BUSINESSEUROPE

Showcasing Single Market problems

May 2022

Examples of Single Market barriers for businesses

In the letter addressed to Commissioner Breton on 22 September 2021, BusinessEurope stressed that the success of the revised Industrial Strategy in bringing us closer to the objectives of the green and digital transition significantly relies on the resource efficiency and consumer choice in the Single Market without barriers. Its freedoms are the basis for Europe's industry and services to develop.

BusinessEurope appreciates the Commission's analysis provided in the updated Industrial Strategy package of 5 May 2021, re-confirming the remaining Single Market challenges through the angle of 14 industrial eco-systems. We also support efforts in ensuring consistent follow-up to the Long-term Action Plan on Implementation and Enforcement of Single Market Rules (2020) as well as the Annual Single Market Reports, including the last one of 2022. However, tangible actions still need to be defined and taken to address the identified Single Market barriers. BusinessEurope stressed it once more in the letter addressed to Commissioner Breton on 22 September 2021.

To facilitate informed decision-making, tangible examples of the barriers businesses and citizens face in the Single Market are key to understand the remaining bottlenecks. BusinessEurope continues building up the evidence and has updated its series of short papers showcasing practical issues on the ground, which come as package or can also be used individually in policy discussions with different interlocutors, as they illustrate barriers across a wide range of different policy areas: from free movement of goods and services to company law, social policy coordination or transport. The papers supplement the work done by the European Commission in the Single Market Report of 2022, analysing the "root causes" of barriers and are structured around two categories: - barriers emerging under the existing EU legislation, due to its complexity, inconsistencies, uneven interpretation and application by Member States, etc. - barriers emerging in the absence of EU legislation, where an additional harmonised framework might be necessary. The examples linked to this introductory note are not an exhaustive list and would be supplemented by new cases in the future.

CONTACT INFORMATION

Martynas Barysas, Director, Internal Market Department
m.barysas@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems - under existing EU legislation

May 2022

Improving Waste Shipment Regulation to facilitate Circular Economy in EU

This paper concerns challenges posed by an outdated Waste Shipment Regulation where companies struggle with inconsistent rules and fragmented enforcement within EU Member States.

CONTEXT

Businesses across Europe are fully engaged in maximising the value of materials, transitioning to circular business models and achieving a circular economy. This can best be achieved through a functioning market for secondary raw materials (SRMs) and circular products. Several challenges and untapped opportunities still remain to create such a market.

One such challenge is the outdated Waste Shipment Regulation (WSR)[1] that hinders the creation of a functioning market for SRMs by making the transport of waste across Member States difficult and expensive. It 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.

LEGAL FRAMEWORK

The WSR lays down procedures for shipments of waste for intra-EU trade and between EU member states and OECD countries to prevent issues with uncontrollable waste transport. It includes a ban on exports of hazardous waste to non-OECD countries as well as a ban on the export of waste for disposal. A revision of the rules on waste shipments is ongoing as part of the new Circular Economy Action Plan, however this is mainly focused on ensuring that the EU does not export its waste challenges to third countries. This will aim at restricting waste exports which may have harmful environmental and health impacts and third countries, as well as illegal exports and illicit trafficking. These issues should indeed be addressed but should be complemented with the issues outlined in this paper.

[1] Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, OJ L 190, 12.7.2006, p. 1.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

BUSINESSEUROPE

Showcasing Single Market problems - under existing EU legislation

IN PRACTICE[2]

Garment and furniture companies experience that it is too complex and too expensive to reprocess their secondary raw materials. During the production processes, these sectors create leftovers such as textiles fabrics, scraps, or other semi-finished products. The leftover percentage may change significantly between 3% up to 21% depending on the degree of efficiency applicable, the materials cost and other variables. Currently, these leftovers are treated as waste and disposed or used in other production, however the costs and process to treat leftovers severely limit the potential of their re-use. Secondary raw materials such as recycled fabric should be viewed as a resource and not waste to encourage Circular Economy.

