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Delegations will find attached document COM(2015) 550 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Upgrading the Single Market: more opportunities for people and business**

{SWD(2015) 202 final}  
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## 1. UPGRADING THE SINGLE MARKET

The Single Market is one of Europe's great achievements. In the past 50 years, it has generated new opportunities and economies of scale for European companies that have strengthened industrial competitiveness, it has created jobs and offered greater choice at lower prices for consumers and it has enabled people to live, study and work where they want. It has contributed to better integrating EU firms into international value chains and strengthening the global competitiveness of European companies.

But the EU and the Single Market need to adapt to a changing environment. Europe is facing economic and social challenges. The economic and financial crisis has tested our economies and created immense social costs. Unemployment remains stubbornly high across Europe, particularly among the young people who should be the heart of Europe's vitality. Low levels of growth have affected people's confidence in Europe. Inadequate levels of investment and obstacles in product and services markets have hampered productivity and the competitiveness of the European economy. Businesses often feel stifled by outdated and excessively burdensome regulations and unable to find the information that they need.

At the same time, innovation and global value chains are generating major new opportunities. Digital technologies are transforming many industrial sectors, leading to more efficient production and new, innovative business models. Manufacturing and services are increasingly being merged into smart and clean business offers that provide greater value added for customers. But this innovation is also challenging traditional business models and established relationships between consumers and business operators.

### 1.1. A deeper and fairer Single Market

The European Commission that came into office in November 2014 is responding to these challenges. It has made increasing jobs, growth and investment its top priority and is pursuing it by deepening the Single Market across sectors and policy areas.

Within a month of taking office, the Commission launched its **Investment Plan** for Europe and the European Fund for Strategic Investments. The plan is already up and running, starting to counter the decline in investment and driving economic recovery. One of the plan's objectives is to create a better business environment for investment by providing greater regulatory predictability and further strengthening the Single Market.

In February 2015, the Commission built on this with the **European Energy Union**, aiming to ensure that consumers and businesses have access to secure, affordable and climate-friendly energy and making the internal energy market a reality across the EU.

In May, the Commission unveiled a **Digital Single Market Strategy** to meet the challenges of the digital economy. A connected digital Single Market will improve access for consumers and businesses to online goods and services while creating the right conditions for networks to flourish and maximising the growth potential of Europe's digital economy.

And last month, the Action Plan on building a **Capital Markets Union** was released. The Action Plan should result in lower costs of borrowing, improved start-up financing and a broader investor base. This will make it easier for Europe's firms to get access to the finance

they need to modernise and expand by linking investors with those who need funding. The Capital Markets Union will make the financial system more stable and increase competition.

We need a Europe that is open to the world and a world that is open to Europe. As outlined in its Communication **Trade for All** adopted earlier this month, the Commission has redesigned its trade and investment policy to make it more effective and more transparent, in tune with our European values. It is working hard to secure an ambitious, fair and effective outcome to the **Transatlantic Trade and Investment Partnership**.

The planned **Circular Economy package** will create new competitive advantages for Europe. It will aim to ensure that valuable natural resources are preserved while boosting competitiveness, innovation and job creation in the design, manufacturing, use, repair and recycling of products, and in waste management.

In order to ensure a fairer Single Market, the EU must also respond effectively to the concerns of people and businesses. They must have the assurance that the Single Market is protecting and empowering them.

People need to be confident that their rights as employees are not undercut. To address those concerns, the forthcoming **Labour Mobility package** will support labour mobility through better coordinated social security systems and a targeted review of the Posted Workers Directive.

People and businesses need to see fairness also in the area of **tax**. It is crucial that companies who benefit from the Single Market are no longer able to exploit differences and loopholes in national tax regimes. The Commission is finalising in-depth investigations on tax rulings in a number of Member States and working to secure the quick implementation of the recently adopted Directive on tax rulings. With the recent Action Plan for fair and efficient corporate taxation, the Commission has rolled out an ambitious programme to ensure that taxes are paid where profits are generated.

Finally, the Commission is taking forward a number of sectoral initiatives relevant for the Single Market. For example, further measures to improve the Single Market for **road transport** will contribute to improved and more competitive transport services. The Commission will consider in particular how the rules on access to the haulage market can be made simpler and more enforceable. It will look at ways to ensure a level playing field for domestic passenger services, greater competition for the hiring of heavy goods vehicles, as well as how to strengthen the enforcement of applicable rules in the sector and ensure adequate working conditions and a level playing field.

Underpinning all these actions, the Commission has made a new start on **better regulation**. By focusing on Europe's real priorities, we are delivering better rules for better results. In many cases, one set of EU rules replaces a patchwork of 28 different national rules, making life easier for citizens and businesses, simplifying the legal framework, reducing regulatory burden across the Single Market and increasing regulatory predictability.

## **1.2. A new Single Market Strategy based on opportunity, modernisation and results**

These measures need to be complemented by a true European Single Market for goods and services.

For all the progress made, too many significant economic barriers remain, notably in the area of services. The Commission estimates that more ambitious implementation of the Services Directive would add 1.8 % of EU GDP.<sup>1</sup>

Barriers to the free exchange of products and services, inadequate enforcement of existing rules, low levels of cross-border public procurement and insufficient political support for structural reforms limit the opportunities for businesses and citizens, resulting in fewer jobs and unnecessarily high prices.

