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Building a true single market for Europe – Business' priorities

BUSINESSEUROPE's contribution to the upcoming Internal Market Strategy for Europe Priorities and recommendations for a better functioning single market

The single market has added more than 2% of EU GDP and created 3 million new jobs since 1992. EU Member States currently trade twice as much with each other as they would do in the absence of the single market. Our common market facilitates trade with global partners, creates many new business opportunities, offers more choice and better prices to consumers, and is fundamental for European companies.

With more than 500 million consumers and 21 million companies Europe has the largest common marketplace in the world and at the very heart of our competitiveness. The changing global economy presents both challenges and opportunities for Europe, and in the last decades we have seen a clear shift in global economic power towards emerging and developing economies. In this context, making our single market work better is key to make Europe more competitive vis-à-vis other parts of the world.

Yet, entrepreneurs still face many obstacles when wanting to operate 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. These remaining obstacles hamper growth and job creation and harm the competitiveness of European companies.

Building on positive results from the Single Market Acts I and II, BUSINESSEUROPE pleads for a radical step to make the single market work better. We expect the Commission's upcoming "*Internal Market Strategy for Europe*" foreseen for the last quarter of 2015 to be ambitious and to present a clear vision for the future. The strategy needs to include concrete proposals for improvement with a systematic focus on better application of existing rules in practice, and a clearly defined timeline for action.

Times have changed. Markets are increasingly integrated. Building a true single market means no space for protectionism or national actions that risk to dramatically affect the functioning of our companies, with negative effects on growth, jobs and citizens' welfare.

THE SINGLE MARKET IN FIGURES¹

3 million new jobs - created directly by the single market since 1992
2% of EU GDP - added by the single market since 1992
5% higher incomes - Europeans earn roughly 5% more today thanks to the single market
58 billion euro - per year consumer detriment resulting from an incomplete single market
1,467 billion euro - estimated annual cumulative economic effect of a complete single market

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



MAIN POLICY RECOMMENDATIONS FOR THE EU INSTITUTIONS AND MEMBER STATES

1. **Better enforce existing rules before creating new ones**, to improve stability and legal certainty. When implementing EU rules, Member States should avoid creating additional burdens (gold-plating) or be transparent and measure extra costs if they do. New national rules should also undergo a single market impact assessment.
2. **Ensure concrete and consistent implementation and application of new legislation** across the single market, by adding specific enforcement tools, creating new, effective governance mechanisms including better reporting, adequate Commission powers, and enhanced Member State responsibilities.
3. **When new legislation is needed, use better regulation** to ensure its proportionality, clarity, consistency and single-market added value, keeping in mind the costs linked to adapting to new regulatory requirements. Transparency and stakeholder involvement are instrumental and should be at the core of the EU better regulation agenda.
4. **Remove remaining barriers** and further harmonise and streamline national rules in targeted areas, such as consumer protection rules. However, addressing remaining obstacles does often not require new EU legislation but rather more consistent application or clarification of existing rules.
5. **Introduce a mutual recognition clause in new EU and national legislation** when appropriate to support the free flow of goods and services by creating more cross-border acceptance and flexibility where full harmonisation is not feasible or desirable.
6. **Support further servitisation in manufacturing sectors** by ensuring EU rules support new business models and a new hybrid reality where goods and services are provided together as a package. This includes better implementing the Services Directive and Goods Package and ensuring compatible application in practice, as well as adopting a case-by-case approach to standardisation.
7. **Take advantage of the opportunities offered by the sharing economy**, and clarify how EU rules apply to sharing economy services and businesses. Any initiative should be based on solid data and a clear picture of the reality and the various business activities that are commonly grouped under this model.
8. Address on a case-by-case basis business **practices resulting in different treatment** – in terms of price or other conditions – grounded on the recipient's residence or nationality. This is often the result of an incomplete single market and is justified by objective reasons, such as different market conditions, costs due to distance, dissimilar VAT rates, national regulations or fragmented IP protection.
9. **Tackle remaining obstacles to free movement of services** focusing on business services, construction, tourism and retail. Member States should better notify new national regulation impacting cross-border service provision and clearly justify any additional rules or requirements imposed on (foreign) service providers.
10. **Facilitate the mobility of citizens, students and workers** through better recognition of professional qualifications and review, and where appropriate reduce, the number of regulated professions and specialisations that fragment labour markets.



