

# HOW DO THE EUROPEAN COMMISSION, MEMBER STATES AND CITIZENS INTERACT IN ENFORCING INTERNAL MARKET RULES?

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## Abstract

*The Internal Market is the main element of European economic integration, the achievement of which was provided for in the Treaty establishing the European Economic Community (Rome, 1957).*

*The implementation of the four fundamental freedoms of movement for the benefit of the citizens of the Member States was one of the major objectives of the Internal Market and led to the adoption of specific European rules, the respect of which is ensured by the Member States under the supervision of the European Commission.*

*Currently, the Treaty on European Union mentions, among the Union objectives, the establishment of the Internal Market, and the Treaty on the Functioning of the European Union provides for the shared competence of the European Union with the Member States in the field of the Internal Market.*

*The rules adopted at Union level for the achievement of the freedoms of movement must be implemented by the authorities of the Member States for the advantage of the citizens of the Member States and of undertakings. In the situation of non-compliance with these rules, the European Commission may bring the Member State concerned before the Court of Justice of the European Union.*

*Thus, the completion of the Internal Market depends on the way in which the three actors interact - the European Commission, the Member States and the citizens according to their specific interests.*

*In conclusion, the full completion of the Internal Market area requires a balanced and effective action carried out by the European Commission, the Member States and their citizens, based on a transparent and collaborative approach.*

**Keywords:** *Internal Market, enforcement, free movement, European Commission, European citizens.*

## 1. Introduction

European integration was a necessity and a plan for the reconstruction of Western Europe after the Second World War which contributed to raising the well-being of its peoples and to the economic ranking in the world by unifying the economic and social interests of the European states which wanted to develop harmoniously their economy and maintain peace.

The Treaty establishing the European Economic Community, Rome, 1957 mentioned, since art. 2, the central objectives as the establishment of the common market, the high level of employment and social protection<sup>1</sup>, and solidarity between Member States.

In the doctrine, it has been pointed out that „European construction also faces a delicate issue: reconciling national

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<sup>1</sup> Mihail Vladimir Poenaru, *Considerații cu privire la regimul juridic al pensiilor ocupaționale din sistemul de drept român în a doua decadă a secolului XXI*, in *Hic et Nunc*: Alexandru Athanasiu, ed. Facultatea de Drept. Centrul de Drept Social Comparat, C.H. Beck Publishing House, Bucharest, 2020, p. 448.

sovereignty with supranational integration<sup>2</sup>, the two realities being found within the European Union with the three pillars, existing in this form until 1 December 2009<sup>3</sup> and which continue, from certain views, and after this date. After more than five decades of European integration, through the drafting of treaties, their amendments, criticisms, compromises, uncertainties, crises and failures, there are undoubtedly, according to O. Bibere, many achievements in the EU: freedom of movement, common policies, single currency, institutions, budget, own resources, legal order, anthem, flag, common currency, European citizenship, European initiatives, economic aid, humanitarian aid, etc.”<sup>4</sup>

Currently, art. 3 para. (2) of the Treaty on European Union (TEU) provides as a general objective of the European Union - an international intergovernmental organization endowed with legal personality - to promote the well-being of its peoples which can be achieved by achieving other specific objectives such as: the establishment of an area of freedom, security and justice without internal frontiers; the continuous development of the Internal Market<sup>5</sup>; the balanced economic growth and price stability, a highly competitive social market economy; the social justice and

protection, equality between women and men, solidarity between generations.

The Union institutions have the task of pursuing these objectives<sup>6</sup> in accordance with the principles of conferral of competence and the sincere cooperation, which are clearly reflected in the legislative and budgetary procedure; in particular, the European Commission shall oversee the application of Union law under the control of the Court of Justice of the European Union.

In this context, the answer to the question: *How do the European Commission, Member States and citizens interact in enforcing Internal Market rules?* could identify different reactions between these actors which will have an impact of the EU competences and the EU institutions tasks. The Internal Market has been created for the wellbeing of the European citizens but the Member States would need EU flexible mechanisms and the support of their citizens for implementing all obligations in this regard.