These barriers also affect other policies in key areas, such as transport, telecommunications and energy. They make the EU less attractive for internal and external investments. They stifle innovation and discourage companies from developing new products and services in Europe, from hiring additional staff and from expanding to new markets.

So the Single Market needs to be revived and modernised in a way that improves the functioning of the markets for products and services and guarantees appropriate protection for people. This Strategy aims to achieve that. It is made up of targeted actions in three key areas:

- **creating opportunities** for consumers, professionals and businesses;
- encouraging and **enabling the modernisation and innovation** that Europe needs;
- **ensuring practical delivery** that benefits consumers and businesses in their daily lives.

Its focus is on practical measures helping small and medium-sized enterprises (SMEs) and start-ups to grow and expand, promoting innovation, unlocking investments and empowering consumers. These measures complement a number of sectoral initiatives, such as for example, initiatives improving the functioning and enforcement of the Single Market for road transport. They are underpinned by economic evidence, focussing on the economically most important obstacles. The legislative actions will be subject to further impact assessment work, which will then be the basis for the Commission's final decisions.

## **2. CREATING OPPORTUNITIES FOR CONSUMERS AND BUSINESSES**

### **2.1. Enabling the balanced development of the collaborative economy**

The way many services and assets are provided and consumed is rapidly changing: the collaborative economy, a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms, is developing at a fast pace. The collaborative economy leads to greater choice and lower prices for consumers and provides growth opportunities for innovative start-ups and existing European companies, both in their home country and across borders. It also increases employment and benefits employees by allowing for more flexible schedules, from non-professional micro jobs to part-time entrepreneurship. Resources can be used more efficiently thereby increasing productivity and sustainability.

According to a recent study,<sup>2</sup> the five main collaborative economy sectors (peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing and music video streaming)

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<sup>1</sup> [http://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2012/pdf/ecp\\_456\\_en.pdf](http://ec.europa.eu/economy_finance/publications/economic_paper/2012/pdf/ecp_456_en.pdf)

have the potential to increase global revenues from around EUR 13 billion now to EUR 300 billion by 2025. A third of European consumers say that they will increasingly participate in the collaborative economy.<sup>3</sup>

However, the emergence of new business models often impacts existing markets, creating tensions with existing goods and services providers. Both sides complain of regulatory uncertainty over the application of rules on consumer protection, taxation, licensing, health and safety norms, social security and employment protection. Hasty or inadequate regulatory responses to these challenges risk creating inequality and market fragmentation.

Such difficulties and uncertainty need to be addressed. A clear and balanced regulatory environment is needed that allows the development of collaborative economy entrepreneurship; protects workers, consumers and other public interests; and ensures that no unnecessary regulatory hurdles are imposed on either existing or new market operators, whichever business model they use.

The Digital Single Market Strategy has already kick-started work to analyse the role of platforms, including in the collaborative economy. This initiative will be complemented by other cross-sector studies and active engagement with market operators, consumers and public authorities.<sup>4</sup>

Building on this work, the Commission will issue guidance on how EU law applies to collaborative economy business models and relevant provisions of national law. This guidance will be based on the Services Directive, E-Commerce Directive, European consumer legislation, as well as on relevant treaty provisions. It will consider international best practice and should help Member States and market operators better understand the applicable rules. It will also guide the Commission's enforcement action to ensure that national law does not hinder the development of the collaborative economy in an unjustified manner. The Commission will further assess whether and how any regulatory gaps need to be addressed. It will develop a monitoring framework helping to track the development of the collaborative economy at local, national, company and sector level.

**Actions:** *The Commission will develop a European agenda for the collaborative economy, including guidance on how existing EU law applies to collaborative economy business models. It will assess possible regulatory gaps and monitor the development of the collaborative economy.*

## 2.2. Helping SMEs and start-ups to grow

SMEs are the backbone of the European economy. Yet far too many obstacles remain for SMEs, start-ups and young entrepreneurs looking to grow in the Single Market. Many SMEs cater for a local or regional market. Few consider the EU their home market or set out with pan-European ambition. This limits innovation and job creation.

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<sup>2</sup> Consumer Intelligence Series: The Sharing Economy. PwC 2015, <https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf>

<sup>3</sup> ING International Survey: What's mine is yours - for a price. Rapid growth tipped for the sharing economy. [http://www.economics.com/ing\\_international\\_survey/sharing\\_economy\\_2015](http://www.economics.com/ing_international_survey/sharing_economy_2015)

<sup>4</sup> A public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy was launched in September 2015.

In particular, SMEs complain about:

- the complexity of VAT regulations;
- uncertainties over company law;
- understanding and complying with regulatory requirements;
- a lack of access to finance;
- the fear of punitive bankruptcy laws;
- barriers to innovation.

The Commission is determined to address key difficulties that SMEs – start-ups in particular – face in all phases of their lifecycle.

