

# The SOLVIT Network: State of the Art and Possible Future Developments

Micaela Lottini\*

*Associate Professor of Administrative Law, Roma Tre University*

## Abstract

*After two decades from the first policy documents and the setting up of the SOLVIT network, the European Commission adopted an Action Plan on the reinforcement of SOLVIT, as part of a package of measures aimed at enhancing compliance with EU law and at improving the functioning of the internal market (the ‘compliance package’). With the Action Plan the Commission renews its commitment to improving the quality of SOLVIT’s services by working from different viewpoints and in strict cooperation with the Member States and the other European institutions. Also, the Action Plan is leading the way towards future developments of the network, having regard to its relations with the Commission, its objectives and its role in the integration of the internal market. Most importantly, however, the Commission is making it clear that SOLVIT is, among other things, a mechanism to enhance ‘compliance’, in particular by ensuring the effective application of EU law by national public administrations and by helping citizens and undertakings to avail themselves of their European rights and liberties.*

## I. Introduction

In their more recent documents on the European integration,<sup>1</sup> the Commission and the other European institutions<sup>2</sup> have been making it clear that fostering the ‘effective compliance’ of Member States’ regulatory framework with EU law is essential to deliver the opportunities and benefits of the single market and that, in this respect, ‘an holistic approach’ should be used

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<sup>1</sup> Commission, ‘Upgrading the Single Market: more opportunities for people and business’ (Communication) COM (2015)550 final, 16. See also Commission, ‘Commission Work Programme 2017. Delivering a Europe that protects, empowers and defends’ (Communication) COM (2016) 710 final.

<sup>2</sup> European Parliament, Council and European Commission, ‘Joint Declaration on the EU’s legislative priorities for 2017’ (European Commission, 13 December 2016) <<https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2017en>> accessed 28 January 2020 (Joint Declaration).

in order to improve all stages of policy-making and regulation, from policy design to the enforcement process<sup>3</sup>.

As a matter of fact, in their Joint Declaration *on the EU's legislative priorities for 2017* of 13 December 2016, the European Parliament, the Council and the Commission reaffirmed their commitment to promoting the correct implementation and enforcement of existing legislation<sup>4</sup>. On the same day, the Commission adopted its Communication *EU law: better results through better application*<sup>5</sup>, where it expressly states that in identifying its policy priorities it will 'pay attention, not only to bringing forward new legislation, but also to its enforcement. The work done to ensure the effective enforcement of existing EU law needs to be recognised as being of equivalent importance to the work devoted to developing new legislation'<sup>6</sup>.

In this context, the role played by national public administrations called upon to apply EU law has been acknowledged as crucial,<sup>7</sup> and the strengthening of Member States' administrative capacity has long been considered a key part of the strategy for enhancing 'compliance'.<sup>8</sup> Consistently with the aforementioned policy documents, the Commission once again confirmed its commitment to 'strengthening its support to administrative capacity building at a national level', with its Communication of 22 November 2018: *the single market in a changing world. A unique asset in need of renewed political commitment*.<sup>9</sup>

In order to face the emerging challenges posed by the national administrations' application of EU law, European institutions and Member States have increasingly stressed the need to foster 'administrative cooperation'<sup>10</sup>, to the

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<sup>3</sup> 'It is essential for a well-functioning single market to have correctly transposed, applied, enforced, monitored and satisfactorily harmonised Community rules affecting the functioning of the single market'. Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market [2009] OJ L176/17 (Recommendation of 29 June 2009), pt Whereas 2. See also Commission, 'Single Market Act. Twelve levers to boost growth and strengthen confidence. "Working together to create new growth"' (Communication) COM (2011) 206 final.

<sup>4</sup> Joint Declaration (n 4).

<sup>5</sup> Communication from the Commission – EU law: better results through better application [2017] OJ C18/10.

<sup>6</sup> *ibid* pt 1.

<sup>7</sup> 'The European Union's success in achieving its many goals as set out in the Treaties and in legislation depends on the effective application of Community law in the Member States': Commission, 'A Europe of results: applying Community law' (Communication) COM (2007) 502 final, pt I.

<sup>8</sup> Recommendation of 29 June 2009 (n 3) *passim*.

<sup>9</sup> Commission, 'The Single Market in a changing world. A unique asset in need of renewed political commitment' (Communication) COM (2018) 772 final, 10.

