules are on the statute book.

A *fourth group of factors* relates to the end beneficiaries, the consumers and the undertakings. Both have to be aware of and be receptive to the possibilities that the Internal Market offers them. Targeted information may be needed to that end. If the end beneficiaries experience difficulties in availing themselves of their rights or that the enacted rules are inadequate, there will be feed-back in the end to the Community institutions which may in turn consider new or amending legislative measures to address the concerns of the citizens.

### **2.3. Developing indicators**

Given the complexity of factors and the number of actors that condition the functioning of the Internal Market, taking the overall temperature on the Internal Market is an ambitious aim. That does not imply that one should refrain from it. However, it does imply that it may be adequate to consider a piecemeal approach to the task. The success of the Internal Market Scoreboard points to the need for being precise in defining the information sought and the targeted group.

From the description above it would further appear that there are a number of factors that have been conducive to success of the Internal Market Scoreboard. Reliability of the indicators is important and so is consensus as to the relevance/representativeness of the indicators. For instance, absence of cross border shopping at the retail level could by many be viewed as irrelevant – apart from Internet shopping – for measuring the functioning of Internal Market, the reason being that experience show that retail shopping is local. As concerns the quality of transposition, many would find that for instance, the number of infringement proceedings is not a relevant criterion, at least not on its own and without weighting in other criteria. A high number of infringement proceedings against a Member State in comparison to another Member State may be caused by the fact that in the first Member State, stakeholders are particularly aware of their Community rights. On the other hand, it is still possibly relevant to measure one Member State's performance over time. Next, it would appear useful to make sure that indicators can be used horizontally, i.e. across sectors and Member States.

If the presentation of the indicators is such that it is easy to relate to for the press and the general public it is probably even better. It goes without saying that the development of indicators will require statistical expertise.

As to precise indicators to be developed, there are at least two that deserve attention so as to explore their potential. One has to do with the quality of transposition. As appears from above, it is not always easy to judge on the quality of transposition. Still, the Commission performs conformity assessment of the national implementation measures, i.e. an exam as to whether the national measures imply a correct transposition of the Directives. One could seek to develop a quantitative measure of this qualitative phenomenon, by for instance looking at the number of instances where Member States have failed to transpose in an adequate manner. The numbers could be added up by Member State over time sequences and/or sectors concerned. The group targeted would largely be servants in domestic authorities who are dealing with transposition.

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<sup>10</sup> See also C Timmermans, "Judicial Protection against the Member States: Articles 169 and 177 revisited", in *Institutional Dynamics of European Integration – Essays in Honour of Henry G Schermers* Volume II (1994) 391.

If, for instance, over time a particular Member State has a high number of non-conformity instances in a particular sector, for instance transport, this could point to problems in the relevant national authority, for instance the Ministry of Transport. Such a finding could for instance provide leverage for the corresponding Ministry of Foreign Affairs to ask for action to be taken to improve the transposition procedures of the Ministry of Transports. The reasons for a bad score of a Member State on such a measure can be many, still the measure would provide pressure on the persons at issue to improve the Member State's performance.

Another indicator worth exploring has to do with prices. Price continues to be for many goods and services the prime criterion for consumers when they make their choice. Thus, the relevance of such an indicator and the possible appeal that it could have to the press appears beyond doubts. Next, there is a large consensus to build on to the effect that price differences on the same product, along national borders, is a clear symptom that the markets are not integrated and thus, the Internal Market is not functioning.<sup>11</sup> Moreover, prices constitute a factor that can be established without excessive problems. Let it be added straight way that we do not believe it to be without any problems at all. As for goods, for instance cars, prices will have to be adjusted for domestic taxes and excises. Moreover, the basic model of car may vary from one Member State to another. The problems in comparison are aggravated when it comes to more complex services, for instance mortgages or life insurances. The targeted group would be policy and decision makers at domestic and Community level. Moreover, such indicators could prove helpful in applying the principle of subsidiarity, as they could underpin Community action or the absence of the same with hard facts and bolster the public's understanding for Community action.

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<sup>11</sup> For instance in competition policy, geographical price variations that cannot be explained by reason of geography (typically transport costs) may lead the Commission to open an inquiry into the sector at issue. The Commission has also made price comparisons in other contexts, included in previous Internal Market Scoreboards.