HOW TO ACHIEVE BETTER RESULTS

A comprehensive revision of the WSR is necessary to ensure appropriate management of hazardous waste and avoid illegal routes, as well as improving access to non-hazardous waste for recycling and recovery. Better results can be achieved by minimising the administrative burden for trading high-quality secondary raw materials by:

- Improving the access to waste for reuse, recycling and recovery to facilitate the transition to a circular economy by **allowing the free movement of non-hazardous waste destined for recovery** and reducing unnecessary administrative requirements. For example, by **reducing time required to authorise shipments and exploring the opportunities of digitalisation** (e.g. switching from a paper-based system to an electronic one).
- **Minimising fragmented enforcement within EU Member States** and make sure that transportation of waste in the EU is regulated and handled in the same way. BusinessEurope encourages the **development of guidance** that clarifies the implementation in different countries and the links between the different types of legislation. Logistics of the companies should not be dependent on national borders.
- Making transportation of waste for reuse and recycling less burdensome, both economically and administratively. For example, by **clarifying and harmonising definitions and criteria on recycling, recyclability, reusability and closed loop at EU level** and aligning them with existing EU legislation to create a genuine Single Market in this area (and where possible with international standards). If these issues cannot be dealt with under the WSR, they should be taken care off as soon as possible because they have important effects on the WSR's workings.
- Keep high **quality and transparency in waste shipment**. **A regulatory framework should be set up to import secondary raw materials** from regions without ambitious recycling systems. These waste imports should have a clear purpose: to feed into the circular economy and be used as valuable raw material for European products.

CONTACT INFORMATION

Carolina Vigo, Advisor Industrial Affairs, c.vigo@businesseurope.eu

[2] For more examples, please visit www.circulary.eu

BUSINESSEUROPE

Showcasing Single Market problems - in the absence of EU legislation

April 2022

Transport infrastructure and systems

This paper concerns inadequate or missing cross-border transport infrastructure and electronic systems. While (partial) frameworks exist, progress towards a complete and frictionless EU-wide transport infrastructure network is too slow.

CONTEXT

Europe's transport network lies at the heart of the EU Single Market as a key enabler for the free movement of people, goods, and services. The efficiency of transport services and the interconnection between all modes directly affects the impact on the environment, cross-border value chains, and the competitiveness of EU industry as a whole.

Yet businesses experience that Europe is not yet fully connected. In particular Europe's transport infrastructure network does not deliver. In many places, cross-border connections are inadequate (insufficient capacity) or completely missing, and often national digital systems or physical requirements are not compatible.

LEGAL FRAMEWORK

- **Trans-European Transport Network** (TEN-T) policy is set out by the TEN-T Guidelines (Regulation 1315/2013) which, among other things, define the setup of the network, the infrastructure requirements and its governance. During 2020 the European Commission is reviewing the Guidelines to determine if they are still fit for purpose in the context of ongoing trends such as decarbonisation and digitalisation.The main funding instrument at the EU level is the Connecting Europe Facility (CEF).Grants should continue to be the cornerstone of the EU investment policy for the transport sector and it is therefore positive that the Commission, in the renewed MFF2021-2027, has suggested an additional EUR 1.5 billion boost to trans-European infrastructure through the Connecting Europe Facility.
- A concrete EU Action Plan was released on the **European Rail Traffic ManagementSystem** (ERTMS) to ensure all rail infrastructure on the TEN-T core network is equipped with ERTMS by 2030, complemented by national Implementation Plans.
- **The Single European Sky** has been developed on the basis of various legislative packages aiming to modernise Europe's ATM system in terms of operation, technology, control, and supervision. The latest package (SES 2+) was released by the European Commission in 2013 – however, it has since been stuck in Council as a result of the British-Spanish territorial dispute over Gibraltar.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

BUSINESSEUROPE

Showcasing Single Market problems – in the absence of EU legislation

- **Airport capacity** is essentially a Member State competence. EU action in this area seeks to find common issues and solutions and to support national efforts where appropriate. In particular, the stakeholders and Member States are brought together at the EU Observatory on Airport Capacity and Quality.