## 2. Internal Market - general issues

The Internal Market, which succeeds the Common Market and the Single

<sup>2</sup> See: Roxana-Mariana Popescu, *Interpretation and enforcement of article 148 of the Constitution of Romania republished, according to the decisions of the Constitutional Court*, in Challenges of the Knowledge Society, (Bucharest, 17th - 18th May 2019, 13<sup>th</sup> ed.) <http://cks.univnt.ro/articles/14.html>.

<sup>3</sup> At that date the Lisbon Treaty has entered into force.

<sup>4</sup> Mihaela-Augustina Dumitrașcu and Oana-Mihaela Salomia, *Dreptul Uniunii Europene II*, Universul Juridic Publishing House, Bucharest, 2020, pp. 154-171.

<sup>5</sup> CJEC, 5 May 1982, *Gaston Schul Douane Expéditeur BV v Inspecteur der Invoerrechten en Accijnzen, Roosendaal*, case 15/81, ECLI: ECLI:EU:C:1982:135, 33: “The concept of a common market as defined by the court in a consistent line of decisions involves the elimination of all obstacles to intra-community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market. It is important that not only commerce as such but also private persons who happen to be conducting an economic transaction across national frontiers should be able to enjoy the benefits of that market”.

<sup>6</sup> See Oana-Mihaela Salomia, *La théorie de l'apparence en droit de l'Union européenne. Confiance des citoyens des États membres dans les institutions de l'Union*, in *In honorem Flavius Antoniu Baias. Aparenta în drept. The appearance in law. L'apparence en droit II*, ed. Adriana Almășan, Ioana Vârsta, Cristina Elisabeta Zamșa, Hamangiu Publishing House, Bucharest, 2021.

Market<sup>7</sup>, is an area of shared competence according to para. 2 of the art. 4 of the Treaty on the Functioning of the European Union (TFEU), for the implementation of which the Union adopts legislative acts, binding for Member States which can no longer legislate unless the Union has exercised its competence or if the Union has decided to cease exercising its competence.

Regarding the content of this concept, it is interesting to note that its regulation is very brief, respectively Part III of the TFEU begins with Title I entitled the Internal Market which includes only two articles, the second paragraph of art. 26 defining the field of the Internal Market: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties"<sup>8</sup>.

Thus, in the architecture of the Treaty, Title II regulates the free movement of goods<sup>9</sup>, and Title IV regulates the free movement of persons, services and capital. Therefore, according to the Treaty, it would

seem that the internal market is limited to the four fundamental freedoms, provided for by the Treaty of Rome and gradually developed throughout the Community / Union construction for the benefit of citizens, but their content has expanded to new complex areas (standardization for goods, public procurement).

Naturally, the Internal Market is one of the main domains addressed by the green and digital transitions<sup>10</sup>, and the measures taken to do so are aimed at implementing the four fundamental freedoms, and Member States are working together to find appropriate ways to meet European obligations.

Regarding the regulation in this field, two main categories of acts can be observed:

1. legislative acts adopted pursuant to the TFEU to implement the freedoms of movement; and

2. soft law acts adopted by the European Commission covering the whole area of the Internal Market and its development<sup>11</sup>.

<sup>7</sup> Simon Usherwood and John Pinder, *Uniunea Europeană. O foarte scurtă introducere*, Litera Publishing House, Bucharest, 2020, p. 76: "Therefore, as the European economies developed, the initial project of the EEC, focused on the abolition of tariffs in a customs union, was in the 1980s through the single market program, then in the 1990s through the single currency".

<sup>8</sup> See: Oana-Mihaela Salomia, Dragoș-Adrian Bantaș, *Aspecte generale privind competența Uniunii Europene în domeniul achizițiilor publice, Achiziții publice. Idei noi, practici vechi*, Ecaterina-Milica Dobrotă, Dumitru-Viorel Părvu (coord.), Universitară Publishing House, Bucharest, 2020, pp. 228-230.

<sup>9</sup> See: Augustin Fuerea, *Funcționarea pieței interne pe baza liberei circulații a mărfurilor*, (non-official translation: Functioning of the Internal Market on the basis of the free movement of goods), in *Dreptul Uniunii Europene - principii, actiuni, libertăți*, Universul Juridic Publishing House, Bucharest, 2016, pp. 184-186.