### **3. CONCLUSION**

The Internal market Scoreboard can to some extent take credit for the constant and pronounced decrease in the transposition deficit of Directives. In the absence of overriding reasons to the contrary it should be maintained. However, as has been accounted for on the preceding pages, there are indicators to be considered so as to improve and develop the Scoreboard further. The two main indicators of relevance in this respect relate to the quality of transposition and to prices.

As for the improvement of quality of transposition, a possibility is to add up, preferably by sector, the instances where Member States have failed to transpose directives and thus to target and put pressure on the relevant authorities.

Price is suggested as the other indicator to be developed. A true competitive and efficient market would keep prices under pressure so as to ensure the convergence towards the minimal levels in the EU. Price differences along national borders on the other hand is a symptom of the markets not being integrated, and as an indicator, price difference is accordingly a good indication of an inefficient market.

# IMPROVING THE INTERNAL MARKET SCOREBOARD AND THE CONSUMER MARKETS SCOREBOARD

BY ASSOCIATED PROFESSOR ZITA CEPONYTE

## 1. Introduction

Monitoring of the internal market is among the principal means of identifying the efficiency of and obstacles to a proper functioning of the internal market. EU institutions use a variety of means to monitor the internal market. Some of them are related to sector inquiries, for example, a Sector Inquiry on retail banking<sup>12</sup> conducted recently the Directorate General for Competition of the European Commission, analyses of transposition of EU legislation, such as an analysis of implementation of the Directive on consumer goods and associated guarantees as conducted by the Health and Consumer Protection Directorate General of the European Commission<sup>13</sup>, monitoring of services of general interest<sup>14</sup>, etc.

Other measures, such as monitoring of transposition of EU legislation into national law, are implemented on a continuous basis, and results are published in the Internal Market Scoreboard. A new document - The Consumer Markets Scoreboard, monitoring the consumer outcomes in the single market, is published by the European Commission and will also be implemented on a continuous basis. Individual EU member states also carry out monitoring actions at the national level.

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<sup>12</sup> Communication from the Commission – Sector inquiry under Article 17 of Regulation (EC) No1/2003 on retail banking (Final Report). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0033:EN:NOT>

<sup>13</sup> Communication from the Commission to the Council and the European Parliament. COM (2007) 210 final. [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/guarantees/CSD\\_2007\\_EN\\_final.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/guarantees/CSD_2007_EN_final.pdf)

<sup>14</sup> Special Eurobarometer 226. Prices and quality of services of general interest ([http://ec.europa.eu/internal\\_market/economic-reports/docs/2005/full\\_report\\_en.pdf](http://ec.europa.eu/internal_market/economic-reports/docs/2005/full_report_en.pdf)); Special Eurobarometer 219 Services of general interest. [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_219\\_report\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_219_report_en.pdf)

## 2. Internal Market Scoreboard: what could be done better?

The Internal Market Scoreboard, which is published twice a year since 1997 and which reflects indicators of transposition of directives and of the infringements committed in the course of transposition, should be improved in directions indicated below.

More attention to indicators of the quality of transposition of legislation. The Internal Market Scoreboard, even though it reflects the status of transposition of EU legislation (directives) into national law, should be improved. The mentioned scoreboard records the fact of transposition of the directives, which is a rather formal process reflecting the sole fact of transposition. Sometimes monitoring does not cover quality of transposition. For example, an analysis of implementation of the Directive on consumer goods and associated guarantees<sup>15</sup> has showed that despite the fact that the directive has been transposed by almost all countries, it contains a number of discrepancies, which can be frequently referred to as the quality of transposition.

Provision of the directive	Transposition	Country
<b>Article 3(4):</b> A remedy has to be provided <b>free of charge</b> , and the seller has to bear the costs of postage, labour and materials.	„Free of charge” has no specific definition and provide only for a general duty to provide remedies free of charge	Czech Republic, Sweden
	Law provides that, where consumer goods are brought into conformity with the contract by means of the delivery of replacement goods, the seller may request compensation from the consumer for the use of the goods originally delivered which turned out to be faulty.	Germany

*Table 1. Example of the quality of legislation transposition<sup>16</sup>*

The necessity of reflecting the quality-related provisions of the transposed legislation is also referred to in the Consumer Markets Scoreboard, which states that legislative indicators should be specified in the cases when legal acts provide for specific outcomes beneficial for consumers.

