

CONSIDERATIONS ON THE USING OF ALTERNATIVE MECHANISMS DESIGNED FOR SOLVING THE INTERNAL MARKET PROBLEMS

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Abstract

The European Commission has undertaken in recent years into a comprehensive and ambitious approach to improve the application of Union law, in which he proposed better coordination of the various instruments of European governance without resorting to additional regulations. Emphasis was placed on enhancing the partnership with Member States, of preventative measures, the more effective use of infringement proceedings, on enhancing dialogue and transparency between European institutions and improving the way public information is shared and, not least, on the introduction of new tools to facilitate informal solving of problems. Most of these new devices controls are informal instruments, with non-legislative nature, but which aims to increase the degree of law respecting with obligatory nature. Their implementation involves, primarily, increased cooperation and coordination between Member States administrations. Based on informal analysis of some of these tools, we propose in this paper to evoke how the contributions they can domestic law enforcement market, but also the impact that these mechanisms have on the national administrative system, serving at the targeting policies of the Member States and representing vectors of a normative action.

Keywords: *The European Union, European law, European governance, internal market, informal mechanisms*

Introduction

Over the last decades we have witnessed across the European Union an evolution of the European political system, meaning a bigger flexibility: a smoother coordination process, the emergence of several control mechanisms with alternative and informal character, the multiplication of new types of public tools, less constraining for the member states than the classic tools describing the community method (statutes, directives). A greater importance is attached to deliberating and taking counsel, the institutional system is getting more complex, thus creating multiple independent structures, the horizontal logistics is constantly developing, the definition of common objectives is the heart of the matter and the focus is rather on how the public action is being taken than its content.

But the use of this type of instruments does not exclusively belong to the European Union. Similar mechanisms have been developed both at national level, across most of the western states (even for fields which are not directly submitted to European integration), and international law

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level as well. Flexibility is more popular than the traditional „dirigistic” approach, thus creating a „new public management”¹, featured, among other things, by stronger bonds between the public and private sectors, openness towards the civil society, and the pursuit of technical rather than political resolutions to contemporary problems.

The European Union is nowadays a laboratory designed to generate new legal instruments and new government techniques, as a result of treaties merging. The innovations mainly cover the instruments chosen to solve the public issues, they don't aim at the nature of these issues. The role played by these instruments designed for public actions is to improve the way the European political system works.

Considering the analysis on some of these new developed instruments within the European Commission, designed to facilitate the informal settlement of the problems in order to improve the application of EU law, this paper aims to highlight how the use of several alternative mechanisms for solving the emerged problems and disputes on the Internal Markets displays a cluster of benefits in terms of participation, transparency and efficacy of the system. However, we do consider that multiplying the informal instruments instead of the formal ones in order to achieve the objectives of the European Union takes up the topic of a leading European Union principle: the law community, so an equitable balance between these two types of instruments is compulsory in order not to prejudice the legitimacy over the efficacy.

A special care² has been lately attached to this topic when talking about the technical foreign literature, but the continuous improvement of the alternative mechanisms and the emergence of new ones entitles new analysis and structural approaches.

• The Internal Market – an unfinished project

Being a central element of the European project and its charter members and a capital objective of the European Union³, the set up of the Internal Market⁴ is the most important European project⁵, which has brought a lot of benefits for its European citizens, consumers and economic agents⁶, being one of the main growth engines in Europe at the same time. Its

¹ L. Boussaguet, S. Jacquot, *Les nouveaux modes de gouvernance: quelle nouveauté pour quelle gouvernance ?*, in „Les politiques européennes”, de R. Dehousse, (coordinator), Presses de Sciences-po, Paris, 2009, p. 410.

² See, in particular: T. Christiansen, S. Piattoni, (eds.), *Informal Governance of the European Union*, Cheltham: Edward Elgar, 2003; L. Salamon, *The Tools of Government: a Guide to the New Governance*, Oxford, Oxford University Press, 2002; W. Walters, J.H. Haahr, *Governing Europe*, London: Routledge, 2005; I. Bruno, S. Jacquot, L. Mandin, *Europeanization through its Instrumentation*, Journal of European Public Policy 13(4)/2006, pp. 519-36; O. Borraz, *Governing Standards: The Rise of Standardization Processes in France and in the EU*, in „Governance”, nr. 20(1)/ 2007, pp.57-84;

³ Art. 3 indent. (3) of the Treaty on European Union (TEU), the consolidated version – Official Journal of the European Union C 83/52 RO from 30.3.2010.