THE SINGLE MARKET

I. A SINGLE MARKET POLICY FOR EUROPE'S FUTURE

The single market has brought growth, employment and prosperity to Europeans. It has grown from 12 million companies in 1999 to more than 21 million at present and brings together more than 500 million consumers, **the world's largest common market**.

The single market is Europe's main driver for growth and its performance directly impacts Europe's competitiveness. To be better able to compete with other parts of the world it is essential that the single market works well to attract investment, to allow companies to expand and to offer opportunities to SMEs and start-ups.

Yet, the single market is not living up to its full potential. Remaining obstacles to free movement, poor transposition and implementation, lack of enforcement, insufficient monitoring and poor governance are hampering growth and job creation, and limiting citizens' benefits.

Moreover, in difficult economic times there is a strong temptation towards **protectionism** along national lines. Vested interests are strong to keep the status quo. But if Europe fails to introduce the necessary measures to bring us back on track and Member States limit competition, Europe will become globally uncompetitive. For example, many public services would benefit from opening up to competition through public tendering to private operators or by setting-up public-private partnerships. This would drive innovation and efficiency, while reducing costs and relieving pressure on public budgets.

We need to urgently remove **remaining barriers** to free movement. Companies often cannot complain about additional national or local requirements, such as additional testing requirements or more paperwork – for a lack of time or resources or other reasons. Either they find a solution, which requires spending time and resources, or worse, they simply refrain from operating online and/or across borders.

The struggle to get a clear picture about single market rights and obligations, especially among start-ups and SMEs, creates uncertainty and discourages cross-border operations. We need better awareness and clear **information** on general principles and on specific EU legislation to citizens, companies and public authorities. The EU should also put in place measures that facilitate SMEs and start-ups wanting to operate across borders. Administrative **simplification**, better information and **mutual recognition** are key in this respect.

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 sectoral and framework policies which directly influence its functioning, such as digital, the energy and climate policies and infrastructure.

The digital economy is deeply transforming the single market. This is not only related to the movement of digital goods (e.g. movies, music, software, apps, etc.) but also to the fact that now physical goods and services move more freely in the single market



thanks to digital tools. Through e-commerce, businesses can benefit from a wider market, which also means more choice and better prices for consumers.

A well-functioning single market is fundamental to support Europe's industrial sectors and should be at the core of the **EU's industrial policy**. A well-connected continent where goods, commodities, services, capital, data and labour can flow freely is essential to make Europe more competitive.

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. This would also help address the issue of unjustified geo-blocking, which should not be tackled as a problem in itself, but rather as a consequence of an incomplete digital single market. Inconsistent enforcement by some national authorities also fragments the single market – leaving businesses to navigate through the difficulties caused by unpredictability. It is also important that single market policy helps businesses to remain globally competitive.

A well-functioning and competitive single market is essential to spur innovation, which directly enhances Europe's competitiveness, boosts growth, attracts investment and creates jobs. Yet, boosting innovation relies on proper, effective and enabling intellectual property (IP) protection in the EU. IP-intensive industries generate about 39% of EU GDP. 1 in 3 jobs in Europe depends on these industries. The Unitary Patent will open a new opportunity for companies to protect their inventions in the single market. It is time for the implementation work to be accelerated so that companies and in particular SMEs can start using this new instrument. Initiatives of the Commission to encourage and support the use of IP by SMEs would complement this process and are welcome.

In general, greater awareness on the side of national authorities on the importance of the single market – including the digital single market – is needed. A sense of excitement should be restored and leverage on the argument that the single market is good for the EU and good for businesses, consumers and citizens. True political commitment at European, but especially at national level is a precondition to make the single market work better for all of us.

