



10 June 2020

Single Market Governance Package of March 2020

KEY MESSAGES

For the European Commission, the EU Council, and the European Parliament:

1. The EU needs a strong Single Market reform agenda, also as a core element to the European Recovery Plan implementation after the COVID-19 crisis. The Single Market Governance package of 10 March 2020 is a welcome step that addresses many implementation and enforcement shortcomings in the EU, but this is only a part of the answer.

For the European Commission:

2. BusinessEurope urges the Commission to propose concrete measures for each identified barrier in the Single Market Barriers Report and identify which initiatives in the Commission's annual work programmes tackle the specific barriers.

For the European Commission and the EU Member States:

3. Capacity building and resources for implementation and enforcement of the EU rules should be boosted both at the EU and national levels with a focus on the Single Market functioning, even more so after the COVID-19 crisis.
4. Transparency and barrier-prevention measures should be firmly applied as a norm, making full use of the frameworks for notification of national rules and their proportionality assessment.
5. The task of establishing a single comprehensive information access point for businesses and full digitalisation of procedures necessary to start, develop and grow business across borders should be finally completed by the end of this Commission's mandate.
6. A prominent role should be given to stakeholders as we stand ready to contribute with the necessary evidence base for the work of the Single Market Enforcement Taskforce (SMET).

INTRODUCTION

The Single Market Barriers Report and the Enforcement Action Plan are most welcome from a business perspective. The current COVID-19-related Single Market blockages and disruptions of supply chains have demonstrated the importance of a common market



for the European economy and our dependence on close cooperation to tackle the difficulties and safeguard a level playing field. The current crisis must therefore be seen as an opportunity to relaunch a strong Single Market agenda that includes more integration and more openness across Member States. Removing remaining obstacles, improving implementation, and securing compliance with EU rules should remain a priority.

BusinessEurope appreciates the Commission's work on mapping barriers. The results match the trends reported by BusinessEurope's members. It is worrying that companies continue to struggle with basic procedures such as obtaining relevant information in Member States or expanding within the Single Market.

BusinessEurope strongly supports actions towards removing barriers on the Single Market. However, from the presented Single Market governance package it still remains unclear whether and how each barrier will be addressed. A full overview of the identified barriers and the accompanying solutions unfortunately does not exist. The Enforcement Action Plan is part of the solution, but numerous barriers are left unaddressed and the Commission communication does not include a Single Market reform agenda as such.

- BusinessEurope urges the Commission to propose concrete measures for each identified barrier and to clarify which initiatives in the Commission's annual work programmes are to tackle the specific barriers.
- Better regulation principles must be fully applied with a strong focus on simplification, reduction of unnecessary burdens, and gold plating. A European "One In, One Out" Mechanism must under no circumstances lead to a segmentation of the existing Single Market acquis.
- Intellectual Property (IP) should be part of any Single Market discussion and the announced IP Action Plan by the Commission must also aim at creating a Single Market for copyrighted goods and for patented inventions.

1. Long-term action plan for better implementation and enforcement

Inadequate implementation and enforcement of EU legislation remains one of the most pressing obstacles to a well-functioning Single Market. BusinessEurope strongly supports this action plan as it is urgently needed. It must be kept in mind that on top of removal of the identified barriers, the immediate goal should be to avoid the emergence of new barriers altogether, at the earliest stage possible.

The following section includes *key messages* on some of the proposed initiatives in the action plan.

1.1. Strengthening cooperation and capacity building in EU

Single Market Enforcement Task force (SMET)

BusinessEurope supports the establishment of the SMET in order to ensure close and consistent dialogue between the Commission and Member States. However, it remains unclear how the SMET will determine which barriers are most pressing. This will vary with different businesses and governments.



In relation to this, BusinessEurope is surprised that stakeholder engagement does not seem to have a prominent role in the SMET. Stakeholder engagement is indispensable in order to identify existing problems in practice and develop adequate solutions.

- Criteria for determination of the most pressing barriers need to be developed and be transparent.
- The Commission should establish procedures on how stakeholders can contribute to SMET with evidence on barriers.
- The Competitiveness Council and the European Parliament's Internal Market and Consumer Protection Committee should regularly discuss SMET workflow and findings.

Action 6 – building capacity of public procurement professionals and strengthening the cooperation between national bodies

In view of the complexity of tender procedures, professionalisation and simplification are of key importance to ensure that companies of all sizes and from different Member States can participate in public tenders. We would like to flag that centralised procurement can bring challenges for suppliers, as it increases buyer power and reduces innovation where it prevents tailored offers for individual authorities.