⁴ Its name changed from *Common Market* to *Single Market*, then to *Internal Market*, thus highlighting a double process of getting a deep and enriched meaning. By developing around the four liberties, that is freedom of *movement of goods*, persons, services and capital, the major European market has been completed and upgraded especially by means of enhancing the economic integration, by creating a single currency and by means of developing the cohesion policy.

⁵ According to professor Mario Monti, „The single market is the original idea and the unfinished project of Europe” (The report *A new strategy for the single market. At the service of Europe's economy and society*, presented to the president of the Commission on 09.05.2010. For further information: http://ec.europa.eu/internal_market/strategy/docs/monti_report_final_10_05_2010_ro.pdf.

⁶ According to the European Commission appraisal, the intra-European Union trade rate is nowadays 17% and 28%, respectively, from the ratio of trade in goods and services. The drop by 70% of mobile phone calls costs or by 40% of plane tickets costs are actual illustrative examples – Communication from the Commission, *Towards a Single Market Act. For a highly competitive social market economy. 50 proposals for improving our work, business and exchanges with one another*, COM(2010) 608, 27.10.2010

implementation means cooperation between the member states of the European Union, thus triggering the emergence of the so-called „actual solidarity”, which the charter members had in mind.

The complexity involved around this project, the fact that the Internal Market is governed by a normative frame, made of over 1500 directives and near 1000 statutes, in connection with several policy domains of the exclusive market, normative texts which are often quite complex and look like a „machinery” really hard to understand for the common citizen, made it difficult for the Internal Market to come up. Especially given the present context, marked by the the fiancial and economical crisis which left its mark on each and every European economy and sectors, touching both the enterprisers and the employees as well, and squeezing the purchasing power of millions of European consumers.

The national governments have to deal at the same time with a range of problems while adopting and implementing the measures concerning the Internal Market, according to several assessments carried out by the European Commission⁷. The actual implementation of the Internal Market norms is still facing major challenges, such as considerable delays related to transposing directives or an increased number of complaints came from the citizens or enterprises concerning the violation of their rights granted by EU law⁸.

In the light of the treaties, the EU institutions – especially the Commission and the Court of Justice, are in control and make sure that all the member states observe the European norms, as the European justice is compulsory for the member states (Art. 258 and 259 of the Treaty on European Union) and exclusive (Art. 344 of the Treaty on European Union).

The European Commission is the one that oversees the member states to correctly apply the Union’s law. This responsibility as a „guradian of the treaties” is stipulated under the Art. 17 of the Treaty on European Union („... The Commission shall oversee the aplication of the Union law under the control of the Court of Justice of the European Union”) and it has been ammended through the agency of the Court jurisprudence, which included within the Commission competence the existence of a „general surveillance mission”, which enables it to monitor if the states observe their engagements in the light of the treaties and the decisions made during their application⁹.

While carrying out this mission and due to slow law procedures¹⁰, The Commission continuously developed new ways to enhance the implementation of EU law. Their purpose is not to replace the jurisdictional procedures, they are instead complementary *alternative mechanisms*, strictly related to specific problems, such as the inadequate implementation of EU law or predictable EU norms infringements. Their purpose is to enable the European citizens to fully benefit from the advantages provided by Internal Market and to offer a quick remedy for those who have been touched by the inadequate implementation of European norms, without any proceedings.

⁷ The most complex ones are the annual reports on monitoring the application of EU law, which can be checked at the following address http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report

⁸ Internal Market Scoreboard no. 22 (IP/11/329), made public on 21st of March 2011. For further information: http://ec.europa.eu/internal_market/score/index_en.htm

⁹ The Court of Justice of the European Communities, Judgment of 5/5/1981, *Commission vs. the Netherlands*, Case 804/79, in „Recueil de la Jurisprudence de la Cour de Justice”, 1981, p. 1045.

¹⁰ Basically, the procedure concerning the acknowledgement of a state member which doesn’t observe its commitments, or the *infringement* procedure, governed by Art. 258 of the Treaty on European Union, whose average lifetime is 2 years (for this purpose, report to The 27th Annual Report on Monitoring the Application of EU Law (2009) - COM(2010) 538 final, made public on 01/10/2010 and the 21st Internal Market Scoreboard - 21IP/10/1166, made public on 23/09/2010)

The main alternative mechanisms for solving the problems at the level of the single market are the SOLVIT¹¹ network, the European Consumer Centres networks, the mechanism governed by Regulation 2679/98/CE regarding the free movement of goods¹² within EU and the „EU Pilot” project¹³.