II. TOWARDS BETTER GOVERNANCE OF THE SINGLE MARKET

Effective **governance** of the single market is crucial to reach its full potential and avoid fragmentation and legal uncertainty. The Commission should make sure that single market rules are respected, taking swifter action to enforce EU law, but mostly by addressing more holistically the need for better and more consistent application of single market rules at national level.

Member States must embrace a **culture of compliance**. This requires strong central enforcement and more swift, determined and targeted infringement procedures at EU level when needed, but also stronger cooperation and partnership between the Commission and national administrations.

Better application of existing rules is one of the most important pillars for a well-functioning single market. High **quality implementation**, correct application and **stronger enforcement** of single market rules should be put at the core of the



upcoming strategy. It is essential that EU rules are uniformly applied across the single market.

More resources need to be dedicated to implementation and enforcement, both by the Commission and by Member States. Where appropriate the Commission should provide guidance for Member States to achieve more coherent application of EU rules in practice. SOLVIT and other single market tools need to be further integrated to play an important role in ensuring better compliance with EU rules.

The quality of EU regulation is a key factor to achieve better application of single market rules by Member States. Rules must be designed with a focus on implementation, efficiency and effectiveness. Proper follow-up in the form of peer reviews, mutual evaluations and performance checks by Commission and Member States should become the rule, and not the exception.

The EU should keep a sharp focus on devising **better regulation** which is proportionate, unambiguous and easy to enforce, with greater coordination of all legislative initiatives to avoid inconsistencies. Council and Parliament should make better use of impact assessments which should be updated to assess the impact of burdensome amendments.

When drafting new rules, better coordination is needed to ensure greater consistency in EU legislation. This will avoid unnecessary compliance costs for business. Member States should refrain from adding requirements that negatively affect the single market when they are transposing EU legislation or, if they do, increase transparency about the reasons and impact on competitiveness and growth.

There should be a **target to a net cost reduction** defined for the totality of regulatory costs in all policy areas and a fast-track procedure to make sure that burden reduction proposals are approved quickly without adding new burdens through amendments.

While we welcome the Commission's stronger focus on evaluation, and integrating this in REFIT and the annual Work Programme, using this information to feed into impact assessments to rightly follow the life-cycle of a legislative act which could potentially create more coherence. Unfortunately, a review or recast of all the legislation of a certain policy area does often in practice lead to the introduction of new burdens. It is also important to regularly assess existing rules to ensure that they still respond to the current challenges.

An additional element that cannot be neglected by policy-makers when adopting new legislation for the single market is the "**innovation principle**" that is 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.

There is a need to refresh **single market reporting**, through more comprehensive Single Market Integration reports and linking the results more strongly within the European semester via the Annual Growth Survey and the Country Specific Recommendations in particular. The reports should include more figures, facts and precise indications for improvement, using concrete benchmarks to be able to measure the performance of Member States.



Still the **data collection and analysis** on the quality of implementation and the specificities of some of the sectors of the EU economy is scarce. The basis of well-designed European and national policy is that they are built on facts and figures, evidence-based. A lack of this information will result in inaccuracies and possibly bad policy. There is a need to allocate more resources to the collection of relevant data.

Public procurement stands out as a policy area that could benefit from targeted electronic data collection and analysis. So far this policy area has lacked sufficient collection of statistical data at Member State level. An increased data collection might give a better insight into reliable economic figures regarding public procurement and thereby also highlight problematic areas. This could help future suppliers take informed choices about whether to compete in certain procurements. Still, this should not lead to collection or dissemination of commercially sensitive data

While on the one hand a stable legislative framework is important, so is also reviewing existing legislation to ensure that it is fulfilling policy objectives. For example, the **Remedies Directives** for public procurement are currently undergoing this regulatory fitness test (see box).

As remedy processes in general diverge so greatly in the single market, it would be useful to measure the effectiveness of national systems and offer insight into whether market operators can obtain fair redress. Promoting the use of specialised review bodies at national level might not necessarily require an overall revision of the Remedies Directives.

When designing, implementing and enforcing rules for the **digital single market**, adequate horizontal coordination between different areas and Commission services is needed. Digital is a cross-cutting element in all policy areas. This cross-sectoral dimension must be taken into account.