Indicators of the costs incurred by citizens as a result of a failure to transpose directives. The example presented above clearly shows the existence of regulation problems; however it is not known whether they arose due to gaps in the directive itself or due to an inaccurate and/or incomplete transposition of the directive. Moreover, it is unclear to what extent such misfits affect the functioning of the internal market and consumer confidence.

<sup>15</sup> Communication from the Commission to the Council and the European Parliament on the implementation of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability. Brussels, 24.04.2007 COM (2007) 210 final/ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0210:FIN:EN:PDF>

<sup>16</sup> Ibidem

So far, no indicator has been specified to display the costs incurred by citizens as a result of the directives which have not been transposed or have been transposed incorrectly. Research shows that it would be possible to specify such indicators and to calculate the costs which the citizens would incur as a result of the failure to transpose or incorrect transposition of EU legislation.<sup>17</sup>

Development of communication with citizens. Another topical issue is the accessibility of the Internal Market Scoreboard to citizens. For instance, the latest full edition of the Internal Market Scoreboard is presented in as few as three languages. An opportunity for citizens, businesses, and NGOs to access the outcomes of monitoring is restricted by the language barrier. Information about the status of transposition of directives should be accessible on a wider scale to the public and eventually to the media. Therefore, the citizens, businesses as well as NGOs would in this case be better informed and would be able to engage in the process of monitoring of the internal market.

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<sup>17</sup> Falkner, G., Treib O., Hartlapp M. and Leiber S. (2002). Opposition through the Backdoor? The Case of National Non-Compliance with European Directives. Working Paper Political Science Series 83. Vienna: Institute for Advanced Studies. <http://www.eiop.or.at/eiop/texte/2003-013.htm#-I>

### **3. Monitoring of consumer markets – an instrument to determine the functioning of the internal market**

It is evident that a *deeper knowledge about the functioning of the internal market* from the perspectives of both efficiency, flexibility as well as consumer welfare and satisfaction is currently required. This knowledge would allow to *establish the reasons* for malfunctioning of the internal market as well as create relevant instruments for elimination of existing obstacles. One of such possibilities has been provided for by the Consumer Markets Scoreboard. I would like to emphasise several indicators which are of importance from my point of view and to present my comments and proposals.

#### **3.1. Indicators to screen consumer markets**

The Consumer Markets Scoreboard provides for five indicators to measure consumer markets. I am going to mention only the indicators which are, in my opinion, the most problem-prone ones.

Inclusion of the switching indicator in the Consumer Markets Scoreboard is highly welcomed, however this is a sufficiently problematic indicator, because at this point we should consider not only the consumer opinion, but also other factors affecting the switching to another provider of goods or services. The published Consumer Markets Scoreboard contains ‘weird’ facts, such as the willingness of consumers not to switch providers of retail banking services. However, the situation is more complicated: for instance, in my country (Lithuania) switching of a current bank account is not a difficult task, however if a consumer holds a credit (consumer credit or mortgage), the switching is almost impossible. Determination of the indicator of switching must be affected even by such elements as consumer literacy and skills, that is, whether consumers are aware that they cannot exercise certain rights, because they lack literacy and skills.

Complaint indicators reveal the malfunctioning of internal and national markets. In this case, one needs to collect the fullest possible information and to standardise it. We must point out that very scarce information is available about the complaints heard by FIN-NET<sup>18</sup>. While European consumer centres regularly provide data, no such data are provided from the FIN-NET network. The analysis presented for 2001-2006 shows merely the total number of the cases heard, however the reasons for consumer complaints and the most frequent type of complaints in the field of financial services, which have recently posed considerable problems to consumers, remain unknown. More complete data on financial services must be available and included in the Consumers Market Scoreboard.

Indicators of consumer satisfaction should not be restricted solely to the measuring of consumer satisfaction with service providers as well as sellers. This indicator should be treated with high caution, because in the absence of any choice, consumers sometimes are unable to compare the services provided to them (for example in the case of monopoly services), hence results will not be accurate.