Many entrepreneurs complain about the **complexity of VAT regulations** when looking to operate cross-border. In the Digital Single Market Strategy, the Commission announced a legislative VAT simplification measure to help small e-commerce businesses in particular to operate cross-border. In addition, the Commission will bring forward, as part of its Action Plan for a fraud-proof VAT system, a comprehensive simplification package for SMEs, with the intention of reducing the administrative burdens experienced by such businesses. This is critical for their growth and will enable cross-border trade.

Entrepreneurs also complain about **uncertainties surrounding company law**. The Commission's Single Member Company proposal, which should be adopted by the co-legislators without delay, will reduce the costs of company registration and simplify procedures. Building on this initiative, the Commission will consider further ways of achieving simpler and less burdensome rules for companies — while continuing to act against letterbox companies — including making digital solutions available throughout a company's lifecycle, in particular in relation to their registration and to the filing of company documents and information.<sup>5</sup> In light of the great difficulties which small companies, in particular, face when carrying out cross-border operations, the Commission will also examine the need to update the existing rules on cross-border mergers<sup>6</sup> and the possibility to complement them with rules as regards cross-border divisions. This could make it easier for SMEs to choose their preferred business strategy and better adapt to changes in market conditions, without weakening social and employment protection.

Start-ups also find it difficult to **identify and meet regulatory requirements**. This is why the Commission, when considering policy solutions or evaluating legislation, is paying particular attention to rules that affect SMEs, starting from the principle 'think small first'.<sup>7</sup> Member States have been working on the creation of 'one-stop-shops' to provide information on all the regulatory requirements that anyone starting a business in any sector of the economy will encounter. To complement these efforts, the Commission will launch a Start-up initiative to engage all relevant players, including entrepreneurs, start-up communities, social partners and regional and national authorities, with the aim of improving the environment for start-ups in Europe. As part of that initiative, it will organise a public consultation to get the ideas of entrepreneurs. The Commission can also benefit from the 'REFIT Platform'<sup>8</sup> to provide ideas to inform its decisions. It will examine in conjunction with stakeholders how the Single

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<sup>5</sup> Possible solutions would seek to achieve these objectives through legislative and/or non-legislative measures, but without relating to any particular type of company.

<sup>6</sup> See Directive 2005/56/EC on cross-border mergers of limited liability companies.

<sup>7</sup> See the Commission's Better Regulation Guidelines, SWD(2015) 111.

<sup>8</sup> [http://ec.europa.eu/smart-regulation/better-regulation/key\\_docs\\_en.htm](http://ec.europa.eu/smart-regulation/better-regulation/key_docs_en.htm)

Digital Gateway, initiated as part of the Digital Single Market Strategy, can best address the requirements of start-ups. Together with the participants of the Start-up initiative, the Commission will develop specific features for the Gateway to facilitate the cross-border operations of start-up companies and help them to scale up across Europe.

SMEs and start-ups also find it difficult to **secure funding**. SMEs have already been placed at the heart of the Investment Plan for Europe. For instance, a quarter of the European Fund for Strategic Investments (EFSI) guarantee will be used to support innovative SMEs and midcaps, to ensure more and faster access to risk finance for start-ups.<sup>9</sup> In addition, the Capital Markets Union is taking forward a range of measures in support of venture capital and risk capital financing in the EU. In this context, the Commission will bring forward proposals for a European venture capital fund of funds, supported by the EU budget and open to others in order to attract private capital, in line with the Investment Plan. The fund would be dedicated to promoting the creation and the upscaling of start-ups in the Single Market.

In addition, several EU funding programmes, such as Horizon 2020, COSME and the European Structural Investment Funds, include initiatives supporting SMEs and start-ups.<sup>10</sup> EU programmes also finance advice and support for SMEs and start-ups for their funding options and cross-border operations.<sup>11</sup> The Commission will use COSME funds for information campaigns targeting young innovative SMEs to encourage them to expand cross-border and make use of the possibilities.

The effects of **bankruptcy** also deter people from entrepreneurial activity. The fear of the social stigma, legal consequences and the inability to pay off debts is stronger in Europe than in many other parts of the world, for example because of much longer debt discharge periods. This is a significant disincentive for entrepreneurs to start up a business. Entrepreneurs need to know that they will have a **second chance**. Building on existing work,<sup>12</sup> the Commission will support *bona fide* entrepreneurs and put forward a legislative proposal on business insolvency, including early restructuring and second chance,<sup>13</sup> to ensure that Member States provide a regulatory environment that is able to accommodate failure without discouraging entrepreneurs from trying new ideas.

There are also **barriers to innovation**. The Commission Better Regulation framework sets out the tool needed to assess the possible impacts on innovation of new policy proposal and to identify existing barriers and possible ways to remove them. The REFIT platform can contribute advice on issues identified in the course of its work. In this context, the

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<sup>9</sup> The EU financing instruments for start-ups and SMEs include EFSI and InnovFin (EU Funding for Innovators), which have a strong risk finance aspect for innovation, in part due to their links to Horizon 2020. The SME Initiative - ESIF and Horizon 2020/COSME (EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises) - via the European Investment Bank (EIB) Group, provides uncapped guarantees for loans to SMEs and small midcaps; ESIF also supports a great number of incubators and is trying to motivate regions to cooperate across Europe in investing in smart specialisation and into key enabling technologies (KETs).