It is fundamental to create rules which are future-proof and that do not require regular and continuous updates, given the fast evolution of the digital economy. This is also relevant in relation to the emergence of the **sharing economy** (see also below).

Procurement Remedies Directives – fitness test

The Remedies directives address situations where misconduct took place during procurement and are essential tools to ensure EU rules on public procurement are respected. Remedies should grant effective solutions, such as interim measures, standstill periods and the ability to deem performing contracts invalid. Yet in practice, these measures are rarely effective in rectifying misconduct.

There are various national systems but each either offer (i) solely administrative court procedures or (ii) specialised review bodies. Court remedies alone are problematic as businesses are left to ensure the correctness of procurement case-by-case through lengthy and costly procedures. A remedy can take so long that a procurement contract performance has already been completed, deeming the remedy ineffective. Also, high legal fees often outweigh what contracting authorities are ordered to pay. This makes complaints uncommon, as suppliers do not challenge processes, even if certain of highly negligent action (e.g. blatant cases of direct procurement).

Specialised review bodies instead allow suppliers to more easily challenge procurement procedures - due to their specialised focus, these bodies can react faster. Taking this initial step is less costly than full court procedures, and only the most flagrant cases are sent to court, using resources more efficiently. In addition, transparency on the motivations of administrative decisions should be improved.



Recommendations:

1) Every Member State should put in place one **Single Market Centre** with authority over national transposition, implementation and enforcement of EU legislation. It would be a focal point for the Commission and a tool to provide tailored assistance to Member States. The centres would be part of a strong network with other single market tools such as SOLVIT - to ensure better application of single market rules on the ground.

2) National governments should transform their existing Points of Single Contact **into true Online Business Portals for goods and services**, offering companies all the information and help they need to operate across borders and on the home market, including the completion of administrative procedures entirely online.

3) National governments must further develop the still underused **Internal Market Information (IMI) system**. Public authorities should make better use of IMI to alleviate administrative burden on business, by checking information through this network directly with other Member States if needed, saving both time and costs.

4) Commission and Member States should **upgrade single market reporting**, through more comprehensive Single Market Integration reports and linking the results more strongly within the European semester via the Annual Growth Survey and the Country Specific Recommendations.

5) Member State should keep a sharp focus on **better regulation** and be more transparent about the reasons and impact of added requirements that negatively affect the single market, competitiveness and growth when they are transposing EU legislation.

6) **Refocus data collection and research on the application of single market rules** and step up the efforts of EUROSTAT, EU Institutions, academia and researchers to collect more precise and comparable sector-specific data, without increasing administrative costs to business.

III. DEVELOPMENTS IN THE SINGLE MARKET

Servitisation is the process in which businesses, commonly manufacturers, additionally begin to offer services with their traditionally processed goods. Digital tools have accelerated this process, deeply transforming entire sectors of the economy and value chains. The barriers between traditional sectors of the economy are blurring. Airplane companies install and maintain jet engines for airplanes after the initial manufacturing process. The other way around, internet content providers became themselves manufacturers of devices. In fact, when manufacturing products, usually



25% of its input is considered a service. Globally, data suggests that at least a third of manufacturing firms now offer a range of services to complement their traditional good.

In the past, services and goods have often been viewed by policy makers as two entirely separate entities e.g. when drafting the Services Directive (2006) and Goods Package (2008). However, in reality this is sometimes less evident. Services often appear at all stages of the value chain across a number of different sectors.

However, regulatory and administrative single market barriers, specifically related to the service element continue to limit the ability for businesses to grow through integrating goods and service value chains. It is important that industry is able to fulfil its full growth potential by servitising – otherwise, important industry sectors could move elsewhere.

Similarly, **the rise of the “sharing economy”** has led to new opportunities and challenges in the single market. The sharing economy can be defined as a system built around the sharing, distribution, trade and consumption of goods and services by different people interacting through intermediaries such as digital platforms. The potential value of the five main sharing economy sectors (car sharing, peer-to-peer finance, online staffing, peer-to-peer accommodation, music and video streaming) ranges between \$110-\$530 billion².

