

Brussels, 15 June 2006

**EICTA REPLY TO
PUBLIC CONSULTATION ON THE FUTURE OF THE INTERNAL MARKET**

In accordance with Commission Consultation standards this consultation will be open for 8 weeks (i.e. until 15 June 2006).

We kindly invite you to make use of this reply template. You may reply in any of the official languages of the EU, although by replying in English, German or French, you will facilitate our analysis of your reply.

Please send your comments by e-mail to:
markt-future-IM-policy@cec.eu.int

Or by regular mail to:
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Please be sure to **indicate** if you **do not consent** to the **publication** of your personal data or data relating to your organisation with the publication of your response or if you require us to publish your contribution **anonymously**.

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Profile of the respondent

Please indicate which of the following categories you represent:

Private citizen / Business / Representative organisation / Public administration / Other

Private citizen, please state your

Name, address (incl. country of residence) and email

Business, please state your

Name, address (incl. country of residence), e-mail, sector, size (number of employees) and whether you are engaged in any intra-EU cross-border activities.

Representative organisation, please state your

Name, address (incl. country of residence), e-mail and level of activities (local, regional, national, EU, International)

EICTA is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 57 major multinational companies and 36 national associations from 27 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

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Public administration, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national)

EU Institution, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Academic Institution, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Think tank, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Your reply to the questions in the consultation document

As indicated in the consultation document we do not expect all stakeholders to be concerned by all questions asked. However, we would be most grateful if you could state hereunder your replies to the questions that matter to you.

1) Do you agree with the preliminary analysis of the current situation of the internal market and the challenges it is facing? If not, what is your analysis?

Yes, EICTA agrees. In the digital technology sector, the free movement of goods and services is crucial, and improvements in the functioning of the internal market have brought enormous benefits, notably in the area where the New Approach directives apply. The digital technology sector is largely a global sector. There is probably no other sector where technological change is more rapid and has a greater impact on the society as in our sector. A well functioning internal market, which addresses the challenges the Commission has identified in its consultation paper, is indeed crucial to allow the rapid uptake of digital technology and as a sector to be able to live up to the expectations of the EU: being the key enabler of making Europe a knowledge-based society.

2) In which ways have you benefited from the opportunities offered by the internal market? Where, in your view, does it function well? Where do you see shortcomings?

The New Approach directives have been a great success in creating an internal market for digital technology products. We see shortcomings in some areas where harmonization of the internal markets failed due to bad transposition (e.g. copyright directive), or bad decision making at the EU level (ROHS directive), or due to the fact that product design related legislation was based on article 175 allowing member states to develop diverging design requirements (WEEE directive and Batteries directive).

For example, in the area of trade, we see that the current EU VAT scheme does not allow for a real true harmonized market. As long as the destination country principle had to be applied for the applicable VAT-rates we never ever will get a real unique market. Furthermore, the EU VAT triangulation principle does not allow for chain transaction with more than three parties involved. This is far from the reality and dealing international with long transaction chains is simpler than trading in a similar way within the EU. As a matter of the above said it is still a cumbersome process to achieve single EU-wide customs licenses. Factually companies have to prepare customs declarations per country even if they achieved a single license.

Electronic communications services markets are still another area where the internal market has yet to be materialized. In spite of common legal framework and cooperation mechanisms the national legislations and practices diverge considerably.

3) Do you agree with this choice of priorities? Are there others in your view?

Yes, we agree. EICTA believes that the largest challenge for the Commission lays in ensuring better implementation and enforcement. The Commission has little real control over the implementation process (infringement procedures are often late, and the damage to industry is done by the time such procedures start). In the area of enforcement, the Commission takes too little initiative to coordinate a harmonized enforcement. Yet, diverging implementation of directives and diverging approaches to enforcement (read: diverging interpretations as to what constitutes a compliant product) are the main cause of creating legal uncertainty for companies, increasing administrative

burden, reducing the ability of the EU to evaluate the effectiveness of legislation, and diminishing the effectiveness of the internal market.

4) Internal market policy fosters economic reforms to which citizens and businesses then have to adjust. Do you think sufficient account is taken of the costs of making these adjustments? Why (not)? Do you think flanking measures are needed to accompany market opening? If so, what kind?

5) In your experience, does the internal market offer sufficient opportunities for businesses? Why (not)? Where do you see barriers?