EXAMPLE

In 2017, the "Rastatt Incident" clearly demonstrated the fragility and static nature of the EU's transport network. It also highlighted the importance of improving interoperability and capacity of the overall network. A highly used section along the Rhine-Alpine rail freight corridor (connecting the Ports of Amsterdam/Antwerp/Hamburg with Italy/Switzerland) was closed for seven weeks after a tunnel collapsed. It caused severe disruption as alternative routes were inadequate. It has been estimated that the interruption resulted in approximately EUR 2 billion in damages: EUR 969 million for rail freight operators, EUR 771 million for manufacturing industries, and EUR 308 million for other industries such as infrastructure managers.

HOW TO ACHIEVE BETTER RESULTS

All modes of transport (air, rail, road, etc.) need to become increasingly interoperable as in combination they can offer more efficient transport solutions. Especially with the expected increase in demand for transport services, progress is urgently needed on Europe's transport infrastructure network.

- The **TEN-T** must be completed on time, with a focus on infrastructure projects with the **highest EU added value**.[1] Moreover, better alignment is needed with other policy objectives in the sector, such as decarbonisation and the digital transformation.
- The availability of **safe and secure parking areas** for truck drivers needs to be improved so that transport operators can comply with binding provisions on resting times. Today, around 100.000 parking areas are still lacking for heavy duty vehicles.[2]
- The **ERTMS** must be rolled out at a greater speed. Only 8% of TEN-T core network corridors that need to be equipped with ERTMS by 2030 have been put into operation.
- The **Single European Sky** needs to be completed as a priority and effectively implemented. The current structure involving 36 national air traffic management (ATM) bodies remains fragmented. Modernisation and improved interoperability willallow for more efficient air transport and lower CO2 emissions in the sector.
- **Airport capacity** is set to become a major issue facing air transport in the coming decades, with a predicted 8% capacity gap in 2040.[3] Obstacles to capacity improvement such as planning issues and efficient airport processes need to be addressed.

CONTACT INFORMATION

Martynas Barysas, Director, Internal Market Department m.barysas@businesseurope.eu

[1] The TEN-T *core* network by 2030 and the TEN-T *comprehensive* network by 2050.
[2] Commission Study on Safe and Secure Parking Places for Trucks, 2019.
[3] EUROCONTROL 2018 Report on Challenges of Growth

BUSINESSEUROPE

Showcasing Single Market problems - in the absence of EU legislation

April 2022

Administrative requirements for posting of workers

This paper highlights difficulties faced by businesses in the European Single Market in the context of posting of workers.

CONTEXT

The freedom to provide services constitutes one of the fundamental principles of our single market and the possibility for companies to do business across Member States including postings is an essential part of this. Having clear rules in place which can be effectively implemented by national administrations and companies is important for business, governments and workers, in order to create a level playing field and to ensure that the single market functions well.

To date, all Member States have transposed the Revised Posting of Workers Directive (Directive 2018/957) and have already an over a year-long experience in applying it while posting workers across the EU. Nevertheless, companies continue facing an increasing number of barriers when posting workers in the EU, due to different practices, transposition, and systems at national level.

LEGAL FRAMEWORK

Directive 2014/67/EU on the Enforcement of the Posting of Workers Directive ('Enforcement Directive') came into force in June 2016. The revision of the Posting of Workers Directive 96/71 was adopted in July 2018 and by this date, all Member States have transposed the Directive.

These two directives are the EU's effort to strike a balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. Another key objective of both directives is to harmonise rules across the EU and foster genuine social convergence between Member States. Businesses have long challenged the complexity of the rules as well as the additional administrative burden for companies.