When analysing the sharing economy, it must be taken into account that these companies operate using very different business models and offer a range of services that are often not comparable. There are many challenges related to the development of the sharing economy, according to the sectors where these models flourish, and particularly related to free movement of services, labour and sector legislation, taxation, consumer legislation, competition rules, insurance, etc.

The EU needs to **take advantage of the opportunities offered by the sharing economy**, given its innovation and growth potential, and clarify how EU rules apply to sharing economy services and businesses. This is still a new phenomenon and it is not clear how best it should be addressed. Any initiative should be based on solid data and a clear picture of the reality and the various business activities commonly grouped under this model.

IV. PRIORITIES FOR THE SINGLE MARKET BY AREA

1. THE FREE MOVEMENT OF GOODS

Often cited as the ‘most developed’ aspect of the single market, the free movement of goods generates around 25% of EU GDP and accounts for 75% of intra-EU trade. This has contributed greatly to European growth, spurring employment and inward investment.

The free movement of goods opens 31 national markets with more than 500 million consumers and 21 million businesses. It creates great opportunities to expand business and offers a wider choice to consumers at competitive prices. Consumer welfare has also benefitted from a high standard of widespread common rules.

² [PwC Report on the sharing economy](#), 2014.



However, intra-EU trade in goods stagnates. Creation and subsistence of non-tariff barriers continue to protect national markets instead of exploiting the full economic potential of a truly functional single market for goods. A well-integrated transport system is essential in this respect.

Around 15,000 additional national technical regulations continue to make it difficult for businesses to buy and sell goods in the single market. Additional national rules, such as safety testing, diverging (or excessive) labelling requirements, including those which may result in the erosion of intellectual property rights, or even quantitative source restrictions burden business' performance. As a result, companies either choose to endure such requirements - making them less competitive, or cease to exist in that market - losing out on opportunity. This type of protectionism is limiting the growth potential businesses can offer to the European economy.

Mutual recognition is an extremely important tool to allow non-harmonised goods market access or even aspects of harmonised goods, such as the recognition of a new technology that is not recognised, but still fulfils essential requirements for CE-marking. But as manufacturing becomes more diverse, non-adequate application of mutual recognition is beginning to limit business opportunities to place products on markets. Many businesses are even unaware of the benefit mutual recognition can bring to their performance. This is preventing expansion of innovative European products to citizens and is convincing manufacturers to not scale up and enter previously researched markets, or even successfully proved markets.

The single market for goods is one of the safest in the world due to the vigilance and care placed on its consumers. Cooperation between national authorities and the EU through the Rapid Exchange of Information System (RAPEX) has enabled effective action. Yet, Europe still endeavours to create an unobtainable 'zero-risk' society. This complicates business compliance and puts competitiveness at stake in return for a limited practical gain. As new technologies continue to benefit business models at large, Europe should not enshroud itself from the advantages innovation can offer.

Barriers also exist due to improper application of single market rules to which businesses have no right of recourse to challenge that potentially incorrect administrative decision. Currently, authorities can only be challenged through formal

Market Surveillance

As a national responsibility, market surveillance ensures that European wide product safety rules are applied correctly in practice to protect consumers and ensure a level-playing field for businesses.

A boost in the commitment and political willingness of effective national systems to prioritise market surveillance, as well as more concerted actions inside and outside the single market, will help keep non-compliant products from being marketed. In this context, controls of external borders should be effective and uniformly conducted.

Member States should boost market surveillance nationally. This requires greater political impetus to enable the resources required for suitable facilities and skilled officers. Efficient coordination between authorities would also ensure coherence across the single market.

This will be more effective than promoting additional disproportionate pre-market measures that are only applied by bona-fide players.



court procedures which are long and costly. Unfortunately, SOLVIT is not sufficiently geared to solve internal trade disputes.

