

15 December 2014

## **BUSINESSEUROPE priorities for the single market**

The single market is a key driver for growth and job creation, adding almost €600 billion a year to our economy. EU countries currently trade twice as much with each other as they would do in the absence of the single market.

It has also been estimated that incomes of Europeans would be roughly 5% lower today without the single market. It also facilitates trade with global partners, creates new business opportunities and is fundamental for re-industrialising Europe.

Yet, we see that companies are still facing obstacles when providing their goods and services across borders. Barriers to the free movement of people, goods, services and capital still represent an untapped economic potential of at least 5% of EU GDP.

With this strategy paper, BUSINESSEUROPE sets out its priorities for the future of single market policy. It highlights the importance of the single market for Europe, also showing the close links with other policy areas.

The paper identifies remaining obstacles to free movement and offers concrete recommendations per policy area on how to address them.

### **KEY FACTS AND FIGURES** <sup>1</sup>

3 million new jobs - created directly by the single market since 1992

1,467 billion euro - estimated annual cumulative economic effect of a complete single market

58 billion euro - per year consumer detriment resulting from an incomplete single market

<sup>1</sup> Sources: Cost of non-Europe Report 2014 (EP), EUROSTAT, European Commission



### MAIN POLICY RECOMMENDATIONS FOR THE EU INSTITUTIONS AND MEMBER STATES

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- 1 Ensure better implementation**, application and enforcement of existing rules. This will improve stability and legal certainty for companies. When implementing EU legislation, Member States should be transparent if they add additional burdens (gold-plating) and measure any extra costs.
- 2 When new legislation is needed, use better regulation** principles to ensure its proportionality, clarity and single-market added value. Stakeholder involvement is instrumental and should remain at the core of the EU better regulation agenda.
- 3 Remove remaining barriers** and further harmonise and streamline national rules in targeted areas, such as e-commerce, data protection, VAT and transport. Addressing remaining obstacles does often not require new EU legislation but rather more consistent application of existing rules.
- 4 Better apply mutual recognition** in the area of goods with a mutual recognition clause in new legislation where full harmonisation is not desirable or feasible, and expand when possible its application to other areas of single market policy.
- 5 Increase cooperation** between national market surveillance authorities in Europe to ensure consistent application of the rules applicable to goods. Improving cooperation with third countries will ensure more safe products in the single market. Member States should make sufficient resources available to achieve this.
- 6 Address obstacles for services** using a sector-based approach, starting with the sectors with the greatest economic significance.
- 7 Facilitate the mobility of citizens and workers** through better recognition of professional qualifications and reducing the number of regulated professions that fragment labour markets.
- 8 Increase investment in infrastructure** at both national and European level for instance through the Connecting Europe Facility. Enhance interoperability of national networks and ensure the most cost-efficient and coherent solutions at regional, national and EU level.
- 9 Analyse and review the progress of Member States' implementation of the newly reformed Public Procurement Directives** to safeguard that the principles of transparency, market openness and competitive tendering are upheld.
- 10 Take advantage of the opportunities offered by the digital economy** by removing barriers in the digital single market and by developing a legislative framework which enables companies to exploit the potential of data-based innovation.

*- Detailed recommendations by area are included in the specific chapters -*



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# BUSINESSEUROPE PRIORITIES FOR THE SINGLE MARKET

## I. THE SINGLE MARKET AT THE HEART OF EUROPE

The single market built on the four fundamental freedoms (free movement of goods, services, people and capital) has been the cornerstone of European integration for more than fifty years. It has brought economic growth, employment opportunities and prosperity to Europe's citizens. The single market has grown from 12 million companies in 1999 to more than 21 million at present.

Effective **governance** of the single market is crucial to reach its full potential and avoid fragmentation and legal uncertainty. To ensure better implementation, correct application and strong enforcement of existing single market rules, regular reporting and accurate benchmarking using quantitative indicators are fundamental. Over the past years, single market governance and reporting has improved significantly via the annual single market integration reports, using concrete benchmarks to measure the performance of Member States, and feeding into the European Semester via the Annual Growth Survey and the country specific recommendations. Yet, the single market integration reports should include more figures, facts and precise indications for improvement.