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<sup>18</sup> [www.fin-net.org](http://www.fin-net.org)

### **3.2. Retail internal market integration**

Indicators of performance of the retail internal market are of considerable importance from the consumer point of view both at the national and at the EU level. We need to state that the retail internal market still does not “work” for the consumer; hence it is particularly important to find out about it as much as possible. Certainly, the main indicators include trade (direct investment, number of non-national traders, etc.). However, from the consumer standpoint much significance is attached to such indicators as cross-border buying (in this case, such factors as the value of purchased items and frequency of purchasing are important) and complaints as well as confidence on a legal system of other EU countries. In this sense, it is a matter of great relevance to determine the principal sectors in which integration encounters the most difficulties. Moreover, indicators of integration of the retail internal market could also include cross-border judicial cases (for example, number of cross-border cases, specific areas in which they arise, etc.).

### **3.3 Benchmarking of national consumer environment**

Indicators of benchmarking of the consumer environment would permit a highly efficient assessment of the progress in implementation of the legal acts regulating the fundamental consumer rights and their defence and of the efficiency of operation of state institutions and non-governmental organisations. Such indicators as the level of consumer literacy and skills are currently especially topical. The new EU member states, which lack deeply-rooted traditions of consumer protection, still attach insufficient attention to non-governmental consumer organisations, although the public places a greater confidence in them than in the state institutions protecting consumer rights. Therefore, this indicator is of crucial importance when determining the quality of the consumer environment. The indicators displaying compensation of the damage incurred to consumers through judicial and extrajudicial means of defence should also be taken into consideration (for example, number of court cases, size of damages, voluntary compensation of damages of services providers and sellers to consumer before going to court, etc.).

#### **4. Internal Market Scoreboard and the Consumer Markets Scoreboard.**

Internal Market Scoreboard and the Consumer Markets Scoreboard should be documents complementing each other capable of becoming instrument in determining the functioning of the internal market and related problems as well as enabling improvement of EU legislation and its implementation. The way in which these two scoreboards will supplement each other is not clear yet, for example, in respect of such indicators as benchmarking of the consumer environment, which would involve benchmarking of indicators of legislative compliance. The issues of frequency of publishing and information about documents should probably be considered too.

The both scoreboards must be more promoted and translated to all official languages of EU as well as placed not only on the European Commission's websites, but also on the websites of Europe Direct Centres, European Consumer Centres and other relevant bodies.

## **5. Conclusion**

The Internal Market Scoreboard, which is published twice a year since 1997 and which reflects indicators of transposition of directives and of the infringements committed in the course of transposition, should be improved in the following directions: by focusing on the quality of transposition, establishment of indicators of the costs incurred by citizens as a result of a failure to transpose them or their inappropriate transposition as well as development of communication with citizens. Although the Consumer Markets Scoreboard reflects the principal aspects of the functioning of the internal market with regard to consumers, some indicators, for example, integration of the retail internal market, benchmarking of the consumer environment as well as switching, complaints and consumer satisfaction, should be revised and improved. Improvement is needed when defining. In order to reflect the functioning of the internal market, the Internal Market Scoreboard and the Consumer Markets Scoreboard should supplement each other, and the indicators should be reviewed on a regular basis.

# **IMPROVING THE INTERNAL MARKET SCOREBOARD AND THE CONSUMER MARKETS SCOREBOARD**

**BY PROFESSOR HANS SCHULTE-NÖLKE AND MARTIN WERNEBURG**

## **EXECUTIVE SUMMARY**

The Internal Market Scoreboard is no more (but also no less) than a tool to monitor the transposition of the Directives related to the Internal Market, of which there are currently more than 1500, into the laws of the Member States. Thus, the Internal Market Scoreboard does not monitor the Internal Market as such, but rather parts of the Internal Market Law in the EU Member States. Moreover, because of the very efficient approach to concentrate only on the transposition notification by the Member States (and not the substance of these transposition measures), it permits only rather superficial conclusions to be drawn about the state of the legislation in the Member States. The core figure presented by the Internal Markets Scoreboard, the ‘transposition deficit coefficient’, only reflects the extent to which the Member States have reported the transposition of EU-Directives. It does not at all reflect whether the legislation enacted in order to transpose a directive does, in fact, completely and correctly succeed in doing so, or the extent to which the “law in the books” corresponds with the “law in action”.