<sup>10</sup> Commission, 'European governance – A white paper' COM (2001) 428 final, 25ff.

point that it is now considered ‘the backbone of the EU’s unique system of government and governance’<sup>11</sup>.

Cooperation obligations have been imposed on national administrations as a general principle (article 4(3) TEU<sup>12</sup> and article 197 TFEU<sup>13</sup>), by specific pieces of legislation,<sup>14</sup> and by the case law of the Court of Justice of the European Union (CJEU).<sup>15</sup>

Furthermore, a wide range of initiatives have been put forward to facilitate the correct application of EU law from an ‘administrative point of view’ and to support national administrations in fulfilling their cooperation obligations.

From 2007, for example, the Internal Market Information System (IMI)<sup>16</sup> connects national, regional and local authorities across borders and enables them to communicate quickly and easily with their counterparts abroad, in specific sectors of the internal market. Moreover, the European professional card (EPC)<sup>17</sup>, an electronic document issued through IMI, to professionals in-

<sup>11</sup> AH Türk and HCH Hofmann, ‘An introduction to EU administrative governance’ in HCH Hofmann and AH Türk (eds), *EU administrative governance* (2006) 1.

<sup>12</sup> ‘Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties’.

<sup>13</sup> ‘1. 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.

2. 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. (...)’.

<sup>14</sup> Just as examples: Directive 2006/123/EC of 12 December 2006 on services in the internal market [2006] OJ L376/06, *passim*; Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications [2005] OJ L255/22; Directive 2013/55/EU of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) [2013] OJ L354/132.

<sup>15</sup> See Case C-202/97, *FTS* [2000] EU:C:2000:75; the CJEU, called upon to rule on the application of article 10 TEC, made it clear that the principle of sincere co-operation imposes mutual obligations on the ‘Home’ and the ‘Host’ State authorities. The former has to carry out a proper assessment of the facts relevant for the application of the rules in question, and they have to guarantee the correctness of the information on which they base their decision (e.g. the issuance of an authorisation). The ‘Host’ State authorities, on the other hand, have to ‘recognise’ this decision, and they have to consider themselves bound by it.

<sup>16</sup> See, in this respect, Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 Oct. 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’) [2012] OJ L316/1. In this respect, see M Lottini, ‘An instrument of intensified informal mutual assistance: the Internal Market Information System (IMI) and the protection of personal data’ (2014) 20 *European Public Law* 107, 104. See also, for more information, <<http://ec.europa.eu/internalmarket/imi-net/indexen.html>> accessed 28 January 2020.

<sup>17</sup> In this respect, see M Lottini, ‘The European Professional Card: a new single market governance tool’, (2017) 5 *Rivista Italiana di Diritto Pubblico Comunitario* 1254.

terested in working in another Member State, facilitates the mutual recognition of professional qualifications. These mechanisms are aimed at preventing unlawful decisions made by national administrations applying EU law. In case a problem occurs, however, the affected citizen (or business) must be guaranteed an effective and adequate redress mechanism.<sup>18</sup>

Needless to say, the misapplication of internal market rules by national public administrations raises particular issues regarding legal protection, as the individual has to face the administration of a Member State other than his own. In addition, the long and costly Court proceedings might not be effective, especially within specific areas of the internal market or in situations where an immediate decision is needed.

It is within this context that the Commission, in 2001, adopted the Communication *effective problem solving in the internal market: 'SOLVIT'*, and proposed the establishment of the SOLVIT network. The purpose of the network is to provide a mechanism for the informal<sup>19</sup> resolution of disputes between citizens (or businesses) and those national public administrations which allegedly acted in breach of EU law. In other words, SOLVIT is aimed at fostering the correct application of EU law by national public administrations, as well as at allowing citizens and undertakings to take up their free movement opportunities.

It is therefore not surprising that the Commission handed down its latest policy document on the SOLVIT network on May 2, 2017<sup>20</sup>, as part of a package of measures aimed at enhancing compliance with EU law and at improving the practical functioning of the European market (the 'compliance package'). The Communication *Action Plan on the reinforcement of SOLVIT: bringing the benefits of the single market to citizens and businesses*<sup>21</sup> proposes new actions to strengthen the strategic role of the SOLVIT network for the protection of the individuals and for the enforcement of EU law<sup>22</sup>.

All in all, the aim of this article is, in its first part, to put SOLVIT in the context of the strategies and initiatives for the integration of the internal market

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<sup>18</sup> Recommendation of 29 June 2009 (n 3) *passim*, pt Whereas 2.