<sup>10</sup> These initiatives help leverage finance for companies through loan guarantees and risk finance in collaboration with the EIB Group. Their aim is to assist the establishment and expansion of innovative start-ups and SMEs by de-risking private investment and creating a more enabling ecosystem. This includes support for incubators at regional level and the strategic cross-border connection of value chains as a priority in the context of smart specialisation.

<sup>11</sup> For example, via the Enterprise Europe Network.

<sup>12</sup> Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency, C(2014) 1500.

<sup>13</sup> Cf. also the Capital Markets Union Action Plan, COM(2015) 468.



Commission will also seek to identify innovative markets where innovative regulatory approaches could be piloted to verify the feasibility and sustainability of innovative solutions and their ability to contribute to stimulating investment and hence job creation.

Europe would also benefit from **attracting** more **innovators** from the rest of the world. As highlighted in the European Migration agenda,<sup>14</sup> rules on attracting entrepreneurs, combined with support measures helping them to operate in the Single Market, could make Europe a more attractive destination for innovators from outside the EU. This could boost the creation of start-ups in Europe.<sup>15</sup>

**Actions:** *The Commission will put forward a legislative proposal on business insolvency, including early restructuring and second chance, to address fear of failure and make sure that entrepreneurs have a second chance. It will aim to further remove administrative burdens to the starting and scaling-up of companies' activities, including through initiatives to facilitate the use of digital technologies and cross-border mergers and divisions. The Commission will launch a Start-up initiative, to initiate a broad assessment of requirements for start-ups and*

*ways to reduce such requirements and, where this is not possible, to facilitate compliance. This will include the development of specific features for the Single Digital Gateway to facilitate the cross-border operations of firms, in particular of start-up companies. The Commission will use COSME funds to provide targeted information to encourage young innovative SMEs to expand cross-border and make use of the possibilities offered by the Single Market. Through the Investment Plan and the Capital Markets Union, the Commission will ease access to finance for entrepreneurs in Europe. The Commission will ask the REFIT platform to focus on barriers to innovation and discuss how they can be removed or reduced. Finally, the Commission will examine further possible measures to help attract innovators, such as the possible extension of the Blue Card approach to entrepreneurs.*

### **2.3. Making the market without borders for services a practical reality**

The 2006 Services Directive led to a welcome modernisation of the economy across a variety of sectors. Member States adopted more than a thousand measures abolishing unjustified barriers to the provision of services by businesses and professionals.

Despite this, businesses and professionals still face too many difficulties operating across borders. They are hindered by differences — and sometimes inconsistencies — in the regulation of professions and 'reserved activities' across the EU, unnecessary regulatory barriers to the provision of services and a lack of clarity and predictability in certain key sectors for those who want to provide a service in other Member States.

Addressing the most problematic restrictions would have a positive impact on entrepreneurship and employment, lead to lower prices and a more effective resource allocation in Europe. This means acting on both professions and service provision.

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<sup>14</sup> COM(2015) 240.

<sup>15</sup> Entrepreneurs from non-EU countries have great potential for innovation and job creation. OECD (2011) figures show that migrants from non-EU countries are more likely to start a new business (13.5 % self-employed versus 12.6 % for those born in the country) and contribute to job creation (foreign-born self-employed people who own a small or medium firm create between 1.4 and 2.1 additional jobs).

**Professional services** generate 9 % of EU GDP and regulated professions accounted for around 20 % of the EU labour force.<sup>16</sup> Professional services are strongly connected with other sectors.<sup>17</sup> A more competitive and efficient professional services sector would therefore help industrial competitiveness and the economy as a whole.<sup>18</sup>

Today, Europe has over 5 000 regulated professions,<sup>19</sup> involving over 50 million people. While regulations on the access and exercise of these professions were designed to protect both public interest and the beneficiary of the service provided, many of these regulations are now disproportionate and create unnecessary regulatory obstacles to the mobility of professionals, lowering productivity.

Recent studies<sup>20</sup> show that reforms implemented by a number of Member States to further open regulated professions led to job creation and better prices for consumers.<sup>21</sup>

At EU level, the Services Directive prohibits a number of regulations and requires Member States to evaluate whether others are justified and proportionate. The Professional Qualifications Directive<sup>22</sup> aims to facilitate the mobility of professionals across the European Union, provides the legislative framework to facilitate the mutual recognition of professional qualifications and organises a process between Member States and the Commission to evaluate the regulation of professions at national level. In recent years, Member States have engaged in a reform process that has relaxed or removed a number of regulatory barriers.<sup>23</sup>

However, the mutual evaluation exercise carried out in the last two years further to the revision of the Professional Qualifications Directive has shown that regulation of similar professions varies substantially between Member States, as do reserves of activities.<sup>24</sup>

The Commission will therefore propose, through periodic guidance, specific actions to improve access to, and the exercise of, regulated professions at national level and across the

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<sup>16</sup> Measuring the prevalence of occupational regulation, a survey and a study contracted by the Commission in 2014, 2015, publication forthcoming.

<sup>17</sup> Canton E., Ciriaci D. and Solera I., 'The Economic Impact of Professional Services Liberalisation', European Economy, Economic Papers 533, 2014.