This information on the transposition deficit percentage is accompanied by statistical data on the number of infringement proceedings initiated by the Commission against the Member States, as well as the stage reached in those proceedings, which might serve as an indicator of the quality of transposition. But it should be noted that the number of infringement proceedings might be just the tip of the iceberg in relation to the real level of infringements of EC law caused by incorrect or incomplete transposition.

The Internal Market Scoreboard could be renamed in order to better express its function (e.g. “Internal Market Law Scoreboard”), and improved by introducing further indicators based on statistical data on the actual application of EC law by the Member States (e.g. the number of references to the ECJ; the number of ECJ judgements stemming from preliminary references which hold national transposition measures to be incorrect). It could be also useful to add selected case studies on the quality of the transposition, which examine the quality of the transposition of selected directives Article by Article. It seems highly desirable to maintain the (perhaps renamed) Internal Market Scoreboard chiefly as a legal tool which enables the Commission and all other interested institutions to monitor regularly the steps taken by the Member States in transposing the internal market directives.

Because of the rather limited – but nevertheless very useful – function of the Internal Market Scoreboard as principally a legal tool, the monitoring of the real Consumer Markets is indeed a very important desiderate. It allows, on the one hand, to assess the effects of the existing measures and, on the other hand, to indicate where further measures are needed in order to develop the Internal Market for consumers. The Consumer Markets Scoreboard is therefore a step in the right direction. The proposed indicators may be useful, but will have to be supplemented by other means of monitoring. In particular, more ‘hard facts’ should be sought instead of the many ‘soft facts’ (i.e. opinion polls on consumer attitudes). Given the enormous complexity of the exercise, it might be advisable to start with a less ambitious sector specific approach. For instance, a very important sector, where consumer markets should be monitored, is e-commerce, in particular cross-border consumer transactions.

There is only a rather loose link between the two exercises, which are very different with regard to their respective purpose and method. Thus, it does not seem to be helpful to use the same indicators. Nevertheless, there might be several important areas where both exercises mutually benefit from each other.

## **1. FOCUS AND STRUCTURE OF THIS BRIEFING NOTE**

As the Internal Market Scoreboard is the starting point for considering the introduction of a Consumer Markets Scoreboard, this paper concentrates primarily on the function of, and possible improvements to, the Internal Market Scoreboard as a useful legal tool (under point 2). The Consumer Markets Scoreboard, which is not just an extension of the Internal Market Scoreboard, but a rather different and much more ambitious exercise of empirical market research, is then dealt with separately (under point 3). The conclusions to be drawn from these observations are outlined under point 4.

## **2. INTERNAL MARKET SCOREBOARD**

### **2.1. Overview**

The Internal Market Scoreboard mainly focuses on the implementation of internal market directives into national law, thereby creating a simple transposition deficit coefficient. This coefficient indicates the percentage of Internal Market directives which the Member States have not transposed into their respective legal systems at all, or, not within the given timeframe. The directives in respect of which the Member States have not communicated transposition notifications to the Commission by the deadline are counted and related to the overall number of internal market directives. This is a purely formal approach which does not analyse whether the directives were correctly transposed, whether they are correctly applied by Member States courts or how implemented rights are actually exercised by individuals. The Scoreboard findings, so far purely quantitative, are clearly a simple approach but the indicator shows to what extent legislation agreed upon at EU level is able to reach the market participants. However, the Scoreboard does not - as its name may suggest - describe the current condition of the internal market, nor does it point towards any direct policy specific recommendations. The title "Internal Market Scoreboard" is thus somewhat misleading. The Internal Market Scoreboard could be renamed in order better to express its actual function (e.g. "Internal Market Law Scoreboard").

### **2.2. Progress indicator**

The Scoreboard shows a figure - at the moment 1.2% - which allows for comparison with previous results and can thereby be used to monitor progress. But it should also be noted that the regular increase of Directives to be transposed automatically leads to a lower transposition deficit coefficient even if the absolute number of Directives which are not transposed remains unchanged. Thus, part of the progress indicated by the fall of this coefficient is only due to the statistical effect that the percentage falls if the absolute number of non-transposed directives remains unchanged, but the absolute number of directives to be transposed rises.