Digital convergence is changing the business of traditionally separate industries such as media industries, software industries, network operators and other service providers as well as consumer electronics and information and communication technology industries. All these industries are in a process of radical transformation and are all looking for new positions within the digital convergence space and in the new emerging value chains. In the newly emerging environment, markets are evolving towards a horizontal structure. The traditional vertical market structure (telecom, broadcasting and the Internet) is being replaced by four horizontal layers: content creation, service provision, delivery and consumption. Regulation should be developed to reflect this emerging market structure. It is important to create a regulatory framework that provides a level-playing field for all parties operating in these new markets, and that facilitates digital convergence and the development of an information society. This should be done by reducing the level of regulation to the lowest denominator for all relevant technologies; this ensures equal terms and conditions to create fair competition, which is in the interest of both the consumers and business and which facilitates the growth of the new markets.

The challenge is to build a roadmap from the existing regulatory regimes to new regulation reflecting the emerging horizontal market environment in a way that allows sufficient time for transition, lightens the overall regulatory burden at all levels, and provides sufficient incentive for innovation and market growth.

6) Do you consider that the internal market is 'innovation-friendly'? Why (not)? Where, in your view, are the main barriers to innovation? Which steps should be taken in order to ensure that the internal market is more innovation-friendly?

As the Commission rightly states, the New Approach has created a dynamic, pan-European goods market. The creation of a single large market in this area certainly has fostered innovation and R&D.

EICTA believes that all product design related legislation should be based on article 95 with the aim to allow products to move freely between member states and encourage innovation. Unfortunately, especially in the field of environment, we see a tendency, in particular from the European Parliament, to introduce diverging national requirements for product design, which inherently has a diminishing effect on innovation. The WEEE directive and the Batteries directive include product design related requirements, yet they are based on article 175 of the Treaty. Using article 175 as the legal base for these

directives allows the member states to create diverging design requirements for electronic equipment and batteries. We feel there are no environmental grounds for requiring diverging design criteria and would encourage all DGs in the Commission to apply the principle that all product design related legislation should be based on article 95. Furthermore, product design related legislation should as much as possible rely on the same administrative procedures used for compliance in the ICT and consumer electronics sector.

European R&D and innovation performance is lagging more and more behind the main competitors. The problems are well known: fragmentation of the EU R&D landscape, poor public/private partnership culture, inability to mobilize resources to support large scale R&D programmes and to attract top talents to work and study in Europe. The other weaknesses of the European innovation performance are market access barriers, high regulatory red-tape, inappropriate access to venture capital, obsolete state-aid rules and high level of risk aversion.

EICTA supports the main objectives of the European Technology Platforms (ETPs). They create much needed critical mass in a given area, so that European industrial competitiveness can be strengthened through the joint effort of Industry, European institutions, Member States and other stakeholders and directions can be set and exploited in global markets.

7) Do you consider that the current IPR regimes foster growth and innovation? In your experience, where is more focus or action needed?

➤ Patents

A reliable IPR framework, in particular patent protection, is a key prerequisite for European competitiveness. Patents promote innovation, secure jobs, encourage the free flow of information about new and emerging technologies, and facilitate licensing. European companies spend billions of Euros annually in research and development in ICT and other technology development. Patents—which provide the exclusive right to use, sell or license new technology for a limited period of time — underpin technology transfer and enable a reasonable return on R&D investment.

EICTA welcomes the European Commission's recent initiative to improve the patent system in Europe, specifically the recent consultation on the patent system (on which EICTA has submitted a formal response). Broadly speaking, EICTA believes the European patents are generally working well although there are a few areas where there is room for improvement.¹

➤ Copyright and Copyright Levies

¹ For the full EICTA reply to the patent consultation please follow the link:
<http://www.eicta.org/press.asp?level0=1&level1=6&level2=41&year=2006&docid=662>

Like patents, adequate copyright protection is an important driver of competitiveness and the information economy.

EICTA is of the firm opinion, however, that there is a major market distorting element in many European copyright systems that merits serious attention, which stems from the monopolistic functioning of collecting societies, which hampers the successful deployment of online content services, namely the dysfunctional and inherently unfair setting of copyright levies across the EU and the tendency of collecting societies to expand levy claims to include all kinds of digital devices and media.