<sup>18</sup> *Ibid.*

<sup>19</sup> European Database of Regulated Professions:

[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?fuseaction=home.home](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home)

<sup>20</sup> Koumenta M., Humphris A., 'The Effects of Occupational Licensing on Employment, Skills and Quality: A Case Study of Two Occupations in the UK', Queen Mary University of London; Pagliero M., 'The effects of recent reforms liberalising regulated professions in Italy', University of Turin & Carlo Alberto College; Athanassiou E., Kanellopoulos N., Karagiannis R., Kotsi A., 'The effects of liberalisation of professional requirements in Greece', Centre for Planning and Economic Research (KEPE), Athens; Rostam-Afschar D., 'Regulatory Effects of the Amendment to the HwO in 2004 in German Craftsmanship', Free University Berlin and German Institute for Economic Research (DIW Berlin) — studies commissioned by the European Commission in 2014. (Publication forthcoming at [http://ec.europa.eu/growth/single-market/services/free-movement-professionals/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/index_en.htm)).

<sup>21</sup> For example, reforms of services of legal professions, accountants, tax consultants, real estate agents and physiotherapists as well as more innovative services. See Athanassiou E. et al, *ibid*, study commissioned by the European Commission in 2014 (publication forthcoming).

<sup>22</sup> Directive (EU) 2013/55 of 20 November 2013, due to be implemented by Member States by 18 January 2016.

<sup>23</sup> For example, most compulsory tariffs have been abolished and replaced by market prices.

<sup>24</sup> Justification and proportionality considerations can differ for a single activity, with some Member States stating clearly the ability to rely on the functioning of the market and general legislation (e.g. in the case of consumer protection), whereas others argue for stringent professional regulation.

EU. These actions will identify concrete reform needs for specific Member States.<sup>25</sup> This exercise will consider all issues relating to access to and the exercise of regulated professions.

In a first phase, the focus will be on selected professions in priority sectors.<sup>26</sup> In a second phase, the reforms will be evaluated and the remaining barriers will be addressed.<sup>27</sup> As appropriate, depending on the Member State and subject to an individualised prioritisation assessment, reform priorities will be addressed in the context of the European Semester process.

The Commission will also set out an analytical framework for Member States to use when reviewing existing professional regulations or proposing new ones. This framework will contain a methodology for comprehensive proportionality assessments of professional regulations. Member States will need to demonstrate that public interest objectives cannot be achieved through means other than limiting access to, or conduct in, the professional activities in question.

Finally, the mutual evaluation exercise will also help modernise the legal framework in this area by addressing problems arising from differing legal form, shareholding requirements and multidisciplinary restrictions that apply to certain business services. The Commission will propose, possibly as part of the service passport initiative, legislative action to address regulatory barriers such as diverging legal form, shareholding requirements and multidisciplinary restrictions in key business services<sup>28</sup> and, if appropriate, organisational requirements in construction companies.<sup>29</sup>

On **services more generally**, access to reliable information on applicable requirements is often a barrier, notably for cross-border service providers. Equally, construction service providers are sometimes confronted with certain requirements relating to their organisation in their home state that make offering their services cross border too complex. Insurance requirements are often difficult to comply with for business services and construction service providers and need to be addressed.

A legislative initiative will therefore be proposed for cross-border service providers, in particular for the construction and business services sectors. Under this initiative, harmonised forms would enable service providers to notify to host countries, in one place, the information required under that country's legislation for the service provider to be able to provide services across borders in that country. This will ensure that businesses have full certainty on the requirements applicable in each Member State in key areas<sup>30</sup> for the cross-border provision of services. It will also provide additional certainty for consumers. These requirements will include notifications on posted workers, professional qualifications and other requirements to

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<sup>25</sup> Based on the ongoing process of mutual evaluation, academic studies, a large scale survey and the updated database of regulated professions.

<sup>26</sup> E.g. civil engineers, architects, accountants, lawyers, real estate agents, tourist guides and patent agents.

<sup>27</sup> Based on reports to be submitted by Member States every two years.

<sup>28</sup> For instance, firms dealing with accounting, architecture and civil engineering services, all of which are highly relevant for industry.

<sup>29</sup> For example, requirements to employ a certain number of architects or engineers or have certain equipment available, irrespective of actual works to be undertaken.

<sup>30</sup> In full compliance with the existing EU legal framework.

the extent they are compatible with Article 16 of the Services Directive and Article 9 of the Posted Workers Enforcement Directive.<sup>31</sup>

This will enhance the cooperation between home and host Member States in supporting service providers going cross-border. Upon request, the authorities of the home Member State will issue a **services passport** to help them demonstrate that they satisfy the requirements applicable to them in the Member State where they want to provide their service.<sup>32</sup>

In line with the ‘once only’ principle, the services passport will eliminate the need for multiple requests for information and documentation already provided to the home Member State, through the creation of a ‘common electronic repository’ of documents by the home country administration upon the request of a service provider. In combination, the harmonised notification form and the electronic document repository would ease compliance with existing *ex ante* notification and control requirements.