<sup>10</sup> See: Elena Lazăr, Nicolae Dragos Costescu, *Dreptul european al internetului*, Hamangiu Publishing House, Bucharest, 2021, pp. 18-36; Alina-Mihaela Conea, *Politicele Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2019, pp. 193-194; Oana-Mihaela Salomia, *European legal instruments for green and digital transitions*, Challenges of the Knowledge Society, (Bucharest, May 21<sup>st</sup> 2021, 14<sup>th</sup> ed.), pp. 487-492, <http://cks.univnt.ro/articles/15.html>.

<sup>11</sup> [https://ec.europa.eu/growth/single-market/single-market-act\\_en](https://ec.europa.eu/growth/single-market/single-market-act_en)

"The Single Market Act presented by the Commission in April 2011 set out twelve levers to boost growth and strengthen confidence in the economy" and

"In October 2012, the Commission proposed a second set of actions to further develop the single market and exploit its untapped potential as an engine for growth".

[https://ec.europa.eu/growth/single-market/single-market-strategy\\_en](https://ec.europa.eu/growth/single-market/single-market-strategy_en)

"On 28 October 2015, the European Commission presented a new single market strategy to deliver a deeper and fairer single market that will benefit both consumers and businesses".

At the institutional level, it should be noted that the current European Commission includes a portfolio dedicated to the Internal Market, as well as other portfolios that manage aspects of the impact on the Internal Market – Economy, Jobs and Social Rights<sup>12</sup> and An Economy that Works for People, and to ensure that the rules in this area are followed, it was set up the Single Market Enforcement Task Force (SMET) under the Action plan for better implementation and enforcement of single market rules Search adopted in March 2020 as part of the European industrial strategy, "as a high-level forum where the Commission and EU countries work together"<sup>13</sup>; SMET inform the Competiveness Council and the European Parliament's Internal Market and Consumer Protection Committee on the progress made.

### 3. Benefits of the Internal Market for the citizens of the Member States

The evolution of the fundamental freedoms of movement within the concept of the Internal Market has been carried out in parallel with the economic and social trends that have marked the world economies, with the evolution of human society so that, nowadays, such as: Single market for goods, Single market for services, European

standards, Public procurement or Single digital gateway; the aspects regarding the competition rules<sup>14</sup> fall within the exclusive competence of the European Union according to art. 3 para. 1 letter b) of the TFEU.

At the heart of these actions are the nationals of the Member States whose authorities are responsible for transposing or applying directly the rules adopted by the institutions of the Union in order to achieve the general objectives of the Internal Market. Examples include achievements in the free movement of services which was facilitated by the adoption of a legislative act only in 2006 - *Directive 2006/123/EC on services in the internal market*, although the Treaty of Rome established this freedom which could only be conceived, at that date, in relation to the free movement of persons. At present, services occupy an important place in European economic development, focusing on retail services, business services or construction services. „As one of the largest service sectors, business services contribute to 11% of EU GDP” and ”they range from technical services such as engineering, architecture and IT, to other professional services such as legal services, employment services and facility management”<sup>15</sup>.

This Directive obliges the Member States to establish the Points of Single

<sup>12</sup> The General Directorate which is under the responsibility of the European Commissioner for Internal Market has been renamed last year DG Grow.

DG Grow is "responsible for responsible for:

- completing the internal market for goods and services
- helping turn the EU into a smart, sustainable, and inclusive economy
- fostering entrepreneurship and growth by reducing the administrative burden on small businesses; facilitating access to funding for small and medium-sized enterprises (SMEs); and supporting access to global markets for EU companies. All of these actions are encapsulated in the small business act
- generating policy on the protection and enforcement of industrial property rights
- coordinating the EU position and negotiations in the international intellectual property rights (IPR) system, and assisting innovators on how to effectively use IP rights”

[https://ec.europa.eu/growth/about-us\\_en](https://ec.europa.eu/growth/about-us_en).