<sup>19</sup> See D-U Galetta, 'Informal information processing in dispute resolution networks: Informality versus the protection of individual's rights?' (2014) 20 *European Public Law* 71.

<sup>20</sup> On the SOLVIT network, see M Lottini, 'Correct application of EU law by national public administrations and effective individual protection: the SOLVIT network', (2010) 2 *REALaw* 5.

<sup>21</sup> Commission, 'Action plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses' (Communication) COM (2017) (Action plan on the Reinforcement of SOLVIT) 255 final.

<sup>22</sup> Some legal scholars indicate SOLVIT as a pre-infringement procedure. 'These pre-infringement initiatives rely more and more, although not exclusively, on the active cooperation of Member States, as a group, or between the Member States and the Commission, in sharp contrast to the formal infringement procedures where the EU (via the Commission) opposes a Member State in a legal proceeding': A Correia de Brito, 'Modern enforcement in the single European market', in JM Beneito and J Maillou (directors) and J Corti and P Milla (coordinators), *Fostering growth in Europe: reinforcing the internal market* (2014) 396.

developed, in particular, by the European Commission. Secondly, it focuses on the evolution of the network over the past fifteen years. Lastly, the article provides an analysis of the new Action Plan of 2017 and of the possible future developments of the SOLVIT mechanism, followed by some conclusive remarks on its role to enhance effective ‘compliance’ with EU law.

## 2. SOLVIT from 2002 to 2017

SOLVIT is an informal, free of charge, and non-binding mechanism which handles complaints from citizens (or businesses) of one Member State concerning the material application of EU law by a public authority of another Member State.

SOLVIT works to resolve the problem in cooperation with the national public authority by proposing a possible solution and, ultimately, a change of the original administrative decision. It was established following the above-mentioned Communication *effective problem solving in the internal market* (‘SOLVIT’),<sup>23</sup> and started handling cases in 2002.

The SOLVIT system is made up of a network<sup>24</sup> of national Centres, an online database connecting the Centres, and a dispute-settlement procedure, outlined in the Recommendation on *principles for using SOLVIT*,<sup>25</sup> adopted in December 2001 and later amended in 2013.<sup>26</sup>

The network makes use of online techniques and its activity relies on informal procedural arrangements. It is based on the principle of mutual cooperation, which in this case works at three different levels: at a cross-border level, the two Centres of the concerned Member States (the Home<sup>27</sup> and Lead<sup>28</sup> Centre) cooperate to assess the case; at a national level, the Lead Centre and the national

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<sup>23</sup> Commission, ‘effective problem solving in the internal market (‘SOLVIT’) (Communication) COM (2001) 702 final.

<sup>24</sup> Some legal scholars refer to SOLVIT as a trans-governmental network, as it involves ‘regular and purposive relations between government actors dealing with cross-border policies, and problems. The government actors represent the state but operate at levels below the head of states’: D Sindbjerg Martinsen and M Hobolth, ‘The effectiveness of transgovernmental networks: managing the practical application of European integration in the case of SOLVIT’, in S Drake and M Smith (eds), *New Directions in the Effective Enforcement of EU Law and Policy* (2016) 158.

<sup>25</sup> Recommendation of the Commission of 7 December 2001 on principles for using “SOLVIT” – the Internal Market Problem Solving Network (2001) OJ L331/79.

<sup>26</sup> Commission Recommendation of 17 September 2013 principles for using “SOLVIT” (2013) OJ L249/10 (Recommendation of 17 September 2013).

<sup>27</sup> *ibid* para I, B, 7: ‘The SOLVIT centre in the Member State that has the closest links with the applicant based on for example nationality, residence, establishment or the place where the applicant acquired the rights at stake’.

<sup>28</sup> *ibid* para I, B, 8: ‘The SOLVIT centre of the Member State in which the alleged breach of Union law governing the internal market has occurred’.

authority which allegedly acted in breach of EU law cooperate to find a possible solution; lastly, at a supranational level, the Centres cooperate with the European Commission and other institutions and networks.

Over the years, SOLVIT's evaluation documents<sup>29</sup> have been indicating that the mechanism has proved itself effective in offering individuals and small businesses an alternative to Courts, in ensuring the correct application of EU law and in bringing about changes in administrative practices at a national level.

As a matter of fact, the percentage of cases that are handled and resolved has been constantly increasing.<sup>30</sup> National authorities tend to follow the solutions proposed by SOLVIT – despite their non-binding nature – and have improved their capacity to interpret and correctly apply EU law.