**Actions:** *The Commission will launch a legislative initiative introducing a services passport with a harmonised notification form and an electronic document repository to increase certainty and reduce barriers for service providers who want to access other EU markets in order to expand their activities. It will further improve access to professional services at national and EU level by issuing periodic guidance that identifies concrete reform needs for specific Member States and professions that have unjustified regulations. The Commission will also propose an analytical framework for Member States to use when reviewing existing regulations or proposing additional ones. Finally, the Commission will propose legislative action to address regulatory barriers, such as diverging legal form and shareholding requirements, as well as multidisciplinary restrictions for key business services and, if appropriate, organisational requirements in construction companies. The Commission will review market developments and, if necessary, take action in connection with insurance requirements for business and construction service providers.*

#### **2.4. Addressing restrictions in the retail sector**

Retail and wholesale activities are one of the largest services sectors in Europe, accounting for 9.6 % of value added and 13.1 % of total employment in 2012. From 2010 to 2012, productivity growth in the sector was flat in the EU compared to a growth of 3.9 % in the US. Recent studies<sup>33</sup> conclude that restrictive regulations create significant barriers to entry, leading to fewer new outlet openings for most store formats, hampering competition and leading to higher prices for consumers. Even with the development of e-commerce, this will remain an issue because a physical presence is often important for building consumer trust and confidence.

The responsibility to regulate the establishment and operation of the retail sector lies primarily with Member States. Regional and local rules also tend to play an important role. To comply with the fundamental Treaty freedom of establishment, these regulations must

<sup>31</sup> Although it is related to issues covered by the Services Directive or the Posted Workers Enforcement Directive, the passport will not alter the content of these Directives, nor eliminate the fact that access to activities is reserved to individual professionals holding the necessary professional qualification.

<sup>32</sup> The Member State where a service provider wants to provide its services will remain responsible for defining these requirements, as long as these requirements comply with the relevant provisions of EU law.

<sup>33</sup> Holland van Giizen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment – forthcoming; Commission internal analysis, 2015.

however be justified by public policy objectives such as environmental protection, town and country planning or consumer protection. They must be appropriate and proportionate to the objectives pursued. The peer review<sup>34</sup> on retail establishment showed that retailers often face disproportionate and inappropriate establishment conditions and procedures.

Member States have a margin of discretion in regulating the retail sector, but must not unduly restrict the Single Market freedoms. Member States should assess and modernise, as necessary, their retail markets, taking inspiration, where relevant, from well-functioning and less disruptive solutions developed in other Member States.

The Commission will therefore set out best practices on retail establishment and operational restrictions in the Single Market, in full compliance with the subsidiarity principle and legitimate public policy objectives pursued by Member States. In doing so, the Commission will support Member States in giving consumers the choice they deserve. This initiative will also provide guidance about the Commission's priority setting for enforcement action with respect to restrictions in the retail sector.

***Actions:*** *The Commission will set out best practices for facilitating retail establishment and reducing operational restrictions in the Single Market. These will provide guidance for Member State reforms and priority-setting for enforcement policy in the retail sector.*

## **2.5. Preventing discrimination of consumers and entrepreneurs**

The rise of online trade and increased travel between Member States, has led to new business opportunities for entrepreneurs and access to a wider range of offers in goods and services for consumers.

Yet, too often they find themselves discriminated against on the basis of their nationality or place of residence. The Commission and European Consumer Centres regularly receive complaints from consumers who are denied access to cheaper websites, offers or discounts. They are often faced with higher prices or have difficulty obtaining the same service as local customers. Such practices concern a vast array of goods and services, ranging from amusement park tickets to utility charges.

While different access, prices or sales conditions can be the result of objective differences (e.g. in delivery costs or justified legal requirements), they are often motivated by unjustified market fragmentation strategies on a territorial basis.

This goes against the very idea of the Single Market. It leads to lower consumer trust and greater reluctance to shop cross-border, be it in person or online. The lost opportunities for businesses and for the European economy go far beyond the individual purchase from which the individual trader may pocket higher profits.

Article 20 of the Services Directive<sup>35</sup> already prohibits all types of unjustified territorial restrictions,<sup>36</sup> but sets only general principles which have not always prevented discriminatory

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<sup>34</sup> The peer review of the regulatory frameworks applicable to retail establishment was carried out throughout 2014-2015.

<sup>35</sup> Directive 2006/123/EC of 12 December 2006.

<sup>36</sup> European companies offer their goods and services throughout the EU. They cannot be subject to different treatment because of their nationality, place of establishment or location. In the same way, discrimination of

practices on the ground. Further action is therefore necessary to give effect to these principles and develop concrete rules against discrimination based on the nationality or place of residence of market participants.

In its Strategy for a Digital Single Market,<sup>37</sup> the Commission has already announced legislative proposals by mid-2016 to end unjustified geo-blocking. This is reflected in the Conclusions of the European Council of June 2015.<sup>38</sup> As part of its broader efforts for a fairer Single Market, the Commission aims to fight comprehensively all forms of unjustified discriminatory treatment for purchasers based in different Member States, irrespective of whether they are applied in direct sales or via distribution channels and regardless of the way they take place or the technology used.