### **2.3. Qualitative Approach**

The Scoreboard tries to mitigate the purely quantitative approach of the transposition deficit rate by reporting the number of infringement proceedings brought before the European Court of Justice by the European Commission. The number of infringement proceedings indicates that transposed directives are not being applied properly and thus serves as a qualitative indicator. But even this qualitative analysis is limited. The number of infringement proceedings does not provide any evidence of the quality of national transposition legislation. Until now, both the transposition deficit rate and the measure comprising the number of infringement proceedings face similar objections. Here further research needs to be done. A model for a comprehensive qualitative analysis is the Consumer Law Compendium (referred to in the Bibliography at the end of this paper) where national transposition legislation for eight consumer directives was scrutinised. The analysis showed some qualitative transposition deficits alongside greater deficits and differences regarding the application of the consumer protection measures.

The Internal Market Scoreboard could be improved by introducing further indicators based on statistical data on the actual application of EC law by the Member States (i.e. “law in action”, e.g. the number of references to the ECJ; the number of ECJ judgements stemming from preliminary references which hold national transposition measures to be incorrect). Following the model of the many more detailed transposition studies, it could also be useful to add selected case studies by way of example, on the quality of the transposition, which examine the quality of the transposition of selected directives Article by Article.

### **3. CONSUMER MARKETS SCOREBOARD**

#### **3.1. Overview**

The Consumer Markets Scoreboard was set up to mitigate some of the drawbacks the Internal Market Scoreboard is facing due to its purely legalistic approach. It examines the “final outcomes” affecting EU consumers and, unlike the Internal Market Scoreboard, is not directed at “legal tools”. At present, the Scoreboard generates a substantial amount of data on different aspects of the internal market as far as consumers are concerned. The scoreboard is thus more a data compilation, and less an instrument that delivers reliable and concise findings on the state of market integration, assessing the development of the market over a certain period of time. This feature is rightly expressed by the subtitle “Monitoring consumer outcomes in the single market”. In its current form, the title “Scoreboard” is somewhat misleading.

#### **3.2. Analysis of indicators**

At the moment the Consumer Markets Scoreboard uses five indicators: complaints, price levels, satisfaction, switching and safety. In the following it will be considered whether the indicators can in themselves produce reliable data for recommendations on improving the internal market and/or consumer policy.

##### **3.2.1. Complaints**

Data on complaints captures how consumers respond “negatively” to products and services. Complaints reveal not only the attitude of consumers towards products and services but, even more so, demonstrate consumer action in response to dissatisfaction. Thus consumer complaints can serve as a measure of the quality of goods and services. The Scoreboard in its present form analyses complaints only by means of consumer surveys data collected by the Special Eurobarometer 252. The significance of this “soft” data could be improved by adding comparable hard facts which could be obtained from companies, non-judicial institutions and judicial institutions. Companies on the supply side will have detailed data on complaints by their customers. However, since companies have developed different approaches towards complaints, i.e. they may explicitly invite consumers to express dissatisfaction or they may refrain from doing so, this data is not standardised and therefore less comparable. Secondly, data on complaints available from non-judicial institutions, for example, Member States’ regulatory agencies for consumer protection such as offices of fair trading and similar authorities, or from the European Consumer Centres Network (ECC-Net) will show by Member State whether and how consumers complain. Comparability of this data will improve with the planned consultation of complaint handling bodies in the EU on the possible development of a system for complaint classification. Thirdly, data on consumer complaints leading to legal proceedings could be obtained from judicial institutions. This could be done by screening data on court actions or injunction proceedings brought by consumers. In this context it would be of interest to examine the financial costs consumers have to bear when taking their complaints to judicial institutions.

The survey could be further enhanced by scrutinising the different legal frameworks consumers are facing when making complaints. This should be done by means of comparative legal research.

For instance, the national rules on how to inform consumers on existing complaint handling schemes and how to react to a complaint may vary widely. Thus, any comparison of numbers of complaints will have to take into account such differences.

### **3.2.2. Price levels**

This indicator was introduced because it was argued that price levels were of great concern to consumers. Indeed, price is an important criterion for purchase decisions taken by consumers. High prices may lead consumers to refrain from buying at all; noticeable price differences may be relevant for consumers, in particular, with regard to cross-border shopping. However, the relevance of data on price levels throughout the Member States' consumer markets is only of limited use for specific policy recommendation. First of all, there will always be the problem of comparability. It already seems difficult to identify products for which there is comparable demand from all EU consumers. Moreover, price levels depend on customer needs (demand side) which may differ from Member State to Member State. Reliable results will therefore have to take consumer habits into account. It also has to be taken into account that, to a great extent, prices differ within and among Member States for no apparent reason such as competitive distortion. Thus price levels are not a stable criterion, they are difficult to assess and even more difficult to use for policy making.