Notwithstanding these positive conclusions, however, the abovementioned documents showed that the effectiveness of the network was still negatively impacted by different factors, and that SOLVIT suffered from several weaknesses: Centres were understaffed in relation to their caseload, the level of public awareness of SOLVIT's activities was relatively low, and cooperation was not always effective. Further, the mandate of SOLVIT had given rise to different interpretations amongst the Centres, combined with a high degree of ambiguity and uncertainty as to whether a given case fell within or outside the remit of the network.<sup>31</sup>

Hence, the Commission took action to address these issues and reap SOLVIT's full potential.

In particular, in 2013 a new Recommendation was adopted, *on the principles for using SOLVIT*,<sup>32</sup> containing a series of provisions aimed at improving the operation of the network.

The Recommendation tries to clarify the level of service that individuals and businesses can expect from SOLVIT, the various procedural steps and deadlines that the Centres must respect when handling a case. It also considers the necessary follow-up for cases which could not be resolved. Moreover, the Recommendation indicates how applicants should be informed and what assistance they should be offered. It sets out minimum standards that SOLVIT Centres should comply with as for organization structures, legal expertise and relations with other networks, in order to consistently and seamlessly deliver services of equal quality across the network.

Furthermore, it gives a clearer indication of SOLVIT's mandate; it specifies that SOLVIT can decide cases where the internal market problem is caused by

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<sup>29</sup> Commission Annual Reports on SOLVIT. All the Reports can be found on the SOLVIT website: <http://ec.europa.eu/solvit/>.

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

<sup>32</sup> Recommendation of 17 September 2013 (n 26).

national rules incompatible with EU law. These cases, indicated as 'structural cases', in accordance with the previous documents, were in principle excluded from its remit. SOLVIT's mandate also covers cases which are not *stricto sensu* cross-border. In other words, the Recommendation extends SOLVIT's mandate to include problems where applicants confront their own national administration instead of a foreign one, 'but only after having exercised their free movement rights or when trying to do so'<sup>33</sup>.

It is worth mentioning, in conclusion, that the Commission reshaped the SOLVIT online database as a stand-alone module in the Internal Market Information system (IMI).<sup>34</sup>

### 3. The Action Plan of 2 May 2017 and the 'Compliance Package'

#### 3.1. Assessment of the performance of SOLVIT (2017)

Over the last few years, the European institutions have repeatedly called on the Commission to take action in order to strengthen the SOLVIT mechanism<sup>35</sup>. Accordingly, the Commission, with a Staff Working Document<sup>36</sup>, carried out an assessment of the performance of the network after the modernisation of its legal framework by the Recommendation of September 2013.

The assessment highlighted that the minimum standards, along with operational and quality objectives set out for the network had not been fully met. The effectiveness of the mechanism, despite the overall positive results, was still undermined by several factors, such as, lack of adequate staffing, insufficient legal expertise, and limited awareness of the mechanism – especially by businesses.

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<sup>33</sup> *ibid* pt I.B.2.

<sup>34</sup> In favor of this integration is Musselli: L Musselli, 'Administrative cooperation between Member States: the SOLVIT network', in L Ammannati (eds), *Networks. In search of a model for European and global regulation* (2012) 91.

<sup>35</sup> See European Parliament resolution of 27 February 2014 on SOLVIT [2014] OJ C285/96; European Parliament, 'Report of 1 October 2015 towards improved single market regulation' (European Parliament, 27 February 2014) <[www.europarl.europa.eu/doceo/document/A-8-2015-0278EN.html](http://www.europarl.europa.eu/doceo/document/A-8-2015-0278EN.html)> accessed 30 January 2020 and European Parliament, 'Report of 3 May 2016 the single market strategy' (European Parliament, 3 May 2016) <[www.europarl.europa.eu/doceo/document/A-8-2016-0171EN.html](http://www.europarl.europa.eu/doceo/document/A-8-2016-0171EN.html)> accessed 30 January 2020 etc.

<sup>36</sup> Commission, 'assessment of the performance of SOLVIT accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Action Plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses' (Working Staff Document) SWD (2017) 210 final.