In September, the Commission launched a public consultation on geo-blocking and other geographically-based restrictions when shopping and accessing information in the EU.<sup>39</sup> Its outcome will provide important insights for the Commission's forthcoming legislative action, which will address geo-blocking and other forms of discriminations by market operators on the grounds of place of residence or of nationality. They must go hand in hand with strengthened enforcement in each Member State, which, as announced in the Digital Single Market Strategy, must be further enhanced through the reform of the Consumer Protection Cooperation Regulation.

***Actions:*** *In line with its geo-blocking initiative in the Digital Single Market Strategy and as part of a comprehensive approach to further increase fairness in the Single Market, the Commission will take measures — both legislative and enforcement actions — to fight unjustified different treatment of customers on the basis of residence or nationality in terms of access, prices, or other sales conditions by: identifying and banning specific forms of residence-based discrimination not grounded on objective and verifiable factors; making it easier for consumers and consumer associations to know if and how there is discrimination, including through the use of transparency tools; and improving enforcement by national authorities through the reform of the Consumer Protection Cooperation Regulation.*

### 3. ENCOURAGING MODERNISATION AND INNOVATION

#### 3.1. Modernising our standards system

Standards are crucial for innovation and progress in the Single Market: they increase safety, interoperability and competition and help remove trade barriers. They are essential for European competitiveness. Over the past decades, the European Standardisation System has greatly contributed to this success. A recent study from the UK<sup>40</sup> shows that the use of standards contributed over 28 % to UK productivity growth, while the benefit to companies in

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consumers on the basis of their nationality, residence or location can have no place in a true European single market. Only objective and verifiable circumstances may justify applying different prices and conditions to customers just because they happen to live in a different Member State.

<sup>37</sup> COM(2015) 192.

<sup>38</sup> The June 2015 European Council Conclusions call on the Commission to take action to 'remove the remaining barriers to the free circulation of goods and services sold online and tackle unjustified discrimination on the grounds of geographic location'.

<sup>39</sup> See <https://ec.europa.eu/eusurvey/runner/geoblocksurvey2015/>

<sup>40</sup> British Standards Institution (BSI), 'The Economic Contribution of Standards to the UK Economy', 2015.

general from the use of standards is valued at up to 5 % of their annual turnover. The success has been possible due to a unique public private partnership between the European regulator and European standardisation community.

But the standardisation process faces challenges from the changing nature of the economy and diversification of business models, the ever-increasing role of information and communication technology, and the growing importance of services in today's global value chains, where goods and services are increasingly provided together in a package.

The European Standardisation System needs to be up to these challenges, producing timely and market-driven standards in an inclusive way and consolidating Europe's leadership in international standardisation. European standards need to support EU policies and for digital innovations, they need to offer increased security and interoperability. This is why the Digital Single Market Strategy launched an integrated standardisation priority plan with a focus on ICT technologies and a review of the European interoperability framework.

More generally, this means modernising the existing partnership. The Commission will therefore propose a 'Joint initiative on Standardisation' between the Commission, the industry concerned, European standardisation organisations and the standardisation community in general. The Joint initiative will aim to speed up and better prioritise standard setting across the board. Following discussion with stakeholders, the Joint initiative could be agreed in early 2016.

In addition, there remains significant untapped potential from the development and use of voluntary European service standards to address servicification and deliver an integrated European services market.<sup>41</sup> Such standards could reduce costs and market fragmentation yet currently account for only 2 % of all EU standards. Drawing on the successful experience acquired for products, the Commission will issue dedicated guidance, exploring the issues, including ensuring that such standards are demand-led and adopted where they are most needed.

***Actions:*** *To modernise our standardisation system, the Commission will propose and agree a 'Joint initiative on Standardisation' with the European standardisation community. It will also issue dedicated guidance on service standardisation. This will give businesses and consumers confidence in cross-border services and enhance cross-border trade.*

### **3.2. More transparent, efficient and accountable public procurement**

Public procurement represents around 19 % of EU GDP, with over EUR 2.3 trillion being spent each year by public authorities and utilities. In 2014, the EU adopted a major overhaul of the EU procurement framework, simplifying procedures, making the rules more flexible and adapting them to better serve other public sector policies, in particular innovation. This was aimed at making public procurement more efficient and strategic, fulfilling the principles of transparency and competition to the benefit of both public purchasers and economic operators, in particular SMEs.

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<sup>41</sup> As discussed in Section 2.3 above.

But the EU can and must go further. Procurement is still often carried out without the necessary business skills, technical knowledge or procedural understanding, leading to a lack of compliance and negative consequences for both businesses and taxpayers.

A key challenge is the lack of available data and analytical tools that would allow problems or irregularities to be prevented or detected. Furthermore, the way in which national review systems operate can vary considerably, in particular as regards the length of the procedure. There are also significant differences in the level of fees and litigation costs. Finally, data on complaints are not collected in a structured manner.

Another challenge is that, for large-scale infrastructure projects in particular, the complexity and duration of the procurement process also often lead to delays. Nine out of ten large-scale infrastructure projects do not go according to plan: cost over-runs of up to 50 % are common. Delays are also common in all stages of the process, from planning to project implementation and contract execution.

Based on data available, projects over EUR 700 million generally take substantially longer to contract than other procedures<sup>42</sup> and the reason is not due to longer time-to-tender. If the average duration of a typical procedure (from the dispatch of the invitation to tender to the award of the contract) is three and a half months, for large-scale infrastructure projects it is approximately 25 months, rising to 35 months for negotiated procedures.