Most of these control mechanisms are informal non-legislative instruments, but they are used to increase the observance of compulsory legislation degree. The implementation flaws are caused by lack of knowledge, lack of coordination and slow bureaucracy¹⁴.

Providing a less intrusive way to follow the observance of EU legislation, these „soft”¹⁵ and flexible instruments have a practical influence which transcends their informal character, having a strong impact on the national administrative system, serving as orientation advisor for the policies of member states, and acting as the vectors of a normative action.

The application of these new control mechanisms implies a higher cooperation and coordination degree between the Member States governances, a series of measures being taken for this purpose, which include monitoring practices (such as *scoreboards* regarding the performance within several domains), national agency networks for regulation and office servants training programs.

• New ways of administrative cooperation and coordination for a better governance of the single market

There has been traditionally drawn out a razor edge between the activity of EU administration and the administrations of the Member States, considering that, if the first one is responsible of

¹¹ Ad hoc network for solving the problems, in which the EU member states work together for solving the problems caused by public authorities' inadequate application of the law concerning the Internal Market, without using the judicial procedures.

¹² Published within the „Official Journal of the European Union” L 337/8 from 12/12.1998. By the agency of this journal, in order to prevent from habitual and punctual inobservance of technical legislation, there has been developed a rapid alert mechanism between the member states, just in case one of the member states is facing an immediate obstacle which might block the free movement of goods.

¹³ The idea for the EU Pilot project was launched in the Commission Communication in 2007 on „A Europe of Results” [COM (2007) 502]. The Communication states that EU Pilot is designed to deal with enquiries and complaints from citizens and business raising a question of the correct application of EU law. EU Pilot is used when clarification is required from Member States of the factual or legal position. Explanations or solutions are to be provided by Member States within a short timeframe, including remedial action to correct infringements of EU law. The Commission services review all Member State responses and further action may be taken to enforce EU law if required. EU Pilot has been operating since April 2008. Fifteen volunteer Member States are participating: Austria, Czech Republic, Denmark, Germany, Finland, Hungary, Ireland, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Sweden, Spain and the United Kingdom. By February 2010, the EU Pilot was dealing 723 files, after 22 months of operation. A further evaluation of EU Pilot is planned for 2011. For further information: http://ec.europa.eu/eu_law/infringements/application_monitoring_ro.htm

¹⁴ O. Borraz, *Governing Standards: The Rise of Standardization Processes in France and in the EU*, in „Governance”, no. 20(1)/2007, pp.57-84.

¹⁵ A set of atypical legal instruments with a doubtful status, such as testimonials, opinions, communications, guiding lines, notes, framing-tools etc., issued by the European Commission, which in spite of not having mandatory legal force shall not be deprived of any consequence, they constitute the so-called „soft law” according to technical literature, in order to distinguish them from the compelling law instruments (treaties, testimonials, directives) which constitute the so-called „hard law” – F. Snyder, *Soft Law and Institutional Practice in the European Community*, in „The Construction of Europe”, by S. Martin (coordinator), Kluwer Academic Publishers, Dordrecht, 1994, p. 198; E. Bernard, *La spécificité du standard juridique en droit communautaire*, Edition Bruylant, Bruxelles, 2010, p. 490; E. Ferran, *Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board*, in „European Law Review”, Volume 35, Number 6, December 2010, pp. 751-776; L. Senden, *Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?*, in „Electronic Journal of Comparative Law”, vol 9.1- January 2005 (<http://www.ejcl.org/91/art91-3.html>).

initiating and adopting the legislative instruments, then the last ones are supposed to apply the European law¹⁶.