Copyright levies were introduced in most European countries before the advent of copy-protection technology as a means of compensating copyright owners for legitimate private copying. Notably, the UK, Ireland, Luxembourg, Cyprus and Malta do not currently impose copyright levies on digital equipment.

Now that copy protection technology, like digital rights management (DRM), is available, copyright levies on digital products are an outdated form of taxation that penalizes consumers, artists and industry alike. European lawmakers have an obligation to bring real benefits by establishing efficiency and transparency in the collection of levies while phasing out the levies system. Copyright levies are basically an unfair, indiscriminate and non-transparent tax on consumers, and run contrary to the EU's efforts to make the Information Society more accessible. By making digital devices more affordable for consumers, we can further encourage the uptake of technology in Europe and free valuable resources for reinvestment in innovation and European competitiveness.

8) In your experience, do Member State authorities apply procurement rules in a way that gives businesses sufficient opportunity for market entry

Member States should lead by example, also in the field of procurement practices. Governments are convinced that citizens should buy environmentally friendly products. However, we often see that governments themselves are not prepared to buy environmentally friendlier products. The Commission could assist the Member States to change their procurement policies in a harmonized way in order to become more environmentally friendly and stimulate innovation, without creating too much administrative burden on either procurers or industry. For example, governments could easily include a reference to the EU Energy Star requirements or one of the EU voluntary industry code of conducts on energy efficiency in procurement criteria.

9) Do you think that public authorities are sufficiently aware of the opportunities the EU public procurement framework offers for fostering innovation? If not, how could they be made better aware of it?

In January 2006, an independent expert group published an outstanding report known as the "Aho Report" urging European leaders to take radical action on research and innovation "before it was too late". Many key issues were raised including the importance of public procurement in Europe, creating leading edge markets for European products and services, harmonised regulation, ambitious use of standards, a

competitive intellectual property rights regime and fostering a culture which celebrates innovation.

While EICTA fully supports all aspects of the "Aho Report", it would like to put emphasis on the role of public procurement and leading edge markets as key areas that need to be developed as a priority by the European Institutions in the coming months.

To stimulate demand for innovative products and services, governments should use public procurement more actively and act as launching customers. This will be very important for aggregating demand and accelerating public and private adoption of new technologies, products, processes and services in Europe. US and Asia use pre-commercial public procurement of innovation strategically as a means to provide a strong market for their domestic supplier base in well-defined areas of aspired international competitiveness. In September 2005, an expert group - commissioned by DG Research - pointed out the need for Europe to use public procurement of Innovation more intensively. With public procurement in the EU amounting to about 16% of GDP, using only a fraction of this for public procurement of innovative products and services would yield substantial progress towards the Barcelona 3% objective. EICTA therefore very much welcomes the various initiatives on public procurement recently undertaken by various Directorates-General of the European Commission and strongly encourages that a Commission policy be quickly formulated to reflect a European public procurement system that matches systems found in other regions of the world and encourages innovation on a pan-European basis.

EICTA members remain ready to participate in a public/private dialogue with the European Commission and Member State representatives to create a strong public procurement policy which drives demand for ICT goods while improving public services. In addition, we recommend Commission and Member States explicitly address public procurement of innovative products and services in their Open Method of Coordination in the context of the Barcelona 3 % objective.

10) In your experience, are there any significant problems with the internal market preventing the development of the private equity and venture capital market on a cross-border basis? If so, what are they?

11) Do you think that voluntary standards for services would be beneficial? If so, in which sectors should they be introduced?

12) What are your views on how we carry out consultations on internal market policy? For instance, what are your views on the consultation process, and on the relevance and presentation of issues in our consultation documents?

EICTA believes that the consultation process on internal market policy is improving. For example, the EUP directive was completed following an extensive consultation process and offering ample opportunity to industry to debate the pros and cons of the various proposals.

However, we still see that in many areas consultation is in need of significant improvements. The implementation of the ROHS directive, which invokes a comitology procedure to decide on certain specific product design related issues, is proving to be a bad example of European Legislation. In particular the process by which the Technical Adaptation Committee takes its decisions on matters which are crucial to industry is not transparent. Furthermore, new design requirements are published within less than 6 months before industry has to comply with them. This shows an absolute lack of understanding of the technical complexity which these new requirements impose on industry. Business needs ample time to anticipate new legislation in order to change its designs. The TAC committee needs to be more transparent and improve its dialogue with the stakeholders, and issue binding requirements well in advance of the legal date of compliance.

