

Strengthening the Single Market through continuous and open dialogue on implementation, application and enforcement of EU law

Input for the long-term action plan on implementation and enforcement

The European Single Market constitutes a unique example of regional integration. The benefits of the Single Market are numerous and the opening-up of domestic economies has increased competition and lowered prices resulting in 8-9% higher EU GDP in the long run. The total economy has been strengthened with close to 1000 billion Euro every year.¹

Single Market rules are of economic importance for businesses, citizens and the EU economy at large. However, a lack of clarity, consistence, inadequate implementation, poor enforcement and lack of compliance undermine the EU's credibility and effectiveness. Entrepreneurs indicate that better enforcement and more uniform application of existing rules would be an important contribution to lifting barriers to trade. We believe that, next to enhancing the quality of the Single Market acquis, improving implementation and securing compliance with Single Market rules should remain one of the priorities of any future strategy for the Single Market.

Complement to the aim of ensuring high quality law-making and to bring about desired changes in attitude and behavior, implementation, application and enforcement of Single Market rules should be considered systematically during the entire policy cycle by all EU institutions and Member States. Several tools and mechanisms are already in place to this end, but these tend to be used limitedly and predominantly concentrating on implementation rather than application and enforcement². However, to reap the full benefits of existing tools, an equal focus must be placed on all aspects. This requires close and consistent dialogue between the Commission, the Council and Member States. This could be facilitated by establishing a separate forum designed to deal with enforcement of Single Market legislation, for example a "Task Force for Enforcement of Single Market legislation" and by ensuring a better use of the European Semester in this respect and country-specific recommendations on compliance with Single Market legislation.

The upcoming long-term action plan for the better implementation and enforcement of Single Market rules is a welcome opportunity to outline an ambitious strategy while elevating the agenda to a prime political concern for both the Commission and Member States. Enforcement of Single Market legislation is a joint task, and the political ownership should be increased. To this end, the cosignatory Member States propose the following eight improvements aiming at strengthening implementation, application and enforcement at every stage of the policy cycle:

1. Focus on practical implementation and enforcement of new legislation
2. Consistent and timely use of implementation groups
3. Development of online toolkits supplementing adopted legislative acts
4. Annual state of play and an improved Single Market Scoreboard
5. Filling the gap between SOLVIT and infringement procedures
6. Reestablish the EU Pilot mechanism as an early problem-solving mechanism
7. Strengthen the cooperation on enforcement among authorities of different Member States
8. Strengthen the focus on implementation, application and enforcement in evaluations

¹ The European Commission, DG ECFIN 2019

² Swedish National Board of Trade (2016): In Quest of Compliance - Promoting effective enforcement of the EU Single Market

1. Focus on practical implementation, application and enforcement of new legislation

Before introducing new legislation, difficulties and gaps encountered by citizens and companies in the application of **existing instruments** should be solved. Where new measures are needed, the Commission should focus more on the practical issues concerning the implementation, application and enforcement in its **impact assessments** based on thorough consultations with national authorities in question, businesses, trade unions, civil society organizations and citizens in order to ensure the broadest possible uptake and application of new tools. Rather than merely providing estimates on implementation and transposition costs, impact assessments should set out possible **models for practical implementation and transposition**, supporting the intended objectives of the legislative act while serving as an inspiration, having regard to Member States prerogative of implementing EU Single Market law. Furthermore, impact assessments should set out clear measures (e.g. awareness campaigns or road shows) for both the Commission, Member States and the European Parliament on how to achieve the desired behavioral changes following the adoption of a legislative act. Finally, a much more structured and consistent use of **implementation plans** could be explored, including a stronger focus on transposing regulations. Implementation plans should go beyond timelines and consider actual implementation and enforcement challenges in connection to the adoption of a legislative act. Implementation plans should furthermore be adjusted reflecting the final nature of a legislative act. This process could run simultaneously with the lawyer linguistic screening with the aim of being finalized before publication in the European Official Journal.

2. Consistent and timely use of implementation groups

Implementation groups are an effective tool to coordinate and streamline implementation of EU Single Market law. However, experiences demonstrate that the workflow of implementation groups could benefit from **tighter structures and more open atmospheres**. Essentially, implementation groups should be set up by the Commission in case of complicated legislation or legislation that interacts with other pieces of EU law in the immediate aftermath of the adoption of a legal act and well before the national implementation has begun, with participation of the relevant experts in charge of the implementation. Increased use of **peer review** concerning implementation would be a step forward. Discussions should be based on an open dialogue without the immediate threat of infringement procedures, allowing for informal exchange of views concerning also politically sensitive issues where implementation tends to differ the most. The implementation efforts concerning the Single Digital Gateway and the Geoblocking Regulation could serve as blueprints for future efforts to coordinate implementation.