The cooperation between the Member States while applying the Union law may consist of a normative, judicial or administrative action¹⁷. It may come as a set of actions at legislative level in order to add up the dispositions of the EU law, to ensure the observance of the European norms, even by constraint, through the agency of the judicial system, but most of the national actions are included within the executive role of the Union, meaning the European decisions shall be carried out by the national administrative apparatus. This kind of administration can be called *indirect administration*, which comes in to play in the absence of a deconcentrated European administration, the Member States thus being in charge with providing the administrative implementation of EU law by means of adopting individual decisions and carrying on material acts. The doctrine evokes even the existence of an *indirect administration principle*, officially proclaimed (even though without obligatory force) within *Declaration 43 annexed to the Treaty of Amsterdam*, according to „It is therefore incumbent on all Member States to apply the Community law at administrative level”. In addition, given the distinction between direct and indirect administration, a reflection on how the competences can be divided at the EU level, and given the enhanced practical collaboration between national and European authorities while implementing the European policies, there are some voices who speak about the existence of a „*co-administration*”, a *composite administration*¹⁸ or a „*split execution*”¹⁹, some authors considering this a new model²⁰.

The Treaty of Lisbon introduces a new title dedicated to administrative cooperation (Title XXIV of the Treaty on the Functioning of the European Union), which stipulates that effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.. For this purpose, The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States (art. 197 of the Treaty on the Functioning of the European Union).

Art. 6 of the Treaty on the Functioning of the European Union states that the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States in the area of administrative cooperation (alongside other areas, such as industry, culture, tourism, education etc.).

¹⁶ D. Ritleng, *L'identification de la fonction executive dans l'Union*, in „L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux”, by J. D. de la Rochere (coordinator), Edition Bruylant, Bruxelles 2009, p. 40.

¹⁷ For detailed information, please check: C. Mătușescu, C. Gilia, *Aspects regarding the EU Member States competence in the enforcement of the European legislation*, in „Challenges of the Knowledge Society - eBook”, Ed. Pro Universitaria, București, 2011, pp. 538-548.

¹⁸ E. Schmidt-Assmann, *Le modele de l'administration composee et le rol du droit administratif europeenne*, in „Revue francaise de droit administratif”, no. 6/2006, p. 1246.

¹⁹ J. Ziller, *Execution centralisee et execution partagee*, in „L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux”, by J. D. de la Rochere (coordinator), Edition Bruylant, Bruxelles, 2009, p. 114.

²⁰ J. Ziller, *Les concepts d'administration directe, d'administration indirecte et de co-administration et les fondements du droit administratif europeenne*, in „Droit administratif europeen”, de J.- B. Auby, J. D. de la Roche (coordinators), Edition Bruylant, Bruxelles, 2007, p. 235.

Independently from the formal commitment of administrative cooperation at European level, the Union and the national administrations have developed new forms of administrative interaction, that can't be described anymore through the agency of the classic distinction between drawing up and implementing the measures, or between direct implementation by European institutions and indirect implementation by national authorities. It's about a new type of cooperation between the Union and the national administrations, which involves innovative and extremely varied methods, takes the shape of an „administrative union” (*Verwaltungsverbund*)²¹, and boosted exchanges at all levels between administrations under the influence of information and communication technologies. A clarifying example to this end is given by the multiplication of European *agencies*, whose role is to promote the interaction between the European and the national administrative services inside their activity field²², or to set the basis of the *European Union Public Administration Network* (EUPAN), an informal network, whose civil servants from all over the European Union cooperate and establish exchange of information inside the public administration area²³.

As for the Internal Market, here operates one of the most effective instruments for administrative cooperation: the *Internal Market Advisory Committee* (IMAC)²⁴ and the *Internal Market Information System* (IMI)²⁵.

Having regard the Internal Market, at this level operate two of the most effective instruments in terms of administrative cooperation: the *Internal Market Advisory Committee* (IMAC) and the *Internal Market Information System* (IMI).

Being formed out of two representatives of each Member State and chaired by a representative of the Commission, *IMAC* may be consulted by the European Commission on any practical problem concerning the functioning of the Internal Market, other than those which are covered by action taken in compliance with arrangements to notify to the Commission and/or exchange information between the Member States and the Commission, laid down in any other applicable Community measure or established within an existing framework for practical cooperation between the Commission and the Member States²⁶.

²¹ Ch. Demmke, D. Bossaert, *L'européanisation par la coopération informelle: l'exemple du réseau EPAN*, in „EIPASCOPE”, Numéro spécial 25ème anniversaire, 2006, p. 57.

²² Most of the European agencies play a supporting role, they don't govern anything. They have been established to take over some of the Commission duties and to support the Member States in various fields. For detailed opinion on the enhanced role of EU agencies, please T. Zwart, *La poursuite du pere Meroni ou pourquoi les agences pourraient jouer un role plus en vue dans L'Union Europeenne*, in „L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux”, by J. D. de la Rochere (coordinator), Edition Bruylant, Bruxelles, 2009, pp. 159-174.