Often companies are not fully aware of their rights in the single market. This creates uncertainty and discourages them from operating across borders. We need to ensure better awareness of the general principles and the availability of clear **information** on specific European regulation for citizens, companies and public authorities.

The EU should keep a sharp focus on devising **better regulation** which is proportionate, unambiguous and easy to enforce. Legislative proposals with a disproportionate impact on competitiveness that add no real value to the single market and growth must be avoided. Boosting competitiveness and developing the single market through the use of smart regulation tools to cut red tape and devise proportionate legislation should be a mindset of policy-makers. Stakeholder involvement should remain at the core of the EU smart regulation agenda at all times.

Comprehensive and objective **stakeholder consultation** is crucial for collecting high-quality data and business and other stakeholders should be able to scrutinise draft impact assessments before a legislative proposal is finalised. A political forum where stakeholders can bring forward burdensome measures linked to the implementation of EU legislation or the lack of harmonisation should be set up.

An additional element that cannot be neglected by policy-makers while adopting legislation for the single market is the need to consider the "**innovation principle**" as important as the precautionary principle. Besides managing the possible risks, it is fundamental to fully assess and address the consequences of new legislation on innovation, which is one of the key conditions for the development of the single market.



## II. LINKS WITH OTHER EU POLICY AREAS

The effectiveness of the single market directly impacts the strength of our economy and therefore European competitiveness. Single market policy is interlinked with many other EU policies which directly influence its functioning:

**International trade:** the single market is the basis for European exports, and is affected by global developments. New free trade agreements can have a great impact on flows of goods and services to and from the single market. The ongoing negotiations regarding the Transatlantic Trade and Investment Partnership (TTIP) Agreement are an example that cuts across many single market topics, and could have far-reaching consequences on single market legislation. This is particularly the case for cross-border data flows, standards, goods and services, and public procurement as explained in the relevant sections of this strategy paper.

**Digital economy:** digital is having a growing influence on the single market and is cross-cutting all policy areas. The digital single market is growing exponentially. Digital has also a huge impact on industrial policy. A “fourth industrial revolution” is currently taking place, cross-linking industrial automation with IT applications over the internet. By connecting machines, work pieces and systems, it is possible to create intelligent networks along the entire value chain which can control each other autonomously. This will deliver efficiencies for EU industry and services contributing to the creation of new business models, with positive repercussions on the single market.

**Industrial policy:** the single market is a fundamental driver for European industrial growth. This is also acknowledged by the 2014 Commission Communication “*For a European industrial renaissance*”. Aspects of single market policy such as digital, services, servicification and the quality of infrastructure deserve special consideration in this context.

**Energy policy:** A true single market for energy is key for Europe’s competitiveness. However, low interconnection rates affect security of supply, limit renewables integration and hinder the completion of a single energy market. The development of cross-border networks suffers from insufficient private investment and poor cross-border interaction. More investment - including through EU funds -, harmonisation of rules and joint planning are fundamental to achieve a truly connect energy market.

**Intellectual Property:** intellectual property (IP) is a strategic tool to boost innovation, growth and job creation in the single market. Businesses need cost-effective IP protection and effective enforcement throughout the EU. While progress has been made in harmonising IP protection rules within the single market, a number of obstacles linked in particular to legal fragmentation and the use of IP rights are preventing companies to enjoy a true single market for IP.

**Social policy and workers’ mobility:** the single market has contributed decisively to social progress in Europe over the last decades. Since 1992, it has helped create almost 3 million new jobs in Europe. A social dimension is therefore clearly inherent in the completion of the single market. For European labour markets, the free movement of workers has a significant impact. Mobility must be underpinned by a well-enforced legal framework, allowing flexibility to adapt to different national situations.

These links will be analysed further below.



## III. PRIORITIES FOR THE FUTURE OF SINGLE MARKET POLICY

### 1. THE FREE MOVEMENT OF GOODS

The single market for goods has significantly contributed to European growth and consumer welfare. As the 'most developed' of the four-freedoms, goods generate around 25% of EU GDP and account for 75% of intra-EU trade. The EU is also the largest exporter of goods in the world, with a 16.2% share of global exports.