<sup>13</sup> [https://ec.europa.eu/growth/single-market/single-market-enforcement-taskforce\\_en](https://ec.europa.eu/growth/single-market/single-market-enforcement-taskforce_en).

<sup>14</sup> See: Adriana Almășan, Ștefan Bogrea, *Harmonization of Romanian Law to EU Competition Law*, Analele Universității din București, Seria Drept, 2015.

<sup>15</sup> [https://ec.europa.eu/growth/single-market/single-market-services/business-services\\_en](https://ec.europa.eu/growth/single-market/single-market-services/business-services_en).

Contact (PSCs) which “are e-government portals that allow service providers to get the information they need and complete administrative procedures online”<sup>16</sup>. In Romania the PSC was created by the National Authority for Digitalization<sup>17</sup> and it is used for different administrative procedures as recognition of professional qualifications for the regulated professions, customs authorization, urbanism certification, construction, consumer protection and others. Nowadays the Member States must also implement the *Regulation (EU) 2018/1724 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services* which “will facilitate online access to the information, key administrative procedures and assistance and problem-solving services that citizens and businesses may wish to contact if they encounter problems when exercising their internal market rights while living in or doing business in another EU country”<sup>18</sup>. The same Romanian National Authority for Digitalization has the task to make functional the Single Digital Gateway where all the public authorities, universities or professional bodies will provide with online information and online procedures for the European citizens.

In fact, digitization remains one of the most useful tools created in the internal market for the benefit of citizens, which is regulated by binding acts for Member States.

#### 4. Monitoring of the Internal Market’s rules by the European Commission

According with the art. 17 para. 1 of the TEU and art. 258 of TFEU, the European Commission monitors the application of EU law and can launch infringement proceedings against EU countries that do not comply.

As mentioned, the European Commission has created SMET which “is composed of EU countries and of the Commission. EU countries have nominated a SMET contact point from the competent national authorities with direct responsibility for single market issues, in the majority of the cases the ministries for economic affairs”<sup>19</sup>. In Romania, the Ministry of Economy is represented within SMET and collaborates with all Ministries having competences in the field of Internal Market<sup>20</sup>.

The SMET will complement a cooperation network to be set up between national enforcement coordinators, making use of the existing Internal Market Advisory Committee (IMAC) framework.

In the meantime, in order to succeed and to keep the momentum in the implementation, the Single Market Scoreboard will provide both Member States and the Commission with a useful performance-monitoring tool on the application of single market rules

However, not only can the European Commission be notified, but it can also be notified by citizens or other Member States that a Member State is not complying with Internal Market rules.

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<sup>16</sup> [https://ec.europa.eu/growth/single-market/single-market-services/services-directive/practice/points-single-contact\\_nl](https://ec.europa.eu/growth/single-market/single-market-services/services-directive/practice/points-single-contact_nl)

<sup>17</sup> <https://edirect.e-guvernare.ro/SitePages/landingpage.aspx>.

<sup>18</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4374365>.

<sup>19</sup> [https://ec.europa.eu/growth/single-market/single-market-enforcement-taskforce\\_en](https://ec.europa.eu/growth/single-market/single-market-enforcement-taskforce_en).

<sup>20</sup> <http://www.economie.gov.ro/eliminarea-barierelor-de-pe-piata-unica-instituie-in-contextul-pandemiei-covid-19-dezbatuta-in-cadrul-reuniunii-smet>.

Thus, the question arises as to whether the citizens of a State are not required to turn against their own State which, for various reasons, does not implement the rules of the Internal Market, although it has an obligation to do so. What are the reasons why a Member State does not comply with these rules? Are there justified situations?

”Member States must ensure compliance with single market law if the rights of individuals or businesses are to be protected. This must start at the stage of designing national legislation, and be carried through to individual judicial or administrative decisions. The Commission has the task to support Member States in preventing the creation of new barriers to the single market, in the transposition and application of EU law and to initiate remedial action where necessary”<sup>21</sup>.