²³ This cooperation is set up on three levels: *political* (ministers and the commissioner for public administration), *management* (general managers or representatives from the administration) and *technical* (human resources groups, innovative public services, e-governing; experts meetings for better regulation; meetings with the principals of institutes and public administration schools) -http://ec.europa.eu/civil_service/audience/nat_admin/epan_ro.htm.

²⁴ Issued by the European Commission Decision on the establishment of the Consultative Committee for the coordination of the Internal Market, no. 93/72/CEE, published in the „Official Journal of the European Union”, L26/18 of 23/12/1992.

²⁵ IMI was launched in February 2008 to support the revised Directive on the Recognition of Professional Qualifications (2005/36/EC) and since December 2009, Member States are legally obliged to use IMI to fulfil the information exchange obligations of the Services Directive (2006/123/EC) and Commission decision 2009/739/EC of 2 October 2009 setting out the practical arrangements for the exchange of information by electronic means between Member States under Chapter VI of the Services Directive. IMI currently has more than 5 700 registered competent authorities and 11 000 registered users.

²⁶ For detailed information, you can check <http://www.dae.gov.ro/182/comitetul-consultativ-pentru-pia-a-intern-imac>

As for the *Internal Market Advisory Committee*, it is an electronic tool, whose purpose is to facilitate administrative cooperation and mutual assistance between Member States of the European Union (including the states of the European Economic Area) in order to ensure a proper functioning of the Internal Market and the free movement of goods and services²⁷. The information system of the Internal Market has been designed as a flexible tool to sustain the administrative cooperation that supports sectoral legislative instruments. It is currently used for the Directive on *professional qualifications* and the *services* Directive.

IMI is a secure, reusable, multilingual, online electronic application developed by the Commission in partnership with the Member States. IMI allows national, regional and local authorities throughout the 30 EEA Member States to communicate quickly and easily with their counterparts across borders. IMI helps its users to find the right authority to contact in another country, communicate with them using pretranslated sets of standard questions and answers and follow the progress of the information request through a tracking mechanism. The idea behind IMI is to replace the very high number of bilateral relationships, linking EU Member States with a single interface, the IMI network. One of the key advantages of IMI is to successfully overcome the main obstacles to cooperation, such as uncertainty about whom to contact, language barriers, different administrative and working cultures and a lack of established procedures for cooperation²⁸.

In the context of debates over the relaunch of the Internal Market in order to cope with the current challenges and to make available for its citizens and enterprises its full potential²⁹, the simplification and acceleration of the cross-border administrative cooperation between the national administrations, which would eventually give the citizens the possibility to easily benefit from their rights within the Single Market, it's a major objective aimed at because the relaunch of the Single Market requires the active support of all European institutions, Member States and interested parties. One of the tools which may trigger the achievement of this objective is the *expansion of the Single Market Information System*, which turned out to be a mechanism that successfully ensured the contacts between national administrations, and also within other political domains, including the electronic commerce and public acquisitions. One considers that a higher interaction between the Member States authorities, qualified in terms of Single Market issues, doesn't only promote the resolution of immediate problems emerged while applying the directives, but it also promotes the development of a mutual trust between the Member States authorities and a more viable Single Market on the long run (the European dimension of public administration across the Member States)³⁰.

• Improving the implementation of Internal Market law. The role of the alternative mechanisms

As we previously mentioned, the Internal Market, the most ambitious European project, is still facing difficulties during the processes of implementation. „The single market is a construct

²⁷ Romania's participation both within the Internal Market Consultative Committee and Internal Market Information System is basically carried out through the agency of the Department of European Affairs, under the Romanian Government's command, playing the role of a national coordinator.

²⁸ Communication from the Commission *Better governance of the Single Market through greater administrative cooperation: A strategy for expanding and developing the Internal Market Information System - „IMF“*, COM(2011) 75 final, Bruxelles, 21.2.2011.