The document also made it clear that the role of the network in EU law enforcement required improvement; in addition, particular attention should be paid to SOLVIT's capacity of promoting effective compliance in relation to 'structural cases' (where the problem is caused by an unlawful national legislation and thus the national regulatory framework has to be amended). In this respect, the assessment indicated that frequently – despite the growth in numbers – the handling and reporting of structural cases did not lead to the solution of the problems detected through SOLVIT. The functionalities of the SOLVIT application did not allow for a systematic monitoring of actions undertaken at the national level. The information and evidence gathered in SOLVIT, which evidently can be used to inform new priorities and adjustments to existing programmes or policies, were not adequately taken into account.

Drawing on the results of the assessment, the Commission adopted the Action Plan *on the Reinforcement of SOLVIT*, setting out measures to strengthen the mechanism and to work alongside the other Commission's initiatives included in the 'compliance package' adopted on May 5, 2017.

The first initiative is the Proposal for a Regulation *setting out the conditions and procedure by which the Commission may request undertakings and associations of undertaking to provide information in relation to the internal market and related areas*,<sup>37</sup> which provides the setting up of a Single Market Information Tool (SMIT), aimed at enabling the Commission to source defined and readily available data (e.g. cost structure, pricing policy or product volumes sold) in cases of serious difficulties with the application of internal market rules.

The second initiative included in the 'compliance package' is the Proposal for a Regulation *on establishing a Single Digital Gateway (SDG) to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012*.<sup>38</sup> The SDG should provide citizens and businesses with a single access point to market-related information, assistance, advice, problem-solving services, and should improve the activity of national administrations through the use of e-procedures.<sup>39</sup>

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<sup>37</sup> Commission, 'Proposal for a Regulation of the European Parliament and of the Council, setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas' COM (2017) 257 final.

<sup>38</sup> Commission, 'Proposal for a Regulation of the European Parliament and of the Council, on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) 1024/2012' COM (2017) 256 final.

<sup>39</sup> See, in this respect, Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 [2018] OJ L295/1.

A closer look at the Action Plan on SOLVIT makes it clear that it focuses on three main policy areas: i) improving the quality of its services ii) increasing awareness-raising activities and iii) upgrading its role in EU law enforcement.

### 3.2. Improving the quality of SOLVIT's services: the role of the Commission and the 'once only principle'

With the Action Plan of 2017, the Commission commits to taking action in order to improve the overall quality of SOLVIT, in terms of administrative capacity, handling of complex and sensitive cases, legal expertise, and lawfulness of decisions.<sup>40</sup>

As is well known, the Commission is not directly involved in the problem-solving process, though it facilitates the activities of the network by managing its website and the database; it also works in cooperation with the Centres providing advice, assistance or any relevant information.

The Action Plan makes it clear that the Commission, for its part, will strengthen its role by using all available EU funding opportunities to improve the operation of the SOLVIT Centres (at a national level) and by using the latest technologies to provide a more effective support in terms of legal advice and assistance.

Furthermore, the Commission will take action to improve the effectiveness of the decision-making process, in particular by targeting possible divergent views between the two SOLVIT Centres involved in the assessment and handling of a case. In order to prevent possible conflicts of interpretation, it will undertake a 'more systematic monitoring of SOLVIT cases to identify controversial issues and discussions within the network'.<sup>41</sup>

Also a 'more structured arbitration procedure'<sup>42</sup> will be developed. The Commission does not provide any specific indication on this procedure *per se*, however in this respect, it is worth mentioning that the incapacity of the Centres to find an agreement can indeed undermine the effectiveness of SOLVIT's intervention, and this is clearly shown by the CJEU judgment *Slovenská sporiteľňa*,<sup>43</sup> rendered on 7 February 2013. Here, a SOLVIT case ultimately ended up being decided by a national Court (after a preliminary ruling of the Court of Justice), when it was closed as unresolved because the Czech and the Slovak SOLVIT Centres diverged on the interpretation of article 101 TFEU.

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<sup>40</sup> The Commission is responsible for ensuring that the proposed solutions are in full conformity with EU law and evidently retains its prerogative to take appropriate formal action against Member States in accordance with article 258 TFEU. In this respect, see Commission, 'setting out the approach for assessing the conformity of solutions proposed by the SOLVIT network with Community law' (Staff Working Document) SEC (2004) 1159.

<sup>41</sup> Action plan on the Reinforcement of SOLVIT (n 21) 6.

<sup>42</sup> *ibid* 5.

<sup>43</sup> Case C-68/12 *Slovenská sporiteľňa* [2013] EU:C:2013:71.