In accordance with the EU law, the European Commission has established the following ”Tasks and responsibilities for the implementation and enforcement of single market rules:

Member States - Transpose EU law timely and accurately, refraining from unjustified “gold plating”, and ensure a level playing field

Commission - Assist Member States in transposing EU law correctly, fully and on time

Member States - Ensure that national legislation is proportionate and non-discriminatory

Commission - Assist Member States in applying EU law

Member States - Ensure sufficient and proportionate administrative checks and controls so that any breaches are identified

Commission - Check the transposition and monitor the application of EU law

Member States - Avoid any national measures that contradict or hamper the application of EU law

Commission - Act against breaches of EU Law and take formal infringement action if needed

Member States and Commission and - Cooperate effectively to ensure compliance with EU law”<sup>22</sup>.

These tasks that fall to the European Commission and the Member States have as legal basis the fundamental principle of sincere cooperation<sup>23</sup> between Union and Member States provided for the art. 4 para. 3 of the TUE where it is laid down that ”the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”.

The question arises on that topic is whether there is real and active support of the European Commission’s services for the authorities of the Member States during the transposition period of a directive. How can it be explained that there are directives that have not been correctly and completely transposed by a large number of Member States? Is it the fault of the Member States or do most Member States have a different view of the Commission as regards the

<sup>21</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM(2020) 94 final, Long term action plan for better implementation and enforcement of single market rules, [https://ec.europa.eu/info/sites/default/files/communication-enforcement-implementation-single-market-rules\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/communication-enforcement-implementation-single-market-rules_en_0.pdf).

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM(2020) 94 final, Long term action plan for better implementation and enforcement of single market rules, [https://ec.europa.eu/info/sites/default/files/communication-enforcement-implementation-single-market-rules\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/communication-enforcement-implementation-single-market-rules_en_0.pdf).

<sup>23</sup> See: Mihaela-Augustina Dumitraşcu, Oana-Mihaela Salomia, *Principiul cooperării loiale – principiul constituțional în dreptul Uniunii Europene*, in *In Honorem Ioan Muraru. Despre Constituție în mileniul III*, Ștefan Deaconu, Elena Simina Tănăsescu (coord.), Hamangiu Publishing House, Bucharest, 2019.

transposition of that Directive? For example, for three Directives with a very high impact for the free movement of professionals an important number of Member States have received reasoned opinion or letter of formal notice from the European:

- on the 7 March 2019, the Commission has sent reasoned opinions to **24 Member States** (Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) and complementary letters of formal notice to **2 Member States** (Estonia and Latvia) regarding the non-compliance of their national legislation and legal practice with EU rules on the recognition of professional qualifications - Directive 2005/36/EC as amended by Directive 2013/55/EU<sup>24</sup>

- in June 2019, the Commission sent letters of formal notice to all EU Member States, requesting them to comply with the Services Directive and improve their Points of Single Contact. The letters covered several aspects of the PSCs, including calls on Member States to: provide user-friendly one-stop shops for service providers and professionals; help service providers overcome administrative hurdles in the access to service activity; address issues related to online availability and quality of information on requirements and procedures; and ensure ability to access and complete procedures online through the

PSCs, including from other Member States (with reference to the importance of complying with Regulation (EU) 910/2014 on electronic identification)<sup>25</sup> and

- on the 9 February 2022, the Commission has decided to open infringement proceedings against **Latvia and Spain** for not having properly transposed the EU rules on a proportionality test before adoption of new regulation of professions - Directive (EU) 2018/958. This decision follows the opening of infringement proceedings **against 18 Member States** in December 2021<sup>26</sup>.

The infringement procedure is described very clearly on the website of the European Commission according with the art. 258-260 of TFEU<sup>27</sup>: "If the EU country concerned fails to communicate measures that fully transpose the provisions of directives, or doesn't rectify the suspected violation of EU law, the Commission may launch a formal infringement procedure. The procedure follows a number of steps laid out in the EU treaties, each ending with a formal decision:

1. The Commission sends a letter of formal notice requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months.

2. If the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a reasoned opinion: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU

<sup>24</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1479](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1479).