- Purchasers must be encouraged to engage in dialogue with the suppliers both before, during and after a procurement, as they will then gain market knowledge, which will make them more professional in their role as a purchaser. Suppliers can also be more actively involved in training programmes of public buyers.
- A European public procurement portal should be established to ensure easy access to relevant information about the national markets for public contracts, publication platforms, national complaints systems and available tenders across the Single Market. Such a portal should be linked with the existing Tenders Electronic Daily platform and integrated under Single Digital Gateway, as discussed below in section 1.4.

1.2. Better transposition, application, and enforcement of EU rules

Action 7 – Structured dialogue for better transposition of Single Market directives

In the Action Plan, the Commission emphasises at different points the need for more transparent transposition. BusinessEurope supports this, as many of the regulatory burdens arise during the transposition of Single Market Directives. The Commission proposes to establish a more structured dialogue with Member States in order to simplify conformity checks. More structured exchanges and transparency could also facilitate compliance.

- The Commission should take the lead in developing guidance or a template that relates to the transposition of EU directives in order to give more transparency where transposition exceeds the minimum implementation level.



Action 17: EU product compliance network

The absence of coordinated and sufficiently resourced market surveillance for unsafe products is a key problem for companies, as lack of enforcement creates an uneven playing field. While it is positive that the new Regulation on Compliance and Enforcement covers cooperation between national authorities and voluntary harmonisation of methods, it does not resolve issues with resources and capacity.

- In the (implementation of the) Multiannual Financial Framework, sufficient funding should be allocated to capacity building and mutual learning in market surveillance.
- In the implementation of the Regulation on Compliance and Enforcement, the Commission should follow up on national market surveillance strategies and ensure that it is possible to compare activity level and effect across Member States. In particular, the Commission should aim at coordinating efforts towards products and economic operators that present the biggest risk to users.

Action 18 – Making SOLVIT the default tool for Single Market dispute resolution

BusinessEurope sees the potential of SOLVIT and agrees that it should be strengthened in order to assist companies in all Single Market issues they wish to raise. This includes sufficient resources at national and EU level. We recommend that as part of action 18, the Commission publishes the outcomes of the SOLVIT action plan from 2017.

However, considering that SOLVIT only has dialogue and soft power at its disposal and it cannot be used in parallel to litigations, it cannot be the default tool for disputes on all issues of the Single Market, for example, disputes in the area of services are usually more complex.

- The SOLVIT system should allow for all cases to be referred to the Commission for an opinion where these cannot be resolved within the ordinary SOLVIT produce, and report on the number of cases closed to the benefit of the company. Currently, businesses are depending on the referral of the national SOLVIT centres.
- The Commission suggestion, concerning the mandate of the European Labour Authority, contains a wider scope and should be presented in a separate action point and not in relation to SOLVIT.

Action 19 and 22 – Prioritization of enforcement actions or “specific policy areas” for the package meetings with Member States

BusinessEurope finds it positive that the Commission aims for a more strategic approach to its enforcement obligations. However, all Single Market infringements are relevant. For example, cases of less economic importance to the EU as a whole can be of great importance to a specific sector. Excluding this type of cases could potentially erode trust in the system, as well as trust in the single market.

Services, as an area, is more vulnerable to pressures by vested interests as well as to availability of tangible data. It is therefore of utmost importance that criteria for prioritisation as well as transparency standards among the parties concerned, including the stakeholders, are well established.



Experience has shown that the EU infringement procedure serves as an important corrective instrument when national remedies are unsuccessful, or when EU law is not sufficiently taken into account in national proceedings.

- The Commission should develop clear and objective criteria for selecting priority areas for enforcement.
- The EU Pilot system must not undermine infringement cases and become a tool for Member States to prolong cases unnecessarily.

1.3. Barrier-preventing measures

Action 9 - Improving ex-ante assessments of restrictive regulation under the Proportionality Test Directive

This is a very welcome action. However, the Commission should provide structured assistance to Member States. Moreover, stakeholder involvement during the “proportionality testing” should be the norm rather than an exception, with necessary guidance on safeguards to ensure that it is neutral of narrow vested interests.

- The Commission should issue guidance to Member States on how to conduct ex-ante proportionality assessments of newly intended national professional regulation, according to the Proportionality Test Directive (2018/958).
- The guidelines could also lay ground to the extended use of proportionality testing (See more in section 2 on new action suggestions).