3. Development of online toolkits supplementing adopted legislative acts

To ease application of EU Single Market legislation and promote rule compliance among workers, citizens and businesses, online toolkits should supplement adopted legislative acts. Such toolkits should include **tailor-made guidelines for both national authorities and economic operators**. Especially, the guidelines for economic operators should be kept concise and operational with a clear focus on how to apply new rules or digital tools from a **user perspective** in a simplified and non-legal language. Furthermore, the toolkit should include information on transposition or implementation in each Member State based on an interactive set-up as has been done with the [Geoblocking Regulation](#). The latter will allow economic operators to find information concerning national transposition specificities, including the contact details of competent authorities while allowing for cross country comparisons. The online toolkits should be made easily accessible and be linked to the Single Digital Gateway. An online toolkit could serve as an entry point to a legal act collecting all relevant information in an easily accessible way, thereby reducing administrative burdens in connection to compliance.

4. Annual state of play and an improved Single Market Scoreboard

A proper annual state of play of the functioning of the Single Market is most desirable. An improved Single Market Scoreboard should be the core of this state of play. The ongoing evaluation of the present Scoreboard is most welcome. Preferably, a revised Scoreboard should contain **information on regulations**, as well as directives. Furthermore, it should also contain more qualitative evaluations, for example on which directives have proven to be problematic to implement in a majority of Member States and what lessons should be learned. This information could be collected by e.g. stakeholder interviews. Adding this information would make sure the Scoreboard provides a more realistic state of the functioning of the Single Market. This state of the Single Market, including the state of implementation and application, and transparency regarding the actions of the European Commission in the area of enforcement should be **discussed in the Council** on an annual basis in order to **stimulate political ownership**. Furthermore, targeted research regarding regulations of which application generally seems to be problematic could be initiated on this basis.

5. Filling the gap between SOLVIT and infringement procedures

The objectives of SOLVIT, namely fostering and promoting better compliance with EU-law through cooperation between centers in every Member States, cannot be achieved by the Member States individually. Due to SOLVIT's cooperative nature, quality for the plaintiff is dependent on the quality of all SOLVIT centers. To that end, Member States and the Commission should ensure sufficient and well-trained staff for SOLVIT to operate effectively. Secondly, the Commission should use SOLVIT-data more systematically and transparently, including but not limited to **follow-up on structural or recurrent cases**. The aim of this should be to identify areas where EU law allows for an undesirable divergence in the application thereof, in order to consider the need for legislative action by the Commission. To deal with the current gap in the options available between SOLVIT and infringement procedures, an extension of SOLVIT's mandate could be examined, making SOLVIT one accessible instrument for reporting problems (**one stop shop**) linked to the Single Digital Gateway. Such extension could make it possible for SOLVIT to deal more thoroughly with cases concerning e.g. Member States' different application of Single Market rules or cases of national rules, which in combination or indirectly constitute a breach of EU law by ultimately requiring e.g. establishment. SOLVIT is in a good position to deal with the aforementioned categories of cases, as it functions as an EU network with liaisons in all Member States. However, the general objective of SOLVIT – to deliver fast and effective solutions to cross border problems encountered by citizens and businesses – should be kept in mind.

6. Reestablish a larger use of the EU Pilot mechanism as an early problem-solving mechanism

The Commission's cooperative as well as coercive measures are crucial elements in improving Member States incentives and capacity for compliance. It is therefore important that the Commission increases its efforts to systematically monitoring Member States' compliance with EU Single Market rules and uses its discretionary power both targeted and objectively as well as in a cooperative manner. To this end, we welcome the approach for the relaunch of the EU Pilot as set out in the discussion paper drawn up for the EU Law Network meeting of December 13 of 2019. Furthermore, we would like to invite the Commission to incorporate the recommendations made by the Member States in their non-paper 'An enhanced partnership between the Member States and the European Commission for a more effective application of EU law' of October 2019 for the relaunch of the Pilot.

7. Strengthen the cooperation on enforcement among authorities of different Member States

Businesses and citizens experience problems with **diverging interpretation and application** of Single Market legislation. In addition, national authorities face challenges in **cooperation with authorities in other Member States**, e.g. in finding the right counterpart, exchange of information and language barriers. Furthermore, in some areas there are European networks, in other areas not. The new Regulation on market surveillance will improve the cooperation among authorities as far as products are concerned on which harmonized (Single Market) legislation applies. In other areas, there is scope for improvement regarding the cooperation among authorities. The European Commission could facilitate this process by **offering platforms and support**. Moreover, the European Commission in cooperation with Member States could initiate a **mapping of the gaps** in the current cooperation, in order to identify possible solutions for improving the existing cross border enforcement cooperation. In working on this, the different ways in which Member States have tasked their authorities for the application of EU Single Market law should be taken into account.

8. Strengthen the focus on implementation, application and enforcement in evaluations

Evaluation of the functioning of EU legislation should be an important part of the Single Market policy cycle. Especially the implementation, application and enforcement should be **evaluated more thoroughly** and based on **experiences of competent authorities and stakeholders** with problematic and divergent implementation. Possible shortcomings or options for improvement should be given a proper follow-up in the **Council** at a political level. Based on the recommendations of the European Court of Auditors of 2018³ there seems to be scope for improvement. The results of evaluations could also feed into the annual state of play of the functioning of the Single Market. Part of this could be smaller, technical or focused evaluations of existing *acquis* to fix problems in practice soon.

Cosignatory Member States:

Belgium, Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Luxemburg, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden.

³ European Court of Auditors, Special report No 16/2018: Ex-post review of EU legislation: a well-established system, but incomplete.