<sup>25</sup> Erik Dahlberg et al., *Legal obstacles in Member States to Single Market rules*, Study Requested by the IMCO committee, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, November 2020, p. 80 ([https://www.bruegel.org/wp-content/uploads/2020/11/IPOL\\_STU2020658189\\_EN.pdf](https://www.bruegel.org/wp-content/uploads/2020/11/IPOL_STU2020658189_EN.pdf)).

<sup>26</sup> [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_22\\_601](https://ec.europa.eu/commission/presscorner/detail/en/inf_22_601).

<sup>27</sup> This primary legal basis does not provide with a detailed infringement procedure but only the main steps. The deadlines for compliance are not specified but the European Commission mentioned in each step (letter of formal notice or reasoned opinion) the mandatory deadlines for national authorities.

law. It also requests that the country inform the Commission of the measures taken, within a specified period, usually 2 months.

3. If the country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice. Most cases are settled before being referred to the court.

4. If an EU country fails to communicate measures that implement the provisions of a directive in time, the Commission may ask the court to impose penalties"<sup>28</sup>.

It is obvious that the European Commission has a discretionary power to issue the letter of formal notice, the reasoned opinion or to take the Member States to Court of Justice. "Workload pressures and political considerations each play a part in deciding which infringements to pursue. (...) Art. 258 TFEU operates at the level of inter-institutional relations, with the Commission fulfilling a politically sensitive role in policing and implementation of EU law by the Member States and it is not mechanically applied to all violations"<sup>29</sup>.

The Court of Justice of the European Union has pronounced last year in the case... that: "As regards **the seriousness of the infringement**, it must be borne in mind that the obligation to adopt national measures for the purposes of ensuring that a directive is transposed in full and the obligation to notify those measures to the Commission are fundamental obligations incumbent on the Member States in order to

ensure optimal effectiveness of EU law and that failure to fulfil those obligations must, therefore, be regarded **as definitely serious** (judgments of 8 July 2019, *Commission v Belgium* (art. 260(3) TFEU-High-speed networks), C-543/17, EU:C:2019:573, para. 85; of 16 July 2020, *Commission v. Romania* (Anti-money laundering), C-549/18, EU:C:2020:563, para. 73; and of 16 July 2020, *Commission v. Ireland* (Anti-money laundering), C-550/18, EU:C:2020:564, para. 82)"<sup>30</sup>.

"Further to an enquiry or a complaint (by citizens, businesses and organisations), or on their own initiative, the Commission's services might need to gather additional factual or legal information for a full understanding of an issue concerning the correct application of EU law or the conformity of the national law with EU law"<sup>31</sup>. For this purpose, the European Commission has implemented in 2008 the EU Pilot project with the participation of 15 Member States; by July 2013 the entire EU-28 had signed up. The EU Pilot's procedure is the following:

- The Commission's services submit a query to the Member State concerned via EU Pilot.
- Member States normally have 10 weeks to reply and the Commission's services, in turn, also have 10 weeks to assess the response
- If the response is not satisfactory, the Commission will normally launch

<sup>28</sup> [https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure\\_en](https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en).

<sup>29</sup> Margot Horspool (Author), Matthew Humphreys (Author), Michael Wells-Greco (Author), Siri Harris (Contributor), Noreen O'Meara (Contributor), *European Union Law*, 9<sup>th</sup> ed., Oxford University Press, Oxford, 2016, p. 227.

<sup>30</sup> CJEU, *European Commission v Kingdom of Spain*, 25 February 2021, ECLI:EU:C:2021:138, para. 64. It is the first decision under the art. 260. 3 where the Court of Justice obliged a Member State to pay a lump sum and penalty payment: "3. Should the infringement established in point 1 persist at the date of delivery of this judgment, orders the Kingdom of Spain to pay the Commission, as from that date and until that Member State has put an end to that infringement, a daily penalty payment of EUR 89 000. 4. Orders the Kingdom of Spain to pay the Commission a lump sum in the amount of EUR 15 000 000".

<sup>31</sup> [https://ec.europa.eu/internal\\_market/scoreboard/\\_archives/2014/07/performance\\_by\\_governance\\_tool/eu\\_pilot/index\\_en.htm](https://ec.europa.eu/internal_market/scoreboard/_archives/2014/07/performance_by_governance_tool/eu_pilot/index_en.htm).

infringement proceedings by sending a letter of formal notice to the Member State concerned<sup>32</sup>.

