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NOTE

From: Trio Presidency
To: High Level Working Group on Competitiveness and Growth
Subject: Improving enforcement of the Single Market

Delegations will find in Annex a Trio Presidency note on improving enforcement of the Single Market, in view of the meeting of the High Level Working Group on Competitiveness and Growth on 7 November 2019.

IMPROVING ENFORCEMENT OF THE SINGLE MARKET

1. The purpose of this discussion is twofold. Firstly, we want to emphasise the great importance of effective and uniform enforcement of Single Market rules to the growth and competitiveness of the EU as highlighted in the Finnish Presidency's *Vision for a Long-term Strategy on Sustainable Growth*. Secondly, the aim of the discussion is to encourage a lively debate on how to ensure the effective and uniform enforcement and monitoring of such rules so as to create a level playing field for EU businesses and citizens.
2. Moreover, efficient, timely and uniform implementation, application and enforcement of the Single Market is definitely one of the vital elements needed in order to seize future opportunities and meet such challenges as the transition to a climate neutral economy and the rapid adoption of new technologies. This requires an approach that enables the integration of elements and measures from several different policy areas to achieve the best possible outcomes.
3. An effective and well-functioning enforcement system requires a strong commitment from the Commission and from the Member States, better cooperation as well as increased transparency. Therefore, the division of responsibilities between the Commission and the Member States for the enforcement of internal market rules needs to be clearly communicated: the role of the Commission is to take action if a Member State has failed to fulfill its obligations under Treaties. On the other hand, it is the duty of the Member States to intervene in the conduct of businesses if it is contrary to Single Market rules.

4. The EU's Strategic agenda for 2019 -2024 expressly highlights the importance of developing a strong economic base as well as deepening and strengthening the Single Market within the integrated approach. In addition, the Strategic agenda highlights the importance of good governance which depends on the rigorous implementation and enforcement of agreed policies and rules, and which must be closely monitored. A long-term action plan for the better implementation and enforcement of Single Market rules is therefore welcome, as called for in March 2019 **European Council's** Conclusions. Moreover, the Competitiveness Council Conclusions of 27 May 2019 invites the Commission to present an annual report on the current state of Single Market integration and the functioning of the Single Market, including the implementation, application and evaluation of existing legislation.
5. Against this background, it is the time for the HLG to contribute to this debate in order to improve the enforcement of the Single Market rules.

The existing enforcement mechanisms

6. Compliance issues may arise at various stages, from the transposition of Union law into the national legislation to its application by national authorities and the enforcement of EU rules by the national courts.
7. When implementation, application and enforcement is not uniform and effective, this leads to significant problems for companies and citizens, and prevents the Single Market from fully delivering projected benefits. SMEs suffer most since they often lack the means to spend time and money on ensuring that their Single Market rights enforced. Uniform application and enforcement of existing Union legislation would also help to reduce the administrative burden, one of the most cited problems faced by SMEs. Better administrative cooperation and information and good practice between national competent authorities could contribute to reducing the burden.

8. National courts are responsible for ensuring respect of Union law in individual cases. However, the proceedings before national courts can be costly and time-consuming in cases involving Union law, especially if the preliminary ruling from the Court of Justice of the European Union is needed. As a result, private parties may be reluctant to go to court and may find it a lesser evil to comply with national rules, even when those violate their EU rights.
9. As the guardian of the Treaties, the Commission has the power to take action if a Member State has failed to fulfil its obligation under Treaties. Enforcement of Union law via infringement proceedings essentially relies on complaints by private parties or on ex-officio investigations. The Commission has the power to investigate an alleged breach of Union law and, if necessary, to bring the matter before the Court of Justice of the European Union. Only a minority of complaints brought before the Commission are processed. Ex-officio investigations require the Commission to be aware of potential problems and they are resource intensive for the Commission services. However, we need to ensure that serious and the most harmful infringements of Single Market rules are properly examined and sanctioned. This will only be possible if the Commission and the Member States are committed to working together in order to improve conditions for cross-border activities for businesses as well as for citizens.
10. The lack of compliance results in economic shortfalls, such as missed business opportunities and additional transaction costs, or in frustration experienced by citizens in moving to another Member State. It also raises more profound questions of trust between the Member States. Without such trust, Member States would lack incentives to fulfil their EU commitments, which in turn would seriously undermine the functioning of the Single Market. In addition, it is vital that companies and citizens can be confident that their Single Market rights are granted and secured in practice.

Improved enforcement partnership between Member States and the Commission

11. Compliance is a joint responsibility and we thus have to do more to address deficiencies with regard to the correct application of Single Market rules. If we are serious about using the Single Market to the full benefit of our citizens and business, and in particular SMEs, we need to make a fresh start to look at enforcement as a joint task, which is first and foremost in the interest of each and every Member State.
12. There are different possibilities to improve the Single Market enforcement partnership between Member States and the Commission. Better cooperation among national enforcement authorities could ensure more uniform application and enforcement. The Commission could take a facilitative role in setting up networks and providing modern tools for information exchange. In addition, the Commission could also assist Member States on uniform application and enforcement e.g. guidelines.
13. Another possibility could be for Member States to empower specific national authorities to monitor the correct application of EU law of the competent authority in a given Member State, in a partnership approach to complement enforcement by the Commission. Such authorities could be independent and could have the power to initiate proceedings before the national administration or national courts against the competent national authority.
14. There are also examples of independent administrative authorities in specific areas of the Single Market (e.g. in the areas of public procurement, data protection, equality, energy, transport, financial services and consumer protection) who have the role of enforcement authorities and have the power to ensure that the EU and national rules are followed by economic operators and the public sector. Other sectors in which the Member States are required by EU-law to designate the enforcement authority could be considered.

15. The partnership between Member States and the Commission could be enhanced in relation to the Commission's infringement policy. The Commission could make better use of the EU-Pilot mechanism when examining the issues of non-conformity of national legislation with EU-law. This would help solve or better define cases before opening formal infringement procedures. The transparency of the criteria for opening and prioritising infringement procedures could be increased. However, it is important that the Commission uses the infringement procedures and takes appropriate action when needed in order to secure the proper functioning of the Single Market.
16. In anticipation of the long-term Action Plan for the better implementation and enforcement of Single Market rules to be issued by the Commission following the request by the European Council, HLG delegations are invited to discuss the question of how and through which specific measures the Commission and the Member States could contribute to the overall aim of strengthening the enforcement of Single Market rules.

Questions:

1. *What are the most useful current tools for ensuring effective and uniform implementation, application and enforcement of Single Market rules? What kind of enforcement tools work less efficiently?*
 2. *What are the main difficulties encountered by your Member State in the enforcement of Single Market rules? How could the Member States contribute and improve the enforcement of Single Market rules at a national, regional or local level?*
 3. *Could national authorities dedicated to the task of enforcing Single Market rules at national level be a way forward?*
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