Yet, intra-EU trade is stagnating while trade between emerging economies continues to increase. This is mainly due to the existence of non-tariff barriers that still continue to hamper our ability to exploit the economic potential of a fully functioning single market. Most barriers are created through incorrect application of harmonising measures or creation of national protectionist rules. It is essential to fully dismantle these remaining obstacles to boost job and growth creation in the EU.

#### What are the main challenges?

- Too many national technical regulations and standards are acting as an obstacle to the free movement of goods. As a consequence, companies are having to fulfil costly additional product requirements, testing and/or documentation.
- Products being sold in domestic markets are being discouraged from cross-border markets due to additional national testing requirements and certifications imposed upon them. A lack of mutual recognition is limiting the free movement of goods and innovation of European products.
- Disproportionate regulation is complicating company compliance with product safety rules and as a consequence is causing a fragmented market of safe (compliant) and unsafe (non-compliant) products. Pursuing costly 'zero - risk' policies for the free movement of goods is damaging competitiveness of European business.
- Harmonised standards are being scrutinised for near-literal correspondence with essential requirements in the New Legislative Framework Directives that set rules for goods and services. Mandates are being used to support the political agenda and achieve 'big societal goals'. Both trends are politicising standards, making them less practical for companies to use.
- Companies have difficulty in appealing wrongful decisions made by national market surveillance authorities implementing the rules in which they operate. Currently, authorities can only be challenged for arbitrary decisions through costly and lengthy court procedures.
- Differences between the European development of standards in the single market and internationally are creating barriers to trade and difficulties with interoperability of products, especially with regard to the US.



## BUSINESSEUROPE recommendations

- 1) Member States must improve implementation of the ‘**Technical Standards and Regulations’ Directive** to ensure new national technical standards and regulations are notified to the Commission. The notification should be followed by justification for the need to introduce these provisions. The Commission should develop more precise guidance for the justification and documentation in connection with the notification of national regulation. This would give a better basis to determine whether they constitute a barrier to the free movement of goods.
- 2) National market surveillance authorities should ensure wider application of the principle of **mutual recognition**, while the Commission should regularly take stock of the progress made in its application.
- 3) European institutions should make full use of the ‘**innovation principle**’, to take into account the positive impact of innovation when devising risk-related policy measures in goods.
- 4) The Commission should issue market-relevant mandates for **harmonised standards**. These must remain appropriate to achieve their intended objective through early stakeholder involvement in the development process. So far, proper industry consultation is lacking.
- 5) The EU should establish a fast-track and **effective appeal system** at European level to challenge possible wrongful decisions made by national market surveillance authorities. These independent procedures should be binding and held in an appropriate timeframe. The system is needed especially when SOLVIT cannot influence a problem caused by national legislation.
- 6) European standard developers should achieve **global market access** on the basis of ‘one standard, one test, accepted everywhere’, to take the international aspect into account when developing standards. The use of ISO/IEC standards to give presumption of conformity should be promoted.

## 2. THE FREE MOVEMENT OF SERVICES

While services account for the largest part of the EU economy (almost 70% of EU GDP and employment) only 20% of the services in the EU are provided across borders, accounting for just 5% of EU GDP compared with 17% for manufactured goods.

This illustrates what companies are still experiencing: the single market for services is still incomplete and persistent obstacles hamper free movement. At the same time, the growth potential in the area of services, also linked to the rise of e-commerce, is huge.

Services appear at any stage in the value chain and across all sectors, including manufacturing. In fact, the competitiveness of manufacturing in Europe greatly depends upon the availability of high quality and competitive services, and vice-versa. Recent figures indicate that 15% to 30% of the inputs in European manufacturing come from the services sector, making services the most important “raw material” for manufacturing. Moreover, manufacturing companies are providing more and more



additional services related to their products – the so-called “servicification”. For many manufacturing companies “service” is the area offering the largest scope to positively distinguish their product from that of competitors.

The creation of a true single market for services will not only create growth, jobs and business opportunities - it is also essential that services markets become more integrated and more competitive to be able to compete globally, primarily with upcoming service countries such as China and India. This will help address the challenge of preventing further outsourcing and relocation of European services to other parts of the world.