Action 10 - Streamlining the operation of the single market Transparency Directive

BusinessEurope supports a more strategic approach to the TRIS notification system. Most importantly, the Commission should strictly follow up on cases in which Member States do not comply with the recommendation, despite their national measure being non-compliant with EU law. Companies could also be encouraged to make use of TRIS more actively, most notably of the possibility to comment on notified rules. This can be done for example by including TRIS under the SDG (action 2 below).

Action 11 - Preventing new barriers to providing services in the Single Market

BusinessEurope supports the Commission proposal COM (2016) 821 on notification of national rules under the Services Directive. However, the agreement should not undermine the existing Services Directive through exemptions from the notification obligation as regards territorial restrictions (urban-spatial planning including) or stripping the Commission of its present decision-making powers.

Actions 3 and 12 - on measures affecting e-commerce services

BusinessEurope believes that this action will require additional assessment as the content of the actions will depend on the future Digital Services Act proposal. In this regard, BusinessEurope refers to its position paper [“Digital Services Act: Single Market Pillar”](#).

The importance of mapping the already existing legislation and what it requires in terms of implementation and enforcement should be underlined. Many different actions may



create even more confusing rules and more administration for service companies within the Single Market, contrary to the purpose of the action plan.

- The transparency system through notification obligations under the e-Commerce Directive, the Services Directive and the Transparency Directive should be reinforced.

Single Market Scoreboard

BusinessEurope supports the ongoing upgrade of the Scoreboard which also falls under the barrier-preventing and peer pressure measures. An upgrade should include more qualitative indicators and may ensure more transparency, allow for comparisons between issues and Member States, and also a better tracking of compliance with the Single Market rules. The scoreboard can also include reporting on SOLVIT cases that were closed to the benefit of companies (see also action 18 above). Making the Scoreboard more user-friendly should be a priority.

1.4. Guidance and improved access to information

Action 1 – specific guidance tools for national authorities

BusinessEurope finds it key to have more quality guidance relating to implementation of the Services Directive, the principle of Mutual Recognition for better application of the new Regulation (specifically on overriding reasons of public interest), the product Liability Directive and the Market Surveillance Regulation. On services, apart from the updates, inter alia covering recent case-law, the guidelines could look into legal issues that require responses beyond the present scope of the Services Directive but that affect its objectives and implementation.

Action 2 – improving access to information on rules and requirements for users

BusinessEurope welcomes the Single Digital Gateway (SDG) that has the potential to improve companies' and citizens' access to information on Single Market rules and administrative procedures. It is important that the SDG platform is easy to use, so companies can access relevant information without trouble.

- The SDG platform should have a maximum of 3 clicks before the user reaches the desired landing page with relevant national rules and EU rules.
- The Commission and Member States should develop step-by-step guidance on how to comply with these rules and English summaries of the main requirements.
- The SDG platform should include links to all relevant documents and contact information to authorities. The Commission should support the implementation of the SDG to ensure that the information is of high quality and up to date. The inclusion of online procedures, both at national and EU level, should be highly encouraged.
- The ongoing work of the European Labour Authority – ELA – to develop a Union-wide website should aim to improve the availability of information for mobile workers and companies, providing understandable and user-friendly information in all EU languages and taking into account the quality standards set out by the SDG. It is essential that the two online portals are complementing each other and showcasing relevant links which are transparent and create added value for the user.



2. Additional actions to address barriers

The communication from the Commission includes an impressive fact base for the continuous work. This is a welcome and promising step. However, we are also facing a new reality with the present COVID-19 crisis and response measures across the EU. When it is over, strictly following the same evidence base and merely restoring a functioning “pre-crisis” Single Market will not be enough. The EU needs a strong Single Market agenda and BusinessEurope is therefore proposing additional steps to remove bottlenecks in the Single Market as part of the Recovery Plan implementation in the EU.

Harmonised standards

Companies currently face significant and unnecessary costs and burdens in compliance management because of bureaucratic bottlenecks in the process of harmonised standardisation. In particular in view of COVID-19, it is important that companies have harmonised standards at their disposal with technical content that is aligned with international standards. This facilitates compliance processes and sourcing input from third countries. Harmonised standards can also greatly help market surveillance authorities in their work, in particular in view of the lack of resources that these authorities face across the Single Market (see also action 17 above).

Actions needed:

- The Commission should fundamentally revise processes for technical harmonisation of products and reduce intervention of public EU authorities in this traditionally stakeholder-driven process; see for more detailed recommendations our [joint industry statement](#).