Recommendations and enforcement action:

- 1) The Commission should develop detailed guidance to **improve Member State application of the Technical Standards and Regulations Directive** to enhance the effectiveness of the notification procedure. This could be reinforced by increased Commission monitoring of the procedure to ensure full compliance with all provisions.
- 2) The widespread use of **mutual recognition** should be fully enforced by public authorities and its awareness raised among businesses where appropriate. This involves non-harmonised and harmonised goods; as even CE marked products can be affected by national supplementary requirements. New legislation should specifically contain a mutual recognition clause to provide legal certainty for businesses as EU jurisprudence and overarching Treaty provisions are not being upheld.
- 3) Rational and careful risk-management is needed in order to support smart innovation. This can be achieved by using the '**innovation principle**' to take into account the positive impact of innovation when devising risk-related goods measures.
- 4) A **fast and effective appeal system** is needed for the single market to ensure correct application of the legal framework for goods. A mechanism similar to the existing TRIS system could achieve this, by allowing businesses to notify the Commission of administrative decisions potentially breaching EU rules and introduce a stand-still obligation to allow the Commission and interested Member States to jointly analyse the decision with the administrative authority concerned and inform the complainant business as to whether the decision is enforced.

2. FREE MOVEMENT AND CROSS-BORDER PROVISION OF SERVICES

Services account for the largest part of the EU economy with over 70% of EU GDP and two-thirds of employment, i.e. jobs for over 150 million people. Services are the most important source of foreign direct investment and account for 90% of all new jobs created in Europe. Services are also essential for the competitiveness of European industry, accounting for 25% of the input into manufacturing processes. Between 25 and 50% of manufacturing companies' total revenue stems from sales of services. So underperforming services markets hurt Europe's manufacturing industries. Still, most services are provided to other service companies, revealing a true "economy of services" in most developed economies.

Despite its economic significance, 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. Even taking into account that some services are in nature more



local and less tradable than goods and the fact that establishment of businesses or subsidiaries abroad is not included in these calculations, these figures illustrate the magnitude of the challenge that companies are still facing when wanting to operate across borders.

At the same time, the growth potential in the dynamic area of services is huge, where better implementation of the Services Directive alone could add 1.8% of EU GDP. Additional gains are linked to the removal of barriers outside the remit of the Directive and the strong links with the development of the digital economy and cross-border e-commerce in particular. Services markets must also become more integrated 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.

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. Other remaining obstacles relate to diverse national service standards, lack of recognition of professional qualifications, the high number of regulated professions that fragment labour markets, insurance obligations, strains on company mobility, e-commerce barriers and complexity in tax activities.

In this context, it is disappointing to see that during the last years the structural reforms necessary to remove these barriers have almost exclusively been undertaken by countries that benefitted from European financial assistance programmes. As a result, the calculated additional benefits of better implementation of the Services Directive, so the 1.8% of EU GDP has not been achieved, at all (merely 0.1%).

Often also new obstacles arise in traditional service sectors such as retail that need to be addressed. For example, in Hungary retailers are faced with a new system of levies to finance official controls of food products that entered into force on 1 January 2015. The progressive rate of the fee is indirectly discriminatory against foreign retailers. Such examples illustrate a worrying trend where businesses in the retail sector are faced with more new financial obligations such as special crisis, internet and advertisement taxes. These are often de facto acting as protectionist obstacles.

The remaining barriers for services 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. We need to realise the untapped growth potential and act now, decisively.



Non-Discrimination and Geoblocking

Consumers and businesses must be confident to buy or sell cross-border in the single market. Article 20 of the Services Directive is an important instrument to make the single market work better. It prohibits discrimination; so different treatment in terms of price or conditions on the basis of nationality or residence of recipients of services. Companies (who are also service recipients) fully share with consumers the common interest not to be subjected to differential treatment in price or otherwise, or refusal to supply.

Yet, there may be several objective reasons for different treatment, for example related to different market conditions, additional costs due to distance, dissimilar VAT rates, payment issues, different national regulations (e.g. waste disposal) or a fragmented IP landscape.

These objective reasons are in most cases a direct result of remaining barriers in the single market. The legislator should therefore not aim to force companies to sell cross-border at any cost and should also avoid putting excessive administrative burden on companies through the introduction of complicated (online) explanation obligations.

