

Single Market Governance Package

Earlier this year, the Commission adopted two communications concerning the overall governance of the Single Market so as to ensure its proper functioning and added value it provides to EU businesses and citizens. The communications are intrinsically linked with one another, with the first identifying the barriers to conducting cross-border business in the Single Market, and the second presenting a long-term action plan for better implementation and enforcement of Single Market rules.

The adopted Package represented the conclusion of a year-long exercise, in which the Commission gathered feedback from businesses on the ground via European business organisations in order to identify the obstacles present in day-to-day businesses in the Single Market, and what can be done to overcome them. The Malta Business Bureau contributed significantly to the process via its own study “The Impact of the European Single Market on Maltese Businesses” (November 2019), and is in fact heavily referenced in the European Commission’s staff working document accompanying the report identifying barriers in the Single Market.

Barriers to the Single Market

This report by the Commission was significant as it represented probably the first Communication focusing on practical obstacles and barriers to the single market as perceived by businesses, from the businesses themselves. The report proves that while the single market has proven to be a huge success, the first of its kind globally, there are still too many barriers which continue to hinder its proper functioning, making conducting business and consumer journeys more difficult than it needs to be.

The report lists a number of barriers which are present, as well as their root causes, too exhaustive to go into detail within the parameters of this document, but the main ones will be mentioned in brief:

1. Access to information: it seems clear, across the board, that there is a problem with inaccessibility of information on rules and requirements.
2. Administrative burden: all surveys consistently quote complex administrative procedures as one of the most serious obstacles, with posting of workers in the area of services singled out the most. In addition, there is also a big issue with inefficiencies related to additional technical requirements and standards at national level, as opposed to EU level.
3. Public Procurement: there were many complaints about uneven access to public procurement, with a perceived lack of transparency, and possible discriminatory, disproportionate or non-objective behaviour from contracting authorities.

4. Cross-border disputes: Different contractual and legal practices lead to higher costs of resolving cross-border disputes and complaints.
5. Significant problems often arise with registration of business activity in another Member State.
6. Other problems relating to skills shortages/mismatches and language barriers.

A number of root causes were identified for the reported barriers.

1. Regulatory choices at EU and national level:

Restrictive national rules are a crucial problem in particular for the services industry, as it affects entry and exercise requirements for certain activities and professions, such as authorization schemes, mandatory professional body memberships insurance requirements or restrictions on corporate structures. EU law already provides for a framework for the assessment of such restrictions (Services Directive, Proportionality Test Directive, etc), and the Commission has committed to focusing on better implementation and enforcement of these frameworks.

It is also acknowledged that gold-plating remains an issue, given that Member States have a margin to set additional requirements, as long as it is justified and proportionate, in order to pursue legitimate public interests. However, this often leads to additional regulatory or administrative burden for businesses. The Commission recalls the Member States' obligation to ensure that additional requirements must be:

- a. Justified by an overriding reason of public interest
- b. Non-discriminatory
- c. Proportionate, in the sense that they do not go beyond what is necessary to achieve the objective
- d. Easy to understand
- e. Compliant with harmonized minimum rules

It is also acknowledged that some fragmentation comes from the EU's efforts to legislate other public policy objectives, such as consumer protection, worker's rights, and protection of social rights.

2. Transposition, implementation and enforcement of EU legislation

The lack of timely, complete and correct transposition of EU law by Member States undermines the proper functioning of the single market by increasing fragmentation. This is coupled with inadequate enforcement of EU legislation, which is wholly the obligation of Member States, and obligation which the Commission reminds them of in this section.

3. Administrative Capacity and Practices

The Commission lists a number of issues concerning inadequate practices that can lead to single market fragmentation. This includes, insufficient or incompatible e-government solutions at national level, which directly affects access to information on rules and requirements, whilst also leading to difficulties linked with procedures that must be met to sell goods/services cross-border. There is also insufficient coordination between the Commission and national administrations, which undermines effective enforcement of single market rules. This is made more prominent when it is coupled with the insufficient human resources (and expertise) at national level.

4. General business and consumer environment in Member States

A lot of the issues stemming from Single Market fragmentation can often be traced back to purely domestic issues that hamper even purely domestic businesses. These include dealing with construction permits, entry and exercise requirements for activities or professionals, getting electricity, business disputes and taxes.

The Commission concludes by calling upon the Member States to fulfil their legal duties and take responsibility to address the root causes, which often fall within national competence to address, by doing away with burdensome and protectionist regulation and procedures and ensure that they are compliant with EU law. The Commission also called upon Member States to ensure that national authorities responsible for ensuring compliance with the rules of the single market are given adequate resources and powers in the carrying out of their duties (such as the coordination of the single digital gateway, market surveillance, competition and consumer authorities among others), whilst ensuring the effectiveness of the one stop shops in assisting SMEs.