Regulation 883/04 on the coordination of social security is also subject to an ongoing revision and on which an agreement still needs to be found. The approach to exempting the need for prior notification for business trips and short-term postings remains a key aspect of the discussions.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

BUSINESSEUROPE

Showcasing Single Market problems – in the absence of EU legislation

EXAMPLE

The most common challenges faced by companies posting workers across the EU include:

- **Lack of a single EU digital notification procedure** and lack of possibility to notify multiple postings as one action: companies need to submit separate notification forms for multiple postings (a group of workers) to the same location. The same concerns multiple trips of a single posted worker: each trip requires separate notification procedure.
- **Diversity of national websites**: they are the primary source of information about the posting of workers in the absence of an EU dedicated website/service. Not all of them have an English version, and their logic and design are very different. This makes navigating them and extracting information difficult and time-consuming.
- **Lack of guidelines how to interpret rules**: it is not always easy to understand how to apply the rules stipulated by the Revised Directive, which makes complying with the Directive difficult, time-consuming and increases the risk of non-compliance.
- **Diverse remuneration calculation**: it is difficult and time-consuming to calculate the total remuneration for the posted workers and the total cost of posting for a company as workers are entitled to diverse in-work benefits in different Member States.

HOW TO ACHIEVE BETTER RESULTS

Removing obstacles to posting of workers is a key priority for a well-functioning internal market for services. The following solutions are instrumental to this objective:

- **EU eDeclaration for the notification of the posting of workers**: it should be a simple form allowing to safeguard the introduced data, modify them easily if needed, and use them for future postings. The eDeclaration should enable to process group and multiple notifications for a single worker. Moreover, eDeclaration should be designed in a consistent way to minimise administrative burdens for posting companies, also taking into account the specific A1 form related requirements under regulation 883/04.
- **Single National Website** (SNW): introducing the European universal template for SNW would be the best solution. The second best would be introducing the EU-logo to be “pinned” to those national websites offering the core functions (effectiveness, accessibility, accuracy and user-friendliness).
- **Interpretation of rules**: setting up a European Help Desk and securing appropriate resources for its functioning. The European Help Desk, managed by the European Labour Authority, would be very useful to offer guidance on applicable rules and their implementation. National practical guides on posting would also be helpful in providing relevant information on applicable rules across the EU27 (country sheets).
- **EU/national remuneration calculator:** it would enable calculation of a due salary and it could be linked to national Single National Websites; EU database of national

in-work benefits as well as easily accessible information on applicable collective agreements would be helpful.

- **Exempting short-term postings (and business trips) from the need for prior notification:** would bring legal certainty for companies and greatly reduce the administrative burden that they face. Within this**,** the special characteristics and different needs of economic branches and sectors should be considered. Therefore, certain sectors such as the construction sector, should not be covered by the exemption for posted workers.

CONTACT INFORMATION

Anna Kwiatkiewicz-Mory, Senior Advisor, Social Affairs Department,
a.kwiatkiewicz@businesseurope.eu
Robert Plummer, Senior Advisor, Social Affairs Department,
r.plummer@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems - in the absence of EU legislation

April 2022

European company law form designed for SMEs

This paper concerns small and medium-sized companies (SMEs) challenges to establish companies across EU due to linguistic, administrative, or legal differences between Member States. BusinessEurope is therefore advocating for a new instrument that facilitates expansion of activities in the EU.

CONTEXT

SMEs account for over 99% of companies in EU, but only 2% of the European SMEs invest abroad by establishing companies there[1]. 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. Business need common rules to structure themselves as European business.

LEGAL FRAMEWORK

The recently adopted European company law package is intended to facilitate some cross-border mergers (e.g. conversion, divisions, and mergers) but relies (and refers to) heavily on national laws on detailed procedures.

The Societas Europaea (European Company Statute), that already exists, has not picked up on the issue as expected due to its complexity, inaccessibility for smaller companies (e.g. minimum share capital of EUR 120.000) and numerous references to national law.

There is a gap between a company law form designed for SMEs which can take inspiration from the European Company Statute and previous proposals more focused on the smaller SMEs.

One of the central proposals of the Commission's 2008 Small Business Act tried to introduce a European company form (also known as Societas Privata Europaea).

Despite of the strong support of several Members States and the wide business community, the SPE proposal was withdrawn in 2013.

[1] Annual Report on SMEs 2017/2018: Special Background Document on Internationalization of SMEs, p.7

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

BUSINESSEUROPE

Showcasing Single Market problems – in the absence of EU legislation

In 2014, the Commission brought forward a proposal to harmonise national company law on single-member limited liability companies (SUP), allowing companies to establish subsidiaries in any of the EU Member States. The proposal was, however, also withdrawn in 2018.