As rightly identified by the Commission in its 2012 Staff Working Document on Article 20 “businesses are free to determine the geographic scope to which they target their activities within the EU, even when selling online.” It is clear that the fundamental principle of contractual freedom must not deviate into a default obligation to supply. Rather, the focus should be on tackling different treatment at the root of the problem: remaining barriers that hinder free movement in the single market.

We acknowledge the Commission’s intention to end unjustified geo-blocking. Targeting geo-blocking in itself as an illegal practice is an incorrect assumption. While we share the principle of non-discrimination, there are often justifications to trade online in a more targeted manner as outlined above. In fact, many businesses would be willing to expand into the single market or online as they do in national markets, where market conditions make it possible and profitable.

Recommendations:

1) Focus on achieving higher quality of implementation: The Commission must stick to its “zero tolerance policy” by more resolutely launching targeted infringement procedures in cases of non-compliance with the Services Directive and other relevant EU legislation.

2) Achieve better enforcement of the Posting of Workers Directive on the ground. The 96/71/EC Directive provides an appropriate legal framework. It is a practical way to ensure fair competition between domestic and foreign services providers, and for working conditions of host country and posted workers to be



comparable. The Directive should not be revised. The effective implementation of the 2014 Enforcement Directive is the priority if we want to address abuses and irregularities that sometimes happen on the ground, and to help law-abiding companies seize opportunities in the single market.

3) Remove remaining obstacles: The Commission should identify and address the most harmful remaining administrative and regulatory barriers to the free movement of services, also outside the Services Directive. Address the barriers taking a **targeted, sector-based approach**, starting with the sectors with greatest economic significance, such as business services, construction, tourism and retail. It entails further streamlining of national procedures and where possible further application of mutual recognition to foster cross-border provision of services.

4) Enhance the effectiveness of the notification procedure: Member States must respect the obligation in the Services Directive (Article 15 and 35) to notify the Commission of any new laws, regulations or administrative provisions which set national requirements together with the reasons for those requirements. Any new requirements should be assessed by the Commission on their compatibility with EU law and made public and transparent. During the period of assessment there should be a “**standstill period**” until clarity is provided. This should be extended to all national requirements, so also outside the scope of the Services Directive.

5) The Commission should **carefully assess the reasons for different treatment** in terms of price or conditions in single market. Targeting geo-blocking in itself as an illegal practice is an incorrect assumption. Many of such differences are a direct result of remaining fragmentation in the single market.

3. STANDARDISATION

Market relevant standards have numerous benefits for businesses; as a result they are a key strategic interest. Generally, standards allow fast access to a wide range of markets, reduce costs for product proliferation and manage risks. Specifically, harmonised standards allow businesses to demonstrate conformity with European legislation. This assures consumers and regulators on the safety, reliability and comparable performance of goods and services that are provided.

In more recent years, the European standardisation system has become more politicised and is starting to operate in a top down manner. This is blunting the use of standards as tools for businesses. As a result, business investment in the time and resources needed to develop good quality European standards is under pressure.

As the European standardisation system only permits businesses to play a shallow role, strategic decisions are being taken without substantial inclusion of business stakeholders who bear around 93% of the overall cost. Furthermore, the European standardisation organisations should not be seen to represent business interests as their competence covers the process of development. This lack of full inclusion is weakening the overall system and is causing gaps to emerge where standards are needed.



Uniform products are developed for the global market place, therefore the competitiveness of European businesses hinges on whether a standard is internationally accepted as 'state of the art'. International standardisation agreements (such as Dresden and Vienna) exist to organise collaboration between global and European processes, yet frictions have arisen due to consistent demands by European authorities to take rules further than the overall global consensus. These decisions require inclusive, transparent and comprehensive discussion with stakeholders in the political domain instead of being made at an administrative level.

STANDARDS TO FACILITATE INNOVATION

Standards aid innovative processes in various ways: as disseminators of new technology to market, as a baseline for competitive innovation development or as integrators of existing technologies into new solutions. This requires a balanced patent–standard regime to encourage investment in open standards by ensuring fair, reasonable and non-discriminatory licensing of standard essential patents. Effective legal recourse should be available both to patent owners and implementers to block bad faith behaviour that may jeopardise the entire system.