## What are the main challenges?

- Despite the progress made with the 2006 Services Directive, many barriers remain due to its diverse interpretation and application on the ground. Also, Member States too often retained national requirements for reasons of general interest, which are not always justified and proportional.
- There are also remaining obstacles outside the remit of the Services Directive, such as diverse national service standards, lack of recognition of professional qualifications, the high number of regulated professions that fragment labour markets, double insurance obligations, strains on company mobility, barriers to online service provision (e-commerce) and complexity in tax activities.
- The remaining barriers are often sensitive and based on national traditions, making them difficult to address. For example in the area of health services, where more cross-border cooperation would benefit all, markets remain fragmented and very national. The political will and momentum needed to address remaining obstacles to cross-border service provision is often lacking, primarily at national level.
- Moreover, in the aftermath of the crisis, we observe more protectionist trends and that some Member States are introducing or discussing the introduction of new national measures often merely labelled as anti-social dumping actions, which de facto pose new barriers to free movement. For example in Sweden, obligatory registration for foreign companies which would cause burdensome reporting requirements is been discussed.

## BUSINESSEUROPE recommendations

- 1) Member States must ensure better implementation and stronger enforcement of the **Services Directive**, which alone can bring additional gains up to 1.8% of EU GDP. The Commission must stick to its “zero tolerance policy” by launching infringement procedures in cases of non-compliance with the Services Directive and other relevant EU legislation.
- 2) The Commission should identify and **address remaining barriers** to the free movement of services, also outside the Services Directive. Take a *targeted, sector-based approach*, starting with the sectors with greatest economic significance, such as business services, construction, health services, tourism and retail.



- 3) National governments must invest to transform the existing **Points of Single Contact** into true business portals (goods and services) offering companies all the information and assistance they need to operate across borders and on the home market, including offering the possibility to complete administrative procedures entirely online by citizens and businesses.
- 4) The Commission should create a **clear and transparent database** where existing national legislation and new national requirements for the provision of various service activities could be easily viewed.
- 5) Show renewed political will and **commitment** at European, but also national level. National governments must truly commit to make the necessary reforms. Some barriers might be sensitive to address, but once removed they will create growth, jobs and enhance European competitiveness. Also, the introduction of new obstacles to free movement should be avoided.

### 3. THE DIGITAL SINGLE MARKET

Digital is transforming European industry and shaping the EU single market. In the digital area, Europe has dropped from world leader to second tier player in only a few years. Technology offers EU businesses new opportunities to close the gap with their competitors at global level. In general, innovations such as cloud services, data analytics improving efficiency in industrial processes and intelligent connected machines could add more than €2000 billion to Europe's GDP by 2030. Digital is horizontal and has a cross-cutting impact on all sectors of the economy. In particular, digital is deeply transforming the single market. This is related not only to the movement of digital goods, but also to the fact that now physical goods and services must move freely in the single market thanks to digital tools. For instance, thanks to e-commerce, businesses will benefit from a wider market, which will also mean more choice and lower prices for consumers.

#### What are the main challenges?

- While e-commerce is rapidly taking off at national level, cross-border e-commerce is still lagging behind. There is a strong need to boost consumer confidence and business trust in cross-border e-commerce by addressing the remaining fragmentation of applicable rules, for instance in the area of VAT and consumer protection, as well as inadequate payment and delivery systems.
- Too strict regulation on data protection would create obstacles for businesses in collecting, processing and transferring data. This will undermine the development of the data driven economy and the functioning of the digital single market, which needs free flow of data.
- Free flow of data needs to be ensured not only within the EU digital single market, but also internationally, as it is one of the fundamental conditions for European businesses to function.





- There are obstacles to digital entrepreneurship, such as difficult access to finance and the excessive cost to start a new business. Setting up a company in Europe is almost twice as expensive as in the US and even 6 times more than in Canada.
- There is a growing gap between skills that employers need and those which are available in the digital economy. It is anticipated that there will be a shortage of up to 900.000 workers with ICT skills by 2020. 26% of employers in Europe have difficulty filling jobs due to a lack of candidates with the right skills.