Services agenda

BusinessEurope calls for new impetus to the Services Single Market, the potential of which has been underused for years.

Actions needed:

- A fresh assessment of authorisation and licensing regimes in Member States, with a view to a further opening of markets where job creation potential is greatest, and lifting the conditions for all mobile workers on an equal foot are necessary, even more so in the aftermath of the present COVID-19 crisis.
- The proportionality test criteria, as spelled out in the rules for Member States before regulating a profession, should be similarly set as a general toolbox for all national legislative proposals on the service provision. Practical application of the toolbox should be regularly discussed with stakeholders.
- Following potential steps the governments may still take in re-nationalisation of some businesses in the present crisis, a strict framework to adhere to the Single Market rules will be necessary. This includes a Commission’s assessment of the Services of General Economic Interest (SGEIs).

**Ensuring uniform and effective rules for the free movement of workers and services**

Inconsistencies in the implementation of regulations such as the Posting of Workers Directive cause single market barriers that need to be addressed.

Actions needed:

- As regards the ongoing transposition of the revised posting of workers directive 2018/957, the Commission should give more time to national administrations and companies to put in place the tools to provide companies with the necessary information on how to comply with the new requirements.
- Commission should take action against Member States that have not implemented the mandatory exemption of short-term postings in the Posting of Workers Directive.
- Member States should implement the possible exemption in the Posting of Workers Directive for postings that do not exceed one month.
- The Parliament and Council should quickly agree on revision of Regulation 883/2004 and 987/2009 to introduce a mandatory exemption of A1 forms for business trips and an exemption for short time assignments from carrying A1 certificates.

Obtaining information and administrative procedures

The Single Digital Gateway is one way to digitally accommodate businesses' needs on online information, but according to the existing Single Market legislation, Member States should already provide online information through various Points of Single Contact (PSC). The best way to improve information access, is to provide business with all procedures and necessary information in one digital portal.

Actions needed:

- A centralisation of the PSC's in various EU legal acts.
- Fast integration of PSC in the Single Digital Gateway, so companies only need to refer to one place for assistance, information and electronic procedures.
- PSC must have availability of comprehensive information and e-procedures regardless of whether the request originates from a national or foreign business.
- All information and relevant documents made available in the PSC should be available in English.

European company law form designed for SMEs

SMEs account for over 99% of companies in EU but only 2% of the European SMEs invest abroad by establishing companies there. This is due to linguistic, administrative, and legal differences between Member States, which makes it difficult to create subsidiaries abroad. Further, solely 3% of start-ups become scale-ups in Europe. This rate is too low and underlines the need for a legal vehicle allowing companies to better manage their expansion within the European Union. Businesses need common rules to structure themselves as European businesses. A European company form would be a way to facilitate easier expansion in EU.

**Actions needed:**

- Continue to explore the possibilities for a European company law form, designed for SMEs, drawing on inspiration from the European Private Company proposal.
- The company form should allow for a low entry minimum capital, have no compulsory cross-border character, lead to more flexibility and be a limited liability company available to all.
- The company form should also have significantly larger contractual liberty with reference to regulation, the company's statutes and, only where necessary, to national law.

Waste shipment regulation

EU should put emphasis on removing inconsistencies and filling the gaps in the current policy framework for circular economy, starting with a better implementation of the existing waste acquis. The current Waste Shipment Regulation (WSR) is outdated and hinders the creation of a functioning market for secondary raw materials by making the transport of waste across Member States difficult. This causes significant inefficiencies in the field of international waste management, including for products destined for remanufacturing and refurbishment. It is also problematic for smaller Member States for which national recycling facilities are expensive.

Understanding that hazardous waste will be increasingly phased out, there are some instances where it is possible to extract chemicals (for example phosphorus) from hazardous waste. In those specific circumstances the access for recycling can be improved.

When reviewing the WSR it is important to:

- Ensure the correct management of hazardous waste and avoid illegal routes.
- Improve the access to waste for recycling and recovery.
- Minimise the administrative burden for trading high-quality, secondary raw materials by clarifying inconsistencies, differences of interpretation between other pieces of legislation, as well as dissimilarities in enforcement within the EU Member States.

European Semester

BusinessEurope calls for a relaunch of the European Semester, with a new focus on implementation and ensuring that all EU support for Member States' public borrowing is accompanied by a commitment by Member States to implement sustainable growth and employment enhancing structural reforms. This is indispensable for the Single Market initiatives to fully deliver the benefits they are designed for.

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