Also, in order to enhance the effectiveness of the mechanism in terms of the resolution of the problems faced by the complainants, in the new Action Plan, the Commission makes it clear that, in specific areas of single market, such as the mutual recognition of non-harmonised goods, ‘if SOLVIT’s informal approach fails’ it will ‘look at the possibility of introducing an “appeal procedure” for businesses’.<sup>44</sup> In this case, the new ‘appeal procedure’ should be ‘a part of the review of enforcement of the mutual recognition principle’.<sup>45</sup>

As a matter of fact, on 19 March 2019, a new Regulation was adopted on the mutual recognition of goods lawfully marketed in another Member State.<sup>46</sup>

Whereas n. 39 of the Regulation states that: ‘where the SOLVIT’s informal approach fails, and serious doubts remain regarding the compatibility of the administrative decision with the mutual recognition principle the Commission should be empowered to look into the matter and provide an assessment to be taken into account by the competent national authorities at the request of the SOLVIT Centre.

Interestingly enough, article 8 of the Regulation (headed ‘Problem-solving procedure’) seems to take a step back, introducing a ‘cooperation procedure’ (rather than an ‘appeal-procedure’) which should work *ex ante* – hence prior to the adoption of the proposed solution by SOLVIT. In fact, it specifies that the article in question ‘applies if an economic operator affected by an administrative decision has submitted the decision to the SOLVIT and, during the SOLVIT procedure, the Home Centre asks the Commission to give an opinion to assist in solving the case’<sup>47</sup>. If so, the Commission enters into communication with the relevant economic operator and the competent authorities who took the administrative decision in order to assess its compatibility with the principle of mutual recognition<sup>48</sup>. Then ‘the Commission may issue an opinion identifying concerns that should, in its view, be addressed in the SOLVIT case and, where appropriate, making recommendations’<sup>49</sup> to assist in solving the problem; the ‘opinion has to be considered during the SOLVIT procedure’<sup>50</sup>.

In this respect, it is worth noting that, *de facto*, the Commission has already been part of the ‘decision-making process’ and its intervention has been requested after SOLVIT failed to resolve the problem, as is clearly shown by several

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<sup>44</sup> Action plan on the Reinforcement of SOLVIT (n 21) 5.

<sup>45</sup> *ibid.*

<sup>46</sup> Regulation (EU) 2019/515 of the European Parliament and of the Council, of 19 March 2019, on ‘the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008’, OJ L 91/1 of 29.3.2019.

<sup>47</sup> *ibid* para 8(1).

<sup>48</sup> *ibid* para 8(2).

<sup>49</sup> *ibid* para 8(3).

<sup>50</sup> *ibid* para 8(4).

Decisions of the European Ombudsman (EO), called upon to investigate the activity of the Commission in that respect.

One case<sup>51</sup> concerned the European Commission's handling of an infringement complaint against the Dutch authorities, which refused to issue a visa for a third-Country family member of a Union citizen. The complainant sought help from the Austrian SOLVIT Centre which, *inter alia*, suggested that the issue raised was not an isolated case; SOLVIT's attempt to find a solution did not lead to a satisfactory result. Therefore, a complaint was lodged with the European Commission, which decided not to take any further action, despite the evident misapplication of EU rules in the case at issue, in absence of a general and consistent practice contrary to EU law on the part of the Dutch authorities. The complainant, drawing on SOLVIT's opinion (which suggested that the problem was structural) contested the Commission's decision and brought the matter to the attention of the European Ombudsman. The EO opened an investigation, contacted the Dutch Ombudsman and the SOLVIT network, and then closed the case finding no maladministration in the Commission's conduct.

In a further relevant case<sup>52</sup>, an Estonian citizen was refused by the competent authorities unemployment benefits in Finland, where he resided. He firstly filed an unsuccessful complaint with SOLVIT and then reported the above facts to the Commission, alleging that the decision of the Finnish authorities was in contrast with EU law. The Commission, however, ruled that although the challenged decision of the national authorities was not in line with EU law, it could not take further action on the matter because it was a domestic dispute and advised the complainant to make use of the domestic remedies at his disposal. The complainant then brought the case before the EO, who concluded that the Commission's position was reasonable and in line with its statutory powers.