The Commission also committed to assessing the need of further regulatory action, depending upon which root causes of the barriers can be addressed at EU level, and also offered Member States its assistance in tackling these root causes at a national level. The Commission also adopted the Action Plan for enforcement and implementation within this same package, a description of which is to follow.

Action Plan for Better Implementation and Enforcement of Single Market Rules

It was the above report on barriers to business in the Single Market that directly led to the development of this Action Plan. It has been seen in the report on barriers that in many cases such barriers derive from incorrect or incomplete application at national level of already agreed EU legislation. Member States have an obligation to correctly apply what they have

Tasks and responsibilities for the implementation and enforcement of single market rules	
Member States	Commission
✓ Transpose EU law timely and accurately, refraining from unjustified “gold plating”, and ensure a level playing field	✓ Assist Member States in transposing EU law correctly, fully and on time
✓ Ensure that national legislation is proportionate and non-discriminatory	✓ Assist Member States in applying EU law
✓ Ensure sufficient and proportionate administrative checks and controls so that any breaches are identified	✓ Check the transposition and monitor the application of EU law
✓ Avoid any national measures that contradict or hamper the application of EU law	✓ Act against breaches of EU Law and take formal infringement action if needed
✓ Cooperate effectively to ensure compliance with EU law	

agreed to as European legislators, and the Commission has the responsibility to enforce that application and take steps if the rules are not respected.

As such, ensuring that the mentioned barriers are overcome is indeed a joint endeavour of Member States and the Commission to ensure that the rules are applied correctly.

The goal is to make enforcement broader, covering the entire lifespan of legislation, from inception to application. This will require increased collaboration at all levels of governance in the EU, from local and regional, to European level.

To strengthen enforcement of single market rules, a joint Single Market Enforcement Task-Force has been set up, composed of Member States and the Commission, which will regularly assess the state of compliance of national law with single market rules. To achieve its goals in this area, the Commission proposes a number of actions, listed into 6 categories.

1. Increasing knowledge and awareness of single market rules

This category includes actions such as providing guidance tools, training and exchange of best practices for national authorities and judges on particularly complex pieces of legislation; improving access to information on rules and requirements for businesses via the Single Digital Gateway; as well as general capacity building for national public administrations via the Multiannual Financial Framework.

2. Improving the transposition, implementation and application of EU rules

Here the Commission is proposing establishing more structured dialogue with the Member States so as to simplify conformity checks and avoid gold-plating, while also assisting more on implementation.

3. Making the best use of preventive mechanisms

The Commission will be making use of the newly agreed ex-ante proportionality assessments and ensuring its application so as to be sure of the proportionality of new national professional regulation. The Commission also commits to improving follow up and monitoring of notifications having the highest impact on the single market via the Transparency Directive, as well as improving upon the notification mechanism under the e-commerce Directive within the Digital Services Act. In this regard, the European Legislators are also encouraged to proceed with speedy adoption of the proposal for a new Services Notifications procedure.

4. Detecting non-compliance inside the single market and at the external borders

The Commission proposes rationalizing single market IT systems and setting up a platform for online enforcement, during which the IMI (Internal Market Information) system will be prioritized. The Commission will work with the European Anti-fraud Office (OLAF) and national authorities to strengthen enforcement against counterfeit and illegal products, whilst also supporting Member States in strengthening enforcement in the agri-food change. The possibility of promoting digital tools to allow for more targeted controls with regards to labelling and traceability systems will also be explored.

5. Strengthening enforcement on the ground

The Commission will set up the EU Product Compliance Network as from January 2021, consisting of representatives of national market surveillance authorities. The Commission will also monitor the new mutual assistance mechanism and will identify and tackle non-justified refusals. The Commission also proposes prioritizing and reinforcing SOLVIT to promote it as the default alternative dispute resolution tool in all single market policy areas.

6. Improving handling of infringements

The Commission will always prioritise seeking dialogue with Member States in case of apparent breaches of EU law. However, if dialogue does not achieve the intended results, the Commission commits to enforcement action when necessary.

Full text of the Commission Communications:

Identifying and addressing barriers to the single market:

https://ec.europa.eu/info/sites/info/files/communication-eu-single-market-barriers-march-2020_en.pdf

Long term action plan for better implementation and enforcement of single market rules:

https://ec.europa.eu/info/sites/info/files/communication-enforcement-implementation-single-market-rules_en_0.pdf

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