EXAMPLE

A Copenhagen-based bike sharing service that serves 10,000 bikes across 12 cities in Europe has established companies across EU to increase the chance of winning local tenders and to fulfil legal requirements regarding employees or leasing of vans. The company has among others bought existing companies in Spain and Germany and started new companies in the Netherlands and Hungary.

For the company, as an SME, it is a difficult and expensive process to acquire or establish companies in other EU countries. There are different legal conditions that apply across EU which the company needs to investigate each time: for example, what a director of a German or Hungarian company is liable for. In some Member States, it is required that all directors of the company are physically present when registering a company and setting up a bank account. However, in other Member States, it can all be done online. There are also burdens in connection to translation, traveling costs, and obtaining important documents. This creates a risk and financial burden every time the company wants to scale up and sell in a new EU country. Each time, they must do a lot of research before determining their investment.

HOW TO ACHIEVE BETTER RESULTS

Create a new European company law form designed for SMEs. EU should continue to explore the possibilities around providing an instrument that facilitates expansion of activities in EU. The form should among others:

1. **Be a limited liability company** available to all, on a voluntary basis, whether natural or legal persons, single or multiple shareholders.
2. **Have no compulsory cross-border character** but it should have the possibility to transfer the company to any Member State, without any dissolution or creation of a new legal person.
3. Be eligible to be **formed from scratch**, in order to foster entrepreneurship.
4. **Have significantly larger contractual liberty** with reference to the regulation, to the company's statutes and, only where necessary, to national law.
5. **Low entry minimum capital**.

CONTACT INFORMATION

Pedro Oliveira, Director, Legal Affairs Department
p.oliveira@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems - under existing EU legislation

May 2022

Harmonised standards

This paper concerns bottlenecks in harmonised standardisation, causing high compliance costs for companies and delays in market entry.

CONTEXT

Harmonised European standards (hENs) represent a consensus by stakeholders on how to meet market needs, while at the same time they facilitate compliance with EU legislation and support the circulation of goods in the Single Market. Following case law from the CJEU, the Commission started to interpret their role in the system for harmonised standards in a more extensive manner. This has aggravated not only an existing backlog of the publication of harmonised standards, but also includes more prescriptive standardisation mandates. The result is a situation where standards are not available to the users, and manufacturers have to resort to alternative and often costly ways to demonstrate compliance with EU law. This prevents using the potential benefits of Single Market governance, as it unnecessarily complicates EU market access.

LEGAL FRAMEWORK

The problem in this case is caused by a contested Commission interpretation of CJEU rulings. The legal framework for European standardisation is set out in Regulation 1025/2012, but this Regulation leaves some leeway as to what the roles of the different actors are in practice (notably Article 10). In principle, the Commission provides the mandate on the basis of which the European Standardisation Organisations (ESOs) develop the harmonised standards with stakeholders. At the end of the process, the Commission also publishes a reference to the hEN in the OJEU, which is necessary for the presumption of conformity to take effect. However, following case C-613/14 (James Elliott) on construction products, the Commission strengthened its oversight on this process by providing more prescriptive mandates and stricter controls before the publication of all hENs. The interpretation of the Commission's responsibilities, and in particular also extending the implications of this case to *all* harmonised standards, remains contested.

IN PRACTICE

The current situation causes severe challenges for company compliance processes relating to the EU market. Much of the additional burden and legal uncertainty will stay invisible for the external beholder, as they are distributed inside each company.

- **Absence of harmonised standards**. In the absence of a hEN, companies needto demonstrate compliance by creating a technical dossier with risk analyses that essentially repeat, for every individual product design, what standards already

prescribe as due risk coverage. This is costly and time consuming and will often involve engagement of a notified body. But even after involvement of a third partyin the conformity assessment, the manufacturer is faced with legal uncertainty about acceptance of this evidence by market surveillance authorities in the EU. In the majority of cases (except where products are subject to pre-market approval), the product may easily be taken from the market which causes enormous turnover loss, reputation damage and recall costs. Modifying a well- established compliance process is in itself a substantial burden as well.