## BUSINESSEUROPE recommendations

- 6) EU institutions must address **fragmentation** in the EU digital single market, especially regarding consumer and data protection rules. With regards to copyright, areas to be addressed include cross-border licensing and transfer of copyright.
- 1) Decision-makers must define harmonised rules on **data protection**. Legislation must strike the right balance between the need to protect privacy enhancing consumers' trust and to enable free flow and legitimate use of data in the digital single market.
- 2) Member States, EU institutions and stakeholders must stimulate **digital entrepreneurship**, through the establishment of a more entrepreneurial culture, the development of clusters, the improvement of access to finance for new digital entrepreneurs and encouragement of second chance for failed entrepreneurs.
- 3) The EU must continuously develop a policy framework to promote **ICT skills** and encourage Member States to learn from each other on how to increase the number and improve the quality of ICT-skilled graduates to match companies' needs.

## 4. PUBLIC PROCUREMENT

Acting as an important lever in the European economy, public procurement accounts for around 19% of EU GDP. In the current economic climate, it is vital that public spending is efficient to ensure best value for taxpayers' money when providing works, goods or services. Likewise, to harness European growth and competitiveness, public procurement should safeguard the principles of transparency, market openness and competitive tendering. As the most common form of public-private partnership (over 60%), concessions are an important tool to facilitate innovation and provide high quality public services.

### What are the main challenges?

- Difficulties in the access and insufficient transparency in public procurement procedures for bidders to compete adequately in cross border tenders illustrates gaps in national implementation, or even national misapplication of the framework through direct award or favouring local suppliers. These discriminatory practices are deterring business involvement in cross-border public procurement.



- The disproportionate use of political aspects in procurement procedures, especially when social aspects are assessed in light of the production process.
- Closing markets to private companies due to an increased use of 'in-house' tenders whereby the public entity delivering the procurement contract is also competing in the private market place.
- Improper use of legal framework by contracting authorities in practice through: issuing ambiguous tender specifications, allocating impractical deadlines for reply, carrying out an insufficient evaluation of tenders, using superfluous qualification criteria, and vague award criteria.
- European companies face significant obstacles when accessing third countries' public procurement markets due to the fact that not all are parties of the Government Procurement Agreement (GPA) of the WTO, while those who are parties to the Agreement have substantially different engagements. Issues like high thresholds for sub-federal tenders and or domestic preference provisions are among the most important problems..

## BUSINESSEUROPE recommendations

- 1) Member States must ensure correct implementation of the **public procurement framework** to achieve flexibility and simplification, while adhering to the principle of transparency. The Commission should conduct regular assessments of implementation progress in Member States to ensure correct application of public procurement rules.
- 2) Public authorities should safeguard public procurement provisions that require a **direct link with the subject-matter** of the contract to exist when using political goals in procurement procedures.
- 3) Public authorities should **not excessively use far reaching exemptions**, such as 'in-house' provisions, that close markets to economic operators, especially where public services are provided successfully through competition between public and private companies.
- 4) Public authorities should **develop sufficient expertise** to correctly use the flexible provisions offered by the reformed public procurement framework. Public authorities could achieve this aim by increasing early transparent dialogue and research in the applicable sector.
- 5) The EU should achieve ambitious provisions in the current **Free Trade negotiations** with US (TTIP) and Japan that clearly go beyond the WTO government procurement agreement (GPA). This should be achieved by eliminating domestically imposed obstacles that limit foreign company involvement in public tenders and by ensuring increased transparency in public procurement processes.



## 5. PUBLIC SERVICES

The provision of high quality and efficient public services is of fundamental importance for European society and the competitiveness of European companies as users of these services. With increased pressure on public budgets, major societal challenges to tackle, and demands for more efficient and cost-effective public services, national governments need to modernise public administration and rethink the provision of public and e-government services.

Stronger cooperation between the public and private sector can improve the provision of public services and greatly contribute to modernising the public sector, primarily through setting up public-private partnerships (PPPs). PPPs can often offer better value for money, enforceable quality standards, wider choice, innovative solutions and the possibility to combine the expertise and skills from both the private and public sector. PPPs can also offer new sources of financing and risk allocation, and channel additional private funding into public infrastructure, networks and services.