In conclusion of this section, it is worth mentioning that, in order to favour citizens and businesses complaining of alleged breaches of their European rights, the Commission is exploring the feasibility of the introduction of the 'once only principle'. Under the 'once only' principle, public administrations should ensure that citizens and businesses have to provide certain standard information to the authorities and administrations – only once. This is especially considering the fact that the public administrations concerned are allowed to re-use and exchange the data with each other, in due respect of data protection

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<sup>51</sup> European Ombudsman, 'Decision in case 1040/2017/JAP on the European Commission's handling of an infringement complaint against the Netherlands concerning a refusal to issue a visa for a third-country family member of a Union citizen' (European Ombudsman, 28 May 2018), <[www.ombudsman.europa.eu/en/decision/en/95906](http://www.ombudsman.europa.eu/en/decision/en/95906)> accessed 30 January 2020.

<sup>52</sup> European Ombudsman, 'Decision in case 330/2017/EIS on the Commission's decision to close an infringement complaint against Finland regarding entitlement to unemployment benefits in cross-border situations' (European Ombudsman, 17 May 2017) <[www.ombudsman.europa.eu/en/decision/en/79286](http://www.ombudsman.europa.eu/en/decision/en/79286)> accessed 30 January 2020.

and confidentiality rules. The ‘once only’ principle would allow the Commission to make full use of the legal analysis and evidence already gathered by SOLVIT, so that, in practice, citizens and businesses wishing to complain to the Commission following an unresolved SOLVIT case could be exempted from having to re-submit information already held by the network.

### 3.3. SOLVIT and the other assistance and problem-solving services

SOLVIT should be more user-friendly, and hence, in addition to the above-mentioned ‘once only’ principle, the Commission commits to increasing SOLVIT’s ‘findability’.

In particular, with the setting up of the Single Digital Gateway (now provided by Regulation No 2018/1724<sup>53</sup>), SOLVIT should be linked with the other existing EU and national mechanisms providing information and problem solving services, all sharing a common and single entry point.

Moreover, in order to make it easier for citizens and businesses to identify and make use of the most appropriate redress mechanism available, the Commission deems necessary to step up cooperation with other European and national information and help networks (such as Your Europe, Europe Direct, Your Europe Advice, the Enterprise Europe Network, European Consumer Centres, EURES, Fin-net and European Network of Ombudsmen). The strengthened forms of cooperation should favour the constant exchange of information and advice, the mutual signposting of cases, as well as the direct transferral of a case from one network to another competent to decide on the specific issue.

In this regard, it is interesting to note that annual Reports of the European Ombudsman (EO) indicate that cases originally submitted to the EO are already being directly transferred to SOLVIT (when they involve a cross-border dispute between a national administration and a European citizen or business).

In case (644/2012/MF), a French national filed a complaint with the EO against the German authorities, alleging the miscalculation of the pension amount to which she was entitled. The EO transferred the case to SOLVIT France, which opened an investigation and contacted the competent German authorities to resolve the problem. In another case (1944/2012/HK), a Spanish national complained against a decision of the Department of work and pensions (DWP) in the United Kingdom. She had moved from Spain to the United Kingdom and had worked part-time for two years before she was diagnosed with cancer. The DWP decided that she was not habitually resident in the

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<sup>53</sup> Regulation 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 [2018] OJ L295/1.

Country and thereby she was not entitled to employment and support allowance. The Ombudsman directly transferred the case to SOLVIT Spain.

### 3.4. SOLVIT and EU law enforcement

SOLVIT's primary objective, as outlined in the documents adopted in 2001, is to deliver fast, effective and informal solutions to problems individuals and businesses encounter when their EU rights in the internal market are denied by public authorities. The network was set up as a dispute resolution mechanism, rather than as an EU law enforcement tool.

As legal scholars point out, 'perfect compliance is not demanded: SOLVIT is aimed at resolving problems – if a problem can be resolved in a particular case, a Member State can still be in non-compliance with EU law'<sup>54</sup>.

That being said, over the years, the role that SOLVIT played in relation to EU law enforcement has increased in importance.<sup>55</sup> In particular, SOLVIT has received a growing number of cases linked to 'structural problems' due to a regulatory barrier or an unlawful administrative practice 'of a consistent and general nature'.<sup>56</sup>

In these cases, the SOLVIT Centres tried to resolve the individual problem by recommending the administration, either to disapply the concerned unlawful regulation, or to move away from the unlawful administrative practice. Moreover, the Centres contacted the relevant national authorities to have the regulation amended or to have the practice changed by the issuing of specific guidelines. Hence, many problems relating to the implementation and application of EU law have been highlighted by the network.