²⁹ For more information, refer to Communication from the Commission *Towards a Single Market act. For a highly competitive social market economy. 50 proposals for improving our work, business and exchanges with one another*, COM(2010) 608, Bruxelles, 27.10.2010

³⁰ The European Parliament report on *Governance and Partnership in the Single Market* [2010/2289(INI)] – Rapporteur: Sandra Kalniete.

based on law. Thus, it is crucial that Member States take seriously their obligation to timely transpose and correctly apply the rules they agreed to”³¹.

Through the agency of the Internal Market Scoreboard – an informal tool designed to support the implementation of the Internal Market, the European Commission monitors the way in which Member States apply and observe the Internal Market norms. After studying the 22 Scoreboards that have been issued on a regular basis³², the general conclusion mirrors a positive evolution regarding the implementation and enforcement of the Internal Market norms. Despite this positive evolution, the Single Market is still divided and doesn't work in its full capacity. There are multiple and complex causes: a large number of regulations and the frequency of their adoption, the supremacy of directives during the enactment process (about 80% of the whole number of norms), having the advantage to allow the consideration of local specificities, but also implying significant downshifts between the moment of their adoption at the Union's level and their implementation at national level, thus affecting the effectiveness of regulation and the system consistency) and heavy risks in terms of wrong implementation, a slow procedure in dealing with the infringement cases etc. The hard truth is that „...the decentralised system in which Member States are responsible for the implementation of EU law and the Commission monitors their action presents many advantages but cannot ensure total and homogeneous compliance”³³.

Over the last years, the European Commission committed itself to a complex and ambitious project, designed to improve the implementation of EU law³⁴, aiming at a *better coordination of European governance instruments without using extra regulations*. The stress was on boosting the preventive measures, in partnership with Member States, on an effective usage of the infringement procedure, on boosting the dialogue and transparency between the European institutions, on improving the ways to inform the general public, and last but not least on *introducing new instruments designed to facilitate the informal problem-solving* by means of some extremely effective instruments, such as the SOLVIT network and the EU-pilot project.

Despite all the measures that have been adopted, and although there can be seen a slight improvement when talking about the application of Internal Market law, the results don't meet the expectations. Thus, according to the latest *Internal Market Scoreboard*, made public in March 2011³⁵, the average transposition deficit regarding the Internal Market, whose deadline expired, is 0,9%, Member States are still in line, but only just, with the 1% target set by Heads of State and Governments in 2007³⁶, and the average timespan for delayed implementation of directives after the agreed period also decreased by 9 to 5,8 months. Regarding the compliance deficit, although the infringement cases have decreased by 11% compared to the last semester (the average number of open infringement proceedings decreased to 40 cases per each Member State), it still remains persistent and alarming. If the infringement number remained a constant over the years, it is a different story when talking about the resolution period of these cases. Member States still take considerable time – on average more than 18 months – to comply with rulings of the EU Court of Justice³⁷, even though they are required to take immediate action. One case out of five takes more than 3 years to be solved or to be presented to the Court.

³¹ The Monti Report, *ibidem*, p. 101.

³² They are issued on semestral basis, the first one being presented in November 1997. A full list can be accessed via the following link: http://ec.europa.eu/internal_market/score/index_fr.htm.

³³ The Monti Report, ..., p. 103.

³⁴ To be seen, in this matter, The Communication from the Commission „Towards a Europe of Results – Applying Community Law” (COM(2007)0502).

³⁵ The Internal Market Scoreboard No. 22, *ibidem*.

³⁶ The total number of Member States achieving the 1% transposition deficit target increased from 18 to 20 Member States comparing to last semester.

³⁷ Ireland accounts for the longest delay, taking on average approximately 25 months to comply with rulings.

Given the measures that have been adopted to improve the application of EU law, *the alternative mechanisms for solving the problems and dealing with the complaints had a tremendous effect over the progress that has been made*. The techniques and procedures that have been used for the running of these informal mechanisms (mainly those of the SOLVIT network, which operates in all the 27 Member States) were able to hold pressure on the Member States authorities in order to carry out a better observance of the Internal Market regulations. They have been appointed by the Commission to basically interfere, ex post, in order to solve the lack or the inappropriate norm application, which represent types of law infringement that are harder to detect by the Commission compared to delayed application cases. For instance, through the agency of SOLVIT, there are frequently *identified general structural problems at the Single Market level*. Using annual reports, the network basically offers precious information, in addition to that delivered otherwise (including the formal way), regarding the difficulties each Member State has to deal with while applying the Internal Market norms. Its activity also plays an important preventive role, especially through the agency of SOLVIT +³⁸ cases, submitted to be solved on a frequent basis. The resolution of these cases requires structural changes of the administrative practices or even the legislation. If the above mentioned changes are successfully brought into effect, they prevent the emergence of new cases of incompliance with the European regulations.