- **Link with international standards.** Delays in the harmonisation process mean that the EU adopted version of the standard will run behind the international state-of-the-art standard. Nowadays, that is often the case for more than two or three years. This causes at least a duplication of demonstrating compliance, and oftenеven the need for an EU specific version of the product, or even worse a changeto the design and/or manufacturing processes resulting for example in different product lines for different markets. Where mandates for harmonisation do not offer sufficient possibilities to include market-relevant elements linked to international standards, technical differences between EU requirements and those of most other markets even get a permanent character.

While companies will ultimately strive to overcome these challenges, the lack of harmonisation brings additional costs and decreases safety, as there are no detailed uniform requirements for new technologies anchored in standardisation. It also enhances the risk of diverging technical content between EU and international standards, thereby decreasing European competitiveness.

HOW TO ACHIEVE BETTER RESULTS

BusinessEurope recommends the **Commission to refrain from assuming additional responsibilities in the harmonisation of standards** where those affect the roles of other key players in this system, as also reflected in our joint industry recommendations for effective harmonised standardisation:

1. Harmonised European standards should be put back in the hands of self-regulating stakeholders, with public authorities at EU and national level in a guiding and guarding role rather than the driving seat.
2. There should be **no bureaucratic interference with planning and execution** of standardisation work by the Commission, and **no excessive setting of requirements for standards** that are incompatible with the nature of standardisation. It is key that there is sufficient **flexibility for stakeholders in the process** as to how achieve ends.
3. The backlog in the citation of harmonised European standards in the Official Journalshould be eliminated, and **a swift citation modus should be guaranteed** in the future, which will allow their use for the presumption of compliance by industry.

CONTACT INFORMATION

Martynas Barysas, Director, Internal Market Department m.barysas@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems – under existing EU legislation

May 2022

Points of Single Contact

This paper concerns shortcomings in terms of access to information on Single Market rules and procedures, as there exist multiple information sources and different contact points across EU legislation.

CONTEXT

Companies that wish to export goods and services often face difficulties trying to obtain information about what rules to comply with (national and EU rules), which procedures to follow and which public authorities to contact in Member States they wish to export to.

It is important to ensure a transparent and clear legal base for European companies. When the regulatory environment becomes too complex, there is a risk that SMEs will stop exporting and instead stick to their national market where they already know the rules.

The existing complexity can be illustrated in all the different contact points that have been set up in various EU regulations. They do not cover all business-related aspects nor information about the entire range of requirements that a company must comply with.

LEGAL FRAMEWORK

Companies that export goods or services to other EU Member States must comply with all requirements on the market in question. According to existing Single Market legislation, Member States must make information available to companies through Points of Single Contact. The information obligations are imposed in at least eight different regulations.[1] Some non-exhaustive examples of rules and requirements that companies must comply with when accessing another market are:

- Requirements regarding technical approval
- Requirements regarding registration of the company
- Documentation of the company's eligibility
- Requirements for permits, licences, authorisations
- Registration of posted workers

[1] the Services Directive (2006/123/EC), Mutual Recognition Regulation (764/2008), Recognition of Professional Qualifications Directive (2005/36/EC), Directive on the enforcement of Directive 96/71/EC concerning the posting of workers (2014/67/EU), Marketing of Construction Products Regulation (305/2011), Guidelines for trans-European Energy Infrastructure Regulation (347/2013), Directive on Electronic Commerce (2000/31/EC) and Regulation on a Framework for the free flow of non-personal data in the European Union (COM(2017)495).

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

- Various documentation concerning the posted workers/staff (qualifications, skills, health etc.)
- Requirements regarding local safety certificates and other work environment issue
- Various VAT and tax issues, including registration of staff at local authorities

In 2018, the European Parliament and Council adopted a regulation establishing a Single Digital Gateway (SDG). The SDG will become the online access point for EU citizens and business in need of information to get active in another EU country. The SDG will also facilitate access to procedures and assistance services such as Points of Single Contact. The SDG will increase online access, however multiple points of single contact will continue to exist depending on different EU legislation and procedures will remain not fully digitized. Moreover, it remains to be seen what online procedures will be available under SDG, by the end of 2022. The Commission's Annual Single Market Report of 2022 notes that through Commission enforcement action there are "significant advancements towards fully functioning Points of Single Contacts". This remains to be checked on the ground by businesses.