In Romania, the Ministry of Foreign Affairs is the National Contact Point for EU Pilot and coordinates the formulation and substantiation, by the relevant line institutions, of the responses transmitted to the European Commission via the electronic platform<sup>33</sup>.

The European Commission has also created a useful tool for citizens facing obstacles in relation with the national public authorities which is named SOLVIT - Internal Market Problem-Solving – "SOLVIT is a service provided by the national administration in each EU country and in Iceland, Liechtenstein and Norway. SOLVIT is free of charge. It is mainly an online service. SOLVIT aims to find solutions within 10 weeks – starting on the day your case is taken on by the SOLVIT center in the country where the problem occurred"<sup>34</sup>.

In Romania, the SOLVIT National Contact Point is Ministry of Foreign Affairs<sup>35</sup> which solves the problems raised by the Romanian citizens in relation with the Romanian public authorities or other national public administrations and in this

case the National Contact Point from that Member State will be contacted.

„A real partnership of the different actors at European and Member State level responsible for implementation and enforcement will be essential to overcome existing single market barriers. It will help the directing of targeted enforcement action and improving single market law compliance"<sup>36</sup>.

### 5. The impact of the pandemic crisis on the Internal Market<sup>37</sup>

The European Parliament has published in 2021 a study regarding the impact of COVID-19 on the Internal Market which presents the types of the restrictions and their consequences for citizens, business and administrations. On the „restrictions at EU Member State level that impacted cross-border" it is mentioned that the „restrictions to travel have been a feature of the COVID-19 response from the earliest days of the crisis and notifications."

They are also mentioned the restrictions self-imposed by individuals and their effects because „Once people realize that they are at serious risk of a life-threatening infection, many will voluntarily

<sup>32</sup> CJEU, *Darius Nicolai Spirlea and Mihaela Spirlea v European Commission*, 25 September 2014, case T-306/12, ECLI:EU:T:2014:816, para. 62: "Thirdly, even though the EU Pilot procedure is not in all respects equivalent to the infringement procedure, it may nevertheless lead to it, since the Commission may, at the conclusion of an EU Pilot procedure, formally commence an infringement investigation by sending a letter of formal notice and may, possibly, apply to the Court for a declaration that the breach of obligations alleged against the Member State concerned has occurred. That being so, the disclosure of documents in the context of an EU Pilot procedure would be prejudicial to the subsequent phase, that is to say, the infringement procedure".

<sup>33</sup> <https://www.mae.ro/node/27934>.

<sup>34</sup> [https://ec.europa.eu/solvit/what-is-solvit/index\\_en.htm](https://ec.europa.eu/solvit/what-is-solvit/index_en.htm).

<sup>35</sup> <https://www.mae.ro/node/19314>.

The website of all Romanian Ministries must published the link for SOLVIT on their web pages.

<sup>36</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Long term action plan for better implementation and enforcement of single market rules, COM(2020) 94 final.

<sup>37</sup> J. Scott Marcus et al., *The impact of COVID-19 on the Internal Market*, Study Requested by the IMCO committee, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, February 2021 ([https://www.europarl.europa.eu/RegData/etudes/STUD/2021/658219/IPOL\\_STU\(2021\)658219\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/658219/IPOL_STU(2021)658219_EN.pdf)).

begin to practice various forms of social distancing”. „The prolonged restrictions have taken a heavy toll on the EU citizens, confronted with a dramatic change in their lifestyles and expectations. It could be argued that the culture of rights in Europe – some critics might label it as a culture of entitlement – has significantly crippled the pragmatic efforts made by the governments to fight the pandemic”<sup>38</sup>.

Accordingly with this Study, „Measures imposed or recommended at European level can be assigned to one of three major categories: (1) measures which imposed restrictions, which was largely limited to unified restrictions to travel from third countries into the Union; (2) measures which sought to reduce the cross-border impact of restrictions imposed by Member States individually; and (3) measures that had little do with restrictions or cross-border flows, but were nonetheless important from an EU Internal Market perspective”.