But most of the time, the alternative mechanisms for solving the problems and dealing with the complaints imply cooperation between the structures of the national, regional and even local public administrations, fostering common understanding over some issues related to the application of the Internal Market norms, common definitions of the problems and common working practices. These types of cooperation thus bring a contribution in shaping the procedures undertaken by the national administrations, improving some flawed administrative practices public administrations of Member States, the public administrations of Member States thus going through a professionalization process. The national authorities came to endorse the way of thinking³⁹ and the course of these informal structures, which led to an „informalization” of the national administration working practices⁴⁰. At the same time, by linking the national administrations which cooperate in order to solve the issues related to the application of the Internal Market law, they facilitate the exchange of good practices between these administrations, triggering a more uniform law interpretation and application.

Conclusions

Despite being recently developed, the new EU judicial instruments and governance techniques have already contributed to a better functioning of the Single Market, mainly due to a more direct involvement of all interested parties (European institutions, Member States, citizens, companies, socio-professional organizations, civil society etc.). They have many *advantages* which account for their development. First of all, these instruments facilitate the accomplishment and functioning of the Single Market, using the attunement of national administrative norms and practices and developing mutual trust, thus contributing to *simplification of Single Market rules*. Secondly, and maybe the most important benefit is they have generated a *co-responsabilization* of

³⁸ For such cases, in order to solve the problem which is subject to intimation, it is required certain structural changes regarding the public authorities demeanor, some cases demanding a formal plea designed to amend the legislation, the orientation or other official transposition directives, at national level.

³⁹ Mainly it's about the way in which the Internal Market law is interpreted and transposed.

⁴⁰ For a complex analysis regarding the Informalization of Governance in the EU, check T. Christiansen, S. Piattoni, (coord.), *Informal Governance of the European Union*, Cheltham: Edward Elgar, 2003.

all the parties involved in creating the Internal Market, using these judicial instruments and alternative mechanisms for solving the problems. Bringing them closer to the European decision, there are increased chances to accept the agreed rules and to adequately apply them. These mechanisms contribute to a more educated sense of community, to social dialogue, to a better acknowledgement of the rights arising from the European citizenship and they determine the organized civil society to become more responsible. Thirdly, the informal mechanisms generally allow *a better versatility and dispatch in action* comparing to legislative process or jurisdictional proceedings. They enable the disengagement of the European legislative process and the federal courts, thus contributing both to public funds savings and lesser working tasks, which are frequently in excess inside the legislative or judicial apparatus. As a result, they will be able to focus on the core problems related to the functioning of the European political system. The role of these instruments is not to elude the formal proceedings, they are instead complementary *alternative mechanisms*, strictly related to specific problems, such as the inappropriate application of EU law or predictable EU norms infringements. Their purpose is to enable the European citizens to fully benefit from the advantages provided by the Internal Market and to offer a quick remedy for those who have been touched by the inappropriate implementation of EU norms, in order to early rectify, whenever possible, the EU law infringement situations, without being necessary to fall back on any proceedings related to EU law infringement. But the EU decisional institutions have the chance to interfere whenever they consider these mechanisms don't achieve the expected results or they harm the legislative or jurisdictional rulings.

Providing a less intrusive way to follow the observance of EU legislation, these „soft” and flexible instruments have a practical influence which transcends their informal character, having a strong impact on the national administrative systems. Fostering common understanding over some issues related to EU norms application, common definitions of the problems and common working practices, these types of cooperation thus contribute to shaping the actions undertaken by the national administrations, they amend some flawed administrative practices and play a role in the Europeanization process of public administrations.

Despite having lots of advantages, the new instruments and alternative mechanisms for solving the Internal Market problems do not stand as universal solutions and cannot identify answers for all the emerged problems. Their effectiveness mostly depends on the existence of an appropriate judicial framework, with clear and transparent proceedings, on the responsibility they are transposed and coordinated with, and also on the available financial resources⁴¹.

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⁴¹ The lack of clarity in legislation and the insufficient resources have been considered responsible for the limited performances of some of the existing mechanisms, especially the Solvit network - The Monti Report, *ibidem*, p. 104.

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