EXAMPLE

A manufacturing company and service provider is experiencing increased complexity in the procedures, registration and documentation requirements concerning posting of workers in some Member States. The company operates across EU providing maintenance services on production equipment it has manufactured.

In some Member States, the company must consult several websites – at times only available in the local language - to obtain an overview of the relevant requirements, such as posting of workers or relevant permits. Still, due to the fragmented information, the company does not feel certain that it has everything in order. Nonetheless, it has to fulfil its contractual obligation to provide the services. Considering that some Member States issue excessive fines for non-compliance, the lack of transparency puts this company in a very uncomfortable situation when fulfilling its service contracts.

HOW TO ACHIEVE BETTER RESULTS

The best way to improve information access, is to **provide business with all procedures and necessary information in one "Single Market access point"** accessible also through the SDG. The following actions are needed:

1. **Availability of comprehensive information and e-procedures,** regardless of whether the request originates from a national or foreign business.
2. Provision of **one single, coordinated answer** from a contact point in the Member State concerned, whenever an inquiry is submitted by a business.
3. Information and **relevant documents in English** as default, on top of the official national languages and any other languages chosen by the Member State concerned.

CONTACT INFORMATION

Martynas Barysas, Director, Internal Market Department m.barysas@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems - under existing EU legislation

May 2022

Striving for greater harmonisation of packaging legislation to prevent new market barriers

This paper highlights the diverging packaging and labelling requirements in the EU.

CONTEXT

The free movement of packaged goods is increasingly facing market barriers resulting from divergent national provisions. Unilateral national packaging labelling and information requirements are being introduced by Member States alongside unilateral bans on packaging materials. Additionally, the lack of harmonised EU measures or their delayed adoption is also eroding the integrity of the Single Market.

On one hand, these new market barriers are resulting in additional operational and administrative costs for companies. On the other hand, they risk undermining the EU's sustainability goals by undercutting economies of scale and investments in innovation because of the increasing market fragmentation.

LEGAL FRAMEWORK

Packaging and Packaging Waste Directive defines the essential requirements that packaging has to meet to be put in free circulation on the internal market. These requirements are related to the manufacturing, composition and reusable or recoverable nature of the packaging. In addition to these requirements, manufacturers also need to comply with more specific sectoral packaging and labelling requirements, such as under the European Batteries Directive, the Waste from Electrical and Electronic Equipment, etc.

The Commission is currently reviewing the Packaging and Packaging Waste Directive to revise the essential requirements for packaging with a view to, among others, improving design for reuse and promoting high quality recycling, as well as strengthening their enforcement. To deliver on its sustainability objectives and improve the internal market, the ongoing revision must deliver greater harmonization of packaging measures across the EU thus avoiding market fragmentation resulting from unilateral measures and delivering the ambitious EU climate and circular economy goals.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU
Follow us on Twitter @BUSINESSEUROPE

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: main@businesseurope.eu
EU Transparency register 3978240953-79

BUSINESSEUROPE

Showcasing Single Market problems - under existing EU legislation

EXAMPLE

Diverging labelling and packaging requirements force companies to create several iterations of their packaging to comply with them or to use stickers to add or cover certain markings. In addition to costs and operational impacts on production lines, these national measures also have a negative impact on the size of packaging and its recyclability (e.g., when stickers are required) and can further confuse consumers. Using a single packaging for several markets increases the flexibility of manufacturers to react flexibly to demand, maximize efficiency and reduce environmental impacts.

Furthermore, national interpretations and transpositions differ, and, in some cases, Member States have taken the liberty to establish additional requirements. For example:

- Green dot: The use of the "Green Dot" logo is considered a "confusing" logo and penalized in some Member States, where it is mandatory in others. This leads to situations where manufacturers would need to develop national-specific packaging or use stickers to over label the "Green Dot".