Many of the most influential developers of standards in this context are outside the European standardisation system and take an international industry-driven role, and are effective vehicles to achieve standardisation goals.

Europe should further recognise the importance of these organisations, while mandating EN standards in fields where the ESS is actually relevant. Pre-competitive collaboration between businesses to determine fields requiring ICT standardisation could effectively channel the EU voice globally.

The development of standards is a careful process in which conflicting interests are weighed up to achieve a solution based on consensus between many stakeholders. As a result conflicting interests may take some time to resolve. Although speed may be important in some cases, it is 'timeliness' that businesses strive for. This does not imply a quick development process, but development on a scale based upon the economic activity and technical characteristics unique to the standard itself. If rushed, an immature standard would not be recognised by the market or could tilt the competitive level-playing field. This includes the notion of emerging areas for standardisation. New areas do not necessarily imply that standardisation is relevant to the market. The process for deciding new mandates should be 'bottom-up' and not 'top-down'.

Recommendations:

- 1) Although the Commission should play a strong coordinating role in the European standardisation system to reduce inconsistencies, it should not attempt to anticipate the needs of businesses or policy makers. A bottom-up approach should be taken to acknowledge the strong stakeholder role of business. Granting **business representation in the Committee on Standards** would be an initial step towards a structural dialogue with business. This would ensure market relevant development to take place in policy areas needed on the ground.



2) The **alignment with internationally recognised standards** should be a leading principle. Standards should primarily build on international standards - with increased European participation in international processes and only deviate from them for well-understood and underpinned European interests. Ambitions to deviate from internationally accepted norms should be subject to an open political debate that transparently weighs costs with gains on a rational basis.

3) Speed should not prevail over the careful process of developing quality standards. Therefore the European standardisation system should prioritise **timeliness over speed on a case-by-case basis**. Blanket time limits cannot be mandatorily set for the conclusion of a standard.

4. MOBILITY AND GROWTH

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, students, tourists 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 - both in qualitative and quantitative terms - for which there is an established trend at the EU level. Mobility is also beneficial to consumers who are granted better access to service providers from across the EU rather than only from their country. It also places the EU in a more competitive position in the global context.

Therefore, in the coming years there is a need to promote free movement by overcoming barriers to worker mobility, fostering mobile workers' employment participation and encouraging circular mobility to maximise the benefits of mobility for countries of origin and destination.

8.1 million EU citizens out of over half a billion live and work in a member country other than their own. That is just 3.3% of the total European workforce. 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 State.

Another issue is that many Member States restrict access to certain professions by asking for additional qualifications or diplomas. There are about 5000 of these regulated professions in Europe. Whilst in certain cases there may be valid policy reasons to justify this practice - for complexity, security or safety reasons - this does not always seem to be the case. Many activities are regulated in only a few Member States and more than 25% of them are regulated in just one Member State. The high number of regulated professions and specialisations is fragmenting labour markets and hampering service provision or establishment across borders.



Furthermore, BUSINESSEUROPE is concerned about recent developments in a number of EU countries resulting in new obstacles to international transport operations, considerably affecting free movement. Far-reaching national measures on for instance minimum wage or resting time for truck drivers will not only have a disruptive impact on the transport sector, but on the free movement of goods and services as such, going against the principles of the single market as set out by the EU Treaties.

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 **review, and where appropriate reduce, the number of regulated professions** on the basis of a clear overview of all the regulated professions in the Member States provided by the Commission.

3) On the basis of such review, EU level action could **take the form of country-specific recommendations** on deregulating certain professions in the Member States in order to facilitate worker mobility.

4) The Commission should be a strong guardian of the EU Treaties and **launch infringement procedures when needed to safeguard free movement**. Diverse national rules that complement EU legislation or diverse interpretation of EU law can cause problems for business. It often causes legal uncertainty and disrupts the level playing field that European companies need to compete fairly within the single market.

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