In the meantime, the European Commission<sup>39</sup> has underlined that „We are addressing export bans and have issued border management guidance to keep essential goods available”. SMET has had the role „to ensure the free flow of products such as face masks, medical supplies and food across the single market”. The Commission have also approved measures on the export of protective equipment outside the EU and issued a communication with guidance to EU countries to help them address the shortages of health workers and minimise the effects of the coronavirus

emergency's impact on harmonised training requirements<sup>40</sup>, including a guidance on the implementation of Directive 2005/36/EC on the recognition of the professional qualifications in respect to healthcare professionals; for certain sectoral professions such as general care nurses, dentists (including specialists), doctors (including specialists), midwives and pharmacists, the Directive also lays down minimum training requirements at EU level.

„The Commission has made liquidity measures available to support European small and medium-sized enterprises (SMEs). €1 billion was redirected from the European Fund for Strategic Investments to reinforce the COSME Loan Guarantee Facility and the InnovFin SME Guarantee Facility to mobilise liquidity support for at least 100,000 SMEs”<sup>41</sup>.

## 6. Final remarks

The main elements of the relationship between European Commission and European citizens were also established by the six Commission's priorities for 2019-2024 among which can be mentioned “An economy that works for people” in parallel with the sensitive “Promoting our European way of life”<sup>42</sup> which has the rule of law at its center, a interesting topic in the last years for some European Central Member States.

The current French Presidency of the EU Council has on its “agenda for a sovereign Europe” some priorities for EU citizens as the following:

<sup>38</sup> Monica Florentina Popa, *Negotiating our health: the EU public policies on covid-19 vaccination and the Astra Zeneca Advance Purchase Agreement*, Challenges of the Knowledge Society, 14<sup>th</sup> ed., Bucharest, 21<sup>st</sup> May 2021, p. 454 (<http://cks.univnt.ro/articles/15.html>).

<sup>39</sup> [https://ec.europa.eu/growth/coronavirus-response\\_en](https://ec.europa.eu/growth/coronavirus-response_en).

<sup>40</sup> Communication from the Commission Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures – recommendations regarding Directive 2005/36/EC, C(2020) 3072 final.

<sup>41</sup> [https://ec.europa.eu/growth/coronavirus-response\\_en](https://ec.europa.eu/growth/coronavirus-response_en).

<sup>42</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people_en); [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life_en).

With regard to social issues, the first decision was to revise the posting of workers directive on the basis of the principle of “equal pay for equal work at the same workplace”;

With regard to economic issues, a historic recovery plan funded by joint European borrowing has helped Europe overcome the crisis. And Europe is progressively acquiring commercial protection instruments to no longer be naive when it comes to globalization<sup>43</sup>.

The impact of the Ukraine’s situation<sup>44</sup> is serious on the Internal Market and for sure it will be deeply analyzed in the future. For the next period, the European Commission must adopt specific rules for Internal Market which could help not only the functioning of

this area but also EU citizens and their economic wellbeing.

In conclusion, „the development of European legal provisions and the jurisprudence of the Court of Justice of the European Union on the internal market increase the complexity of the European construction, which is distinguished by a series of stable Union rules, but also by a variable freedom of decision recognized to Member States”<sup>45</sup>.

We appreciate that the relationship among European Commission, Member States and EU citizens could be developed on the new aspects and interactions in the benefit of the Internal Market as the cornerstone of the European Union and the power relations must be abandoned.

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<sup>43</sup> <https://presidence-francaise.consilium.europa.eu/en/programme/priorities/>.

<sup>44</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine_en).

<sup>45</sup> Sergiu Deleanu, *United in diversity - Some aspects to consider regarding elementary rules applicable within the Internal Market of the Union*, in Adriana Almășan, Ioana Vârsta, Cristina Elisabeta Zamșa (eds.) *In honorem Flavius Antoniu Baias. Aparența în drept. The appearance in law. L'apparence en droit*, vol. I, Hamangiu Publishing House, Bucharest, 2021, p. 43.

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