### What are the main challenges?

- In 2013, the aggregate value of PPP transactions was 16.3 billion euro, a 27% increase compared with 2012 (12.8 billion euro), with 80 projects reaching financial close, significantly more than the 68 in 2012. Despite a slightly more positive outlook on the PPP market compared with previous years, it is clear that the opportunities and possibilities that PPPs can offer still need to be better promoted.
- Today, less than 40% of citizens and 70% of businesses in the EU use online public services, illustrating the underuse of e-government and modern public administration tools.

### BUSINESSEUROPE recommendations

- 1) The EU must promote a holistic culture in the management of public services and further development of e-governance that focuses on **result-oriented strategies**, performance and innovation, including through better use of ICT.
- 2) National governments should facilitate and encourage the setting-up of **PPP structures** that focus on delivering results through performance targets, delivering better and more efficient public services.
- 3) Public authorities should ensure transparency and fair treatment of private operators in the delivery of public services through **open and competitive tenders**. This includes ensuring equality of access to European or national funding for public authorities regardless of how they organise the provision of public services, i.e. through a public or private entity.
- 4) **Make better use of EU and national financial means** to promote PPPs. Use the European PPP Expertise Centre (EPEC) as a platform to identify obstacles to the implementation of partnerships and ensure close dialogue with the private sector.
- 5) The EU should support the exchange best practices between the public and private sector. This includes offering guidance and training programs for Europe's civil servants to enhance their capabilities in working with PPP contracts and public tendering, for instance through the EPEC.



## 6. MOBILITY

Mobility is essential for a well-functioning single market. This is true for the free flow of goods and services across borders, but also for the mobility of people as citizens or workers in the single market.

Mobility can benefit both workers and enterprises, and improve the way in which European labour markets function by ensuring the right conditions for people to move around for jobs across occupations, enterprises, sectors and geographically across the single market. By doing so, mobility helps to address mismatches between labour supply and employer demand, for which there is an established trend at the EU level.

Effective and integrated infrastructure networks across the single market are essential to support mobility of people and products, and they heavily contribute to European industrial competitiveness. The capacity of transport, digital and energy networks determines the limits of the flow of goods and services.

### What are the main challenges?

- Currently just 3% of EU citizens live and work in a country other than their own. There are several barriers to intra-EU mobility: language, information about being mobile within the EU, heavy bureaucracy, transfer of social security provisions, heavily regulated professions and overregulated specialisations. However, one of the most prominent ones is the worry that professional and academic qualifications will not be recognised in another Member States.
- The challenges for infrastructure mainly relate to interoperability issues, insufficient investment and joint planning to ensure the most cost-efficient and coherent solutions for infrastructure networks, at regional, national and EU level.
- The Commission has estimated that 1.5 trillion euro over 20 years is the minimum investment needed to keep pace with the increase in transport demand. 500 billion euro will be needed by 2020 to complete the Trans-European Transport Networks (TEN-T). Without these investments, Europe will progressively lose the asset of efficient transport infrastructure capable of supporting long-term, sustainable economic growth.
- In the area of digital, the development of well-functioning, developed, secure and resilient networks is a fundamental precondition for business to benefit from industrial productivity gains thanks to technology. Companies still face difficulties in the European market for telecommunications. Europe still lacks investment in networks which can provide high speed connection at competitive price. The lack of investment is due to scarce prospects of profit, insufficient legal certainty and lack of economies of scale.

### BUSINESSEUROPE recommendations

- 1) The EU should ensure better recognition of **professional and academic qualifications** across the EU through better implementation of the revised



Professional Qualifications Directive, but also through better application of the mutual recognition principle.

- 2) Member States should, on the basis of the ongoing country-specific analyses, **reduce the number of regulated professions** to facilitate the mobility of workers.
- 3) The Commission and Member States must ensure more efficient use of existing **transport infrastructure**, including by the use of smart logistics and ICT solutions, lifting remaining restrictions and address persistent barriers.
- 4) National governments as well as the EU must commit to investing in the **networks of the future**. Investment in infrastructure should be increased, for instance via the Connecting Europe Facility, and take a more prominent place in policy-making.
- 5) The Commission and the Member States need to **foster private investment** in networks, creating a stable and innovative regulatory environment which sets the right incentives for investments, including fix and mobile broadband.

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