Furthermore, a higher level of prices is not in itself a sign for markets failing consumers. Even the contrary could be true: Consumer friendly legislation introduces information duties, rights of withdrawal for the consumer, longer prescription periods etc., which might result in an increase in costs on the supply side. If increased costs are passed on to consumers, consumer protection measures can result in higher price levels. Thus the price level does not directly correlate with the level of consumer protection.

Establishing average prices for certain representative products across all consumer markets could help to detect abnormal price divergence between the Member States' markets. Noticeable differences in price may suggest a difference between the national markets, indicating constraints for market integration.

### **3.2.3. Satisfaction**

This indicator bears some similarity with complaints. They both try to assess the behaviour and attitudes of consumers towards goods and services. Therefore the objections made above (concerning "complaints") apply to this indicator as well. The criterion of consumer satisfaction is, in a way, even less sustainable. In contrast to complaints, it is only concerned with the subjective perception of consumers which has not (yet) transformed into an action. To outweigh the disadvantages of the subjectivity of satisfaction, consumer attitudes should be assessed by means of open questions.

### **3.2.4. Switching**

Switching is perceived as positive consumer behaviour in liberalised markets. Alongside complaints, switching is another action taken by consumers in response to dissatisfaction; switching should therefore be assessed in the context of consumer satisfaction. It should be noted that switching can only be an indicator for a limited number of contracts, namely for long term contracts such as telephony, banking, insurance or supply of water and energy. There are some cases in which switching is impossible because of the market situation (e.g. if there is only one supplier, as may be the case for water supply or train and postal services).

Moreover, there are many cases, where there is no long-term contract, but just a simple exchange of goods or services (e.g. a sales contract or simple services like hairdressing or air transport). In such cases no termination of an ongoing contract is needed. There is practically no barrier to simply go to another supplier. Collecting data on switching primarily makes sense for long-term contracts. Therefore switching will mainly be an indicator for such contracts. Thus, the field of situations for which “switching” can be applied as an indicator is much narrower than that of the foregoing indicators.

The Scoreboard currently uses primarily soft data, i.e. it examines the willingness of consumers to switch contracts, and the attitudes towards, and intentions of, consumers with regard to switching. This tends to underestimate the relevance of legal switching aspects consumers willing to switch a contract are facing, for example, the length of notice periods or the obligation to pay switching fees. Furthermore, the data on consumer attitudes towards switching will not give a coherent picture of the actual switching situation within the Internal Market.

By using hard data, the existing screening approach could be developed in two respects: On the one hand, by means of comparative legal analysis, the legal framework for switching should be analysed. This would require an analysis of both legislation and relevant contracts. Legislation may restrict the actual possibility of switching by introducing notice periods which consumers would have to meet before being able to enter into a new contract. The legal set-up of switching imposed by legislation may, furthermore, differ throughout the Member States, thus creating different switching conditions within the Internal Market that will affect the willingness of consumers to switch. Besides statute law, contracts agreed by consumers and suppliers may also affect consumers’ attitudes towards switching. In some Member States certain types of contracts, especially life insurance contracts or mortgage contracts, simply do not allow any switching. They may also tighten the restrictions of switching already imposed by legislation.

On the other hand, the reliability of the indicator could be considerably improved by working with data on actual switching. Difficulties in obtaining data for the Member States’ overall economy could be outweighed by starting with sector specific research. Data may also be obtained from Member States’ consumer associations. Additionally, annual reports of companies operating in consumer-relevant markets, for example telecommunications corporations, may contain information on consumers switching to other providers. It could further be scrutinised whether it is legally possible to use anonymised data on bank accounts gathered in the context of tax investigation and money laundering investigations for the purpose of ascertaining switching rates.

### **3.2.5. Safety**

Safety of goods and services is of great importance for consumers. It is an obvious criterion when it comes to policy making regarding the protection of consumers. Safety issues may arise predominantly in case of products and potentially health endangering services. However, safety is not only of concern for the purchaser of goods and services but is an issue for all persons who may be affected by the product or service in question. Unlike the indicators dealt with so far, safety is not an indicator which may tell much on the legal and factual position of the consumer vis-à-vis a business. Complaints, price levels, satisfaction and switching may be very helpful indicators for legal policy protecting mainly the economic interest of consumers.