- Triman logo: The indication of a sorting logo ("Triman" logo), is mandatory in some Member States and possibly prohibited in others. Such conflicting requirements make it impossible to have one packaging for the entire European market.

HOW TO ACHIEVE BETTER RESULTS

A functioning Single Market for packaging and packaged goods must be a key deliverable of the ongoing review of the Packaging and Packaging Waste Directive, with a focus on:

- A strong harmonisation of legislative measures on packaging, including on labelling and information requirements, to avoid further market distortions and barriers to the free movement of packaged goods across the EU.
- A strengthening and enforcement of the essential requirements to effectively support the advancement of circular economy goals.
- A legislative framework supporting the creation of integrated market for secondary raw materials to meet recycling targets.

CONTACT INFORMATION

Carolina Vigo, Adviser, Industrial Affairs department, c.vigo@businesseurope.eu

BUSINESSEUROPE

Showcasing Single Market problems – under existing EU legislation

May 2022

Placing Single-Use Plastics on the market

CONTEXT

According to the EU Blue Guide on the implementation of EU product rules, a product is considered as placed on the market when it is made available for the first time on the EU market, i.e., when it is first supplied for distribution, consumption or use on the market during a commercial activity, whether in return for payment or free of charge.

This provision is based on the principle of mutual recognition, according to which products lawfully manufactured or marketed in one Member State should move freely throughout the Union where such products meet equivalent levels of protection to those imposed by the Member State of destination.

LEGAL FRAMEWORK

The Single-Use Plastics Directive provides for a harmonised framework to tackle plastic marine littering and pollution by, among other things, phasing out single-use plastics, introducing economic incentives to reduce consumption and transition to reusable systems, and establishing high collection rates and extended producer responsibility schemes (EPR). All EU Member States had to transpose and implement the SUP Directive into their national legislation by mid-2021, therefore prohibiting the placing on the market of all SUP covered.

In the current form of the Single Use Plastics Directive, the “placing on the market” of certain products would be restricted to the territory of a Member State, rather than the Union Market, which goes against the principles and definitions established by the NLF and the Commission’s Blue Guide. This narrow definition creates pre-conditions for market fragmentation and further harms the Single Market.

EXAMPLE

According to the narrow interpretation of the definitions of ‘placing on the market’ and ‘making available on the market’, which are set out in Article 3 of the SUP Directive, existing stocks without the relevant marking would only be compliant if the products remain in the same Member State where they were already placed on the market prior to 3 July 2021. This would result in a prohibition of making available those products for final distribution to another Member State after that date.

Any decision to move away from “placing on the (Union) market” as the single decisive moment to apply the harmonised markings would be clearly inconsistent with the Single Market principles and would result in both negative economic and environmental impact.

Further limiting the time available for economic operators to utilise the existing stocks transition options, by forcing a very narrow interpretation of the meaning of "placing on the market", will have a significant impact on industry and on the distribution value chain.

It should be noted in this regard that the option of affixing the marking by means of stickers is for industry a resource intensive last resort. Finally, it makes the legislation potentially discriminatory towards distributors active in smaller Member States as products without the marking placed on their territory would not be allowed for final distribution in other Member States. However, its transposition could result in serious market fragmentation due to insufficiently defined provisions, narrow interpretation of established concepts such as "placing on the market" and sever delays with the adoption of guidelines and implementing measures.

HOW TO ACHIEVE BETTER RESULTS

The European Commission, as the guardian of the treaty, should not introduce pre-conditions for market fragmentation in legislative proposals that are aimed at harmonising the single market. Single Market legislation should consistently reflect the market integration ambition through reduction of barriers and be future proof.

Further opening and integration of the markets in the EU need to be based on optimally harmonized rules so that citizens and businesses can easily see they would be treated equally across the EU and can benefit from greater competition across EU countries. Where full harmonisation is not necessary, the mutual recognition principle should be respected and solutions for its practical enforcement found, including in the area of services. This approach should also work to ensure smooth pan-European trade flows with our closest European trading partners.

CONTACT INFORMATION

Carolina Vigo, Adviser, Industrial Affairs department, c.vigo@businesseurope.eu