

The Lisbon Strategy and its implementation

The political message that the Barroso Commission has since the outset of its mandate sent out under the jargon of “Lisbon Strategy” is sustainable competitiveness. In this everything is taken care of: industry and economic progress, consumers and health, growth and jobs, environmental protection and quality of life, social cohesion, research and development. “Sustainable competitiveness” and “sustainable environment” are the two sides of the same coin, i.e. **sustainability** which by definition has to be based on a systemic consideration of all interrelated policies: a balanced approach which the Commission ensures in an admirable manner via its interservice consultation before a decision is taken. Nevertheless, it is obvious from the more general context of the policy statements that the leading consideration behind all of that was, and still is, “competitiveness” and “growth”. After the first 2 years of experience with the implementation of the Lisbon Strategy it has become even clearer than in the beginning that key elements for the attainment of this very objective are **innovation** and a **stable business environment** in which innovation can prosper. Just recently, the Commission issued an updated (Lisbon) agenda for 2007¹ seeking to reinforce confidence/trust through its action. It is worth noting that among its more specific priorities first comes “Knowledge” with the view to fixing clear objectives in order to improve education, research and innovation in Europe, as factors of growth. Consequently, innovation and certainty in the EU action

¹ COM (2006) 122 final, 14.3.2006 : Communication de la Commission au Parlement Européen, au Conseil, au Comité Economique et Social Européen et au Comité des Régions, Stratégie politique annuelle pour 2007, Renforcer la confiance par l’action.

by both businesses and citizens constitute top political priorities and conditions for the attainment of the Lisbon Agenda objectives.

However, quite often the Commission denies itself and gives signs of lack of consistency. One flagrant example is the Microsoft decision with which it fined on an unprecedented scale an innovative company on the grounds that it refused to supply "Interoperability Information" to its competitors, and to allow the use of such technology for the purpose of developing and marketing "work group" server operating systems despite the fact that no abuses had been identified to the detriment of consumers (the other alleged infringement concerns the tying of improved media functionality to Windows). As a remedy, Microsoft was ordered to licence competitors to use the specifications for communications protocols to build Microsoft's technology into their products. In simple words, Microsoft was fined for its success which had been achieved in a competitive environment and which was due to the research conducted by it that led to innovative products; in addition to that, Microsoft was obliged to share its patented findings with its competitors, being thus deprived from its proprietary rights. Irrespective of the legal considerations at hand, namely whether there were indeed exceptional circumstances justifying the disregard of the Intellectual Property Rights conferred to Microsoft, the fact is that the Commission reached the conclusion that there were exceptional circumstances, without even having in advance examined what Intellectual Property Rights there were specifically in the case at hand. No matter which ones and why they had been granted to Microsoft, the Commission considered that it was not relevant to take them into account. The pathology of this consideration lies with the logic that before making an exception to the

rule, the latter has at least to be known. This was not the case and this approach sends a message which is clearly contradictory to the overriding political priorities of the Lisbon Agenda: don't invest, there is no guarantee that your investment will be paid off. The same message is sent in the parental field of data protection of plant protection products: R&D companies have lost their incentive to invest since their investment is not safeguarded by an appropriate implementation of the legislation on data protection. These few recent examples among many others show the discrepancy between the political agenda, be it Lisbon or another capital, and its translation into praxis: **if policy formulation is not depicted in the policy implementation the result is legal uncertainty** that renders meaningless the Agenda to the detriment of competitiveness and at the end of the day of European citizens.

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