Instruments used for this purpose are marketing law, consumer contract law and competition law. Safety belongs to another field of policy. Safety problems may indicate the need to act in order to protect the personal integrity of all persons concerned, irrespective whether they have bought an unsafe product themselves. Measures in this field of EU policy are, for instance, the Product Safety and the Product Liability Directives. These measures do not relate or overlap much with the Directives protecting mainly the economic interests of Consumer. Thus, if safety problems are evidenced, this may indicate the need for rather different measures than those necessary when only the other indicators show problems.

So far the Scoreboard lists the numbers of injuries for several product categories and the numbers of notifications taken from RAPEX and RASFF. These findings could be improved by linking them to numbers of (successful) cases of product safety/liability brought to court by consumers and other market participants. It could then be assessed to what extent consumers are able (legally) to recover from injuries suffered by health endangering products. The safety approach would thus be connected to more consumer markets focussed criteria.

### **3.2.6. Correlation with the Internal Market Scoreboard**

There is only a rather loose link between the Internal Market Scoreboard and the Consumer Markets Scoreboard, which are very different with regard to purposes and methods. Thus, it does not seem to be helpful to use the same indicators. Nevertheless, there might be several important areas where both exercises mutually benefit from each other. For instance, if the Consumer Markets Scoreboard indicates a market failure in a specific sector, the Internal Market Scoreboard helps to clarify whether this market failure might be due to a shortcoming in the transposition of Directives. Or, if the Internal Markets Scoreboard shows a significant shortcoming in the transposition of certain directives, the Consumer Markets Scoreboard could be targeted toward this sector in order to find out what the effect of this shortcoming may be and whether the consumer markets improve when the directive is finally transposed in all Member States.

#### 4. CONCLUSION

It seems highly desirable to maintain the (perhaps renamed and slightly improved) Internal Market Scoreboard as a mainly legal tool which enables the Commission and all other interested institutions to monitor regularly the legislative steps taken by the Member States in order to transpose the internal market directives.

As there is only a rather loose link between the two Scoreboards it does not seem helpful to use the same indicators. However, the more legal approach of the Internal Market Scoreboard and the data accumulated by the Consumer Markets Scoreboard could be combined thus outweighing their individual shortcomings.

The proposed indicators of the Consumer Markets Scoreboard may be useful, but will have to be supplemented by other means of monitoring. In particular, more ‘hard facts’ should be sought instead of the many ‘soft facts’ (i.e. opinion polls on consumer attitudes). With the hitherto developed indicators, the Consumer Markets Scoreboard may produce a vast amount of data which does not give clear guidance for action. Most of this data has to be classified as soft data: it is very subjective and can often be interpreted either way.

On the basis of the foregoing observations it may be useful to slightly regroup the proposed indicators. Indicators for a Consumer Markets Scoreboard could be

- Prices (hard facts)
- Complaints (hard facts)
- Switching (hard facts)
- Consumer attitudes (satisfaction and other ‘soft facts’, in particular such that relate to the ‘hard facts’ like complaints or switching)
- Safety (hard facts)

One would also have to bear in mind that only the indicators “prices” and “complaints” (and consumer attitudes as ‘soft facts’) are applicable in all or the very most market sectors. Switching is likely to deliver guidance for policy making primarily only for long-term relationships. Safety issues (in the narrow sense related to health the word is used here) can only occur with regard to products and certain services (e.g. medical treatment) but not with regard to other services which affect only economic interests (e.g. banking). In particular with regard to the indicators “complaints” and “switching”, it is also important to know that reliable data and comparison requires knowledge of the legal framework of any such activity of the consumer. This legal framework may vary widely in the Member States.

Given the enormous complexity of the exercise, it might be advisable to start the Consumer Markets Scoreboard with a less ambitious sector specific approach. A very important sector, where consumer markets could be monitored, is, for instance, e-commerce, in particular, cross-border consumer transactions. The existing analysis of the legal situation in the 27 Member States shows that there could be enormous deficits of the Internal Market in this area.

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