13) What are your views on the way we carry out impact assessments on internal market policies? In your experience, are we using the right policy instruments to achieve the objectives?

14) What are your views on evaluations conducted for internal market policies and the follow-up given to them?

15) Do you think that Member States should be encouraged to carry out national screening exercises (of existing and new rules and administrative procedures) and if so how?

16) In which fields do you see the greatest need to step up cooperation between Member State authorities in order to make the internal market work?

There is a great need for improvement of implementation of the directives. In areas such as the ROHS and WEEE Directive, the Commission could publish guidance material during the time between the publication of the Directive and the implementation in the national legislation in order to improve the quality of national legislation.

Furthermore, we see a need for the Commission to coordinate and guide the enforcement of directives. For example, in the absence of Commission guidance on how to enforce the ROHS directive, some of the Member States have taken the initiative to develop enforcement guidance. Yet, this is a voluntary initiative of some Member States and does not include all 25 Member States.

The implementation of the Electronic Communications Regulatory Framework has turned out to be a challenging task. The transposition of the directives has resulted in significantly diverging national legislations preventing a common approach for example to the regulatory treatment of VoIP services. In addition, many member states have failed to carry out market analyses in a timely manner. The current coordination efforts have not been sufficient to make national regulatory practices to converge. More resources from the Commission is needed to address current shortcomings without waiting for the outcome of the regulatory package review.

17) What is your assessment of the role and work of supervisory or regulatory authorities in Member States? Should similar systems of supervision be extended to other internal market fields?

EICTA would encourage an EU-alignment of national regulatory authorities. For the enforcement of product design related legislation it is crucial that all 25 enforcement bodies have an exactly identical interpretation of what constitutes a compliant product. Only then can companies enjoy the free movement of goods.

18) What is your view on current mechanisms for enforcing internal market rules at the national level? What should be improved?

19) What is your experience (if any) of the Commission's infringement policy in the field of the internal market? Which type of infringement cases should we handle as a priority?

20) Do you agree with the need to step up coordination and responsibility in Member States for managing the internal market? What (further) assistance could the Commission give in this respect?

Yes, as mentioned before, coordination of national authorities is of paramount importance to avoid diverging interpretations of the legal requirements. An example as to why this is important can be seen in the WEEE and ROHS directive. The WEEE directive provides a general definition of an electronic or electrical equipment (EEE). However, we see this definition gives rise to diverging interpretations in the member states. A product may be regarded as EEE in one Member State, while it is not regarded as such in another. This creates legal uncertainty for manufacturers, not knowing whether they make products which need to comply with the WEEE or ROHS Directive. EICTA would encourage the Commission to act swiftly in such cases and manage the internal market. Unfortunately, currently it does not, leaving industry with legal uncertainty and EU member states to reinvent the wheel 25 times.

21) In your experience, does internal market regulation take sufficient account of the bigger picture of international competitiveness? If not, in which areas do you see problems and what could be done?

No it does not in all areas. EICTA believes the Commission should foster global harmonisation of policies for products as far as possible in order to avoid barriers to trade. There are many countries in the world that copy the EU policies and legislation. However, these are never exact copies, and often we see that non-EU countries unintentionally create diverging requirements. The EU can avoid this global fragmentation of regulatory requirements by actively engaging in regulatory dialogue with other countries. This is starting to take place in the field of environment (especially with regards to WEEE and ROHS), but could be more structural.

An example as to where the Commission does take account of the bigger picture of international competitiveness is in the field of Energy efficiency of ICT products. The EU has signed an agreement with the US to develop common criteria for energy efficiency of ICT equipment under the umbrella of the Energy Star program. Many other countries,

including Japan, have also signed up to this program. EICTA regards the Energy Star program as a good example of global harmonization and cooperation in the field of setting product design standards.

22) On which regulatory issues and with which countries and regions should the EU strive for more international regulatory convergence or equivalence? How should this be achieved? By contrast, where do you think differing rules and standards should coexist?

23) Where should the EU engage more strongly in either intergovernmental or nongovernmental standard-setting organisations?

EICTA MEMBERSHIP

About EICTA:

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