The Recommendation adopted in 2013 acknowledges this evolution, and emphasises the importance of SOLVIT for the effective enforcement of EU law, as well as, for the integration of the internal market, as is clearly stated by paragraph II, according to which 'SOLVIT (. . .) contributes to a better functioning of the single market by fostering and promoting better compliance with Union law'.

With the Action Plan, the Commission indicates several issues that could and should be dealt with in order to render SOLVIT's intervention more effective. First of all, even if the Centres are not able to persuade the competent authorities to resolve a specific problem, the evidence gathered 'on the ground' could and should be used comprehensively and systematically to develop new

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<sup>54</sup> CE Koops, 'Compliance mechanisms compared. An analysis of the EU infringement procedures, SOLVIT, Pilot and IMS?' in JM Beneito and J Maillo (directors) and J Corti and P Milla (co-ordinators), *Fostering growth in Europe: reinforcing the internal market* (2014) 456.

<sup>55</sup> All the data are available on the SOLVIT website, in particular within the Annual reports of the European Commission on SOLVIT.

<sup>56</sup> Case C-278/03 *Commission v Italy* [2005] EU:C:2005:281, para 13.

strategies for the integration of that sector of the internal market. In this respect, the Single Market Information Tool could come into play (in particular cases, where necessary and proportionate) to enable the Commission to request relevant information directly from the market players. Also, the SOLVIT database should be improved to record structural and recurrent problems and to allow Member States to report on the action taken to remedy them.

Using tools such as the Single Market Scoreboard, the Commission commits to regularly informing Member States and relevant stakeholders about breaches of EU law and other obstacles to the single market detected through SOLVIT. Member States, on their part, in order to render the mechanism more effective, should ensure cooperation with national intermediary organisations and the national Contact Points of the different existing networks by using a direct connection with SOLVIT.

#### 4. Conclusive Remarks

With the Action Plan of May 2, 2017, the Commission renews its commitment to improving the quality of SOLVIT's services by working from different viewpoints and in strict cooperation with the Member States and the other European institutions.

Moreover, the Action Plan is leading the way towards future developments of the network, having regard to its relations with the Commission, its objectives, and its role in the integration of the internal market.

In particular, reference is made here to the proposed creation of an 'arbitration procedure' before the Commission in case the two acting Centres cannot agree on how to resolve an internal market problem – as well as of the 'appeal procedure' to the Commission that should be made available to complainants if SOLVIT's intervention is unsuccessful in specific areas of the internal market.

The way in which these procedures should be structured is rather unclear. For example, having regard to the 'appeal procedure': will the Commission intervene when the SOLVIT Centres decide to dismiss the case or when the public administration is unwilling to comply with SOLVIT's proposed solutions? Will this intervention take place prior to the adoption of the proposed solution (as the new Regulation on mutual recognition seems to suggest) or *ex post*, after SOLVIT failed to resolve the problem?

What is evident, however, is that the Commission is planning to increase its role in the decision-making process of the SOLVIT network, role that could be further facilitated by the introduction of the 'once only principle'.

Regarding the objective of the network, in accordance with the background documents,<sup>57</sup> it is apparent that, over the years, it has been gradually shifting from SOLVIT being a mechanism aimed at resolving individual problems caused by the misapplication of internal market rules by national administrations, to becoming a tool aimed at fostering the enforcement of EU law and effective compliance.

The Commission, perfectly in line with this trend, indicates actions that should be taken to strengthen SOLVIT's role in this respect, focusing in particular on the 'structural cases', where the network can contribute to the amendment of national regulations conflicting with EU law.

Which effects the developments foreseen in the Action Plan may have and whether they will substantially change the way in which the network works – thereby strengthening its effectiveness – remain to be seen, and can be appreciated only with time.

However, this much is true: once again, the Commission acknowledges that SOLVIT is playing an essential role in the integration of the internal market, and considers the network an effective remedy to internal market problems.

Indeed, SOLVIT offers individuals and small businesses an alternative to starting legal proceedings before national judges; it is fostering the correct and uniform interpretation and application of EU law by national administrations in a way which is uniform throughout Europe, and is facilitating the amendment of the national regulations which run counter to EU law.

In other words, and to conclude, SOLVIT is enhancing 'compliance' by working at an individual level, at an administrative level, and also at a regulatory level – where it represents an alternative to the formal infringement proceedings provided for by the EU Treaties.

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<sup>57</sup> The documents are available on the SOLVIT website.