The Commission will therefore take a number of initiatives. It will seek to facilitate the collection, consolidation, management and analysis of procurement data, supporting Member States' efforts towards better governance in public procurement. Building on the policies already in place, such as eProcurement, the Commission will foster the development of tools for improved data quality and availability by streamlining existing data gathering mechanisms and supporting the creation of contract registers. It will also promote the development of data analytics tools, in particular to detect anomalies in the procurement process.

The Commission will also seek to improve the effectiveness, efficiency and transparency of the procurement remedies system under the Remedies Directives.<sup>43</sup> These Directives aim to ensure that procurement decisions are reviewed effectively and as quickly as possible. Review procedures are available in all Member States and are widely used by economic operators.

The Commission will encourage first instance review bodies to cooperate and network to improve the exchange of information and best practice. Particular attention will be paid to the strengthening of the specialised first instance administrative review bodies. The Commission will also improve the monitoring of effectiveness of the national review systems through regular assessment, including through the Single Market Scoreboard. This will be complemented by a REFIT evaluation report of the Remedies Directives.

In addition, the Commission will offer Member States the possibility of receiving assistance and advice on the legality of the procurement aspects of projects they intend to launch. Such assistance will be based on a voluntary *ex ante* assessment mechanism for infrastructure projects whose total value equals or exceeds EUR 700 million.

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<sup>42</sup> The duration for the large-scale projects is calculated based on TED data for contracts awarded between 2010-2014, the calculations for a typical project come from European Commission, 'Impact and Effectiveness of EU Public Procurement Law', Commission Staff Working Paper, SEC(2011) 853.

<sup>43</sup> Directive 2007/66/EC of 11 December 2007.



A specific procedure will be developed to allow procurement authorities to obtain a Commission opinion on the compatibility of the envisaged tender procedure with EU procurement rules on the basis of the notification of the project. This notification should include information on the project, together with any relevant documents, including the draft tender documents. The Commission will deliver its opinion within a timeframe which should in principle not exceed three months following the notification of the project. It will take stock of this experience in due course to see whether it is delivering according to needs and expectations.

***Actions:*** *The Commission will set up a voluntary ex ante assessment mechanism of the procurement aspects of certain large-scale infrastructure projects. It will encourage Member States to improve the review of procurement decisions by promoting networking between first instance review bodies, providing special legal and technical assistance to Member States willing to create or strengthen specialised first instance administrative review bodies and improving the monitoring of effectiveness by regular assessment including through the Single Market Scoreboard. The Commission will work with Member States to improve the transparency and quality of national procurement systems through better data, by the establishment of contract registers covering the whole life cycle of contracts and by supporting the development and deployment of a data analytics and anomaly-detection tool to better uncover existing or prospective procurement irregularities.*

### **3.3. Consolidating Europe’s intellectual property framework**

Intellectual property-intensive sectors account for 39 % of GDP and for 35 % of jobs in the EU and are a force for innovation. There has been great progress with regard to intellectual property protection in Europe, particularly through the recent adoption of the Unitary Patent system<sup>44</sup> and the modernisation of the trademark *acquis*.

The Unitary Patent system will play an essential role in enabling innovation<sup>45</sup> in the participating Member States.<sup>46</sup> Europe is now on the cusp of making this patent a reality and establishing the European patent specialised court for which the industry has been calling for decades. However, the key challenge now is to get the endgame right, including addressing uncertainties over how the Unitary Patent will work together with national patents and national supplementary protection certificates (SPC) granted under the SPC regime and the possible creation of a unitary SPC title.

The supplementary protection certificate is critical for producers of pharmaceuticals, medical equipment, animal health products and crop treatment products, but also for new sectors that are likely to require market authorisation for their products.

A unitary SPC title would bring enhanced certainty to industries whose products are subject to regulated market authorisations. More specifically, a unitary SPC title would improve

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<sup>44</sup> The unitary patent is a legal title that will provide uniform protection across the EU on a one-stop-shop basis, providing huge cost advantages and reducing administrative burdens. The package will also set up a Unified Patent Court that will offer a single, specialised patent jurisdiction.

<sup>45</sup> The full implementation of the Unitary Patent will lead to a gain of 0.25 % in EU GDP. The potential gains for individual Member States vary, but could exceed 1 % of GDP in certain Member States.

<sup>46</sup> On 30 September 2015, the Commission adopted a Decision confirming the participation of Italy in the enhanced cooperation on unitary patent protection in the EU. This has brought the total number of participating Member States to 26, with Croatia and Spain not participating.

transparency and certainty on the protection of medicines. This would make it easier both for manufacturers of novel and generic/biosimilar medicines to invest, and for Member States to optimise their health budgets, resulting in an improvement of patients' access to medicines.

To strengthen EU-based manufacturing and competitiveness in industry sectors whose products are subject to regulated market authorisations, the Commission will explore a recalibration of certain aspects of patent and SPC protection. An SPC manufacturing waiver could allow the European generic and biosimilar medicines industries to create thousands of high-tech jobs in the EU and many new companies.<sup>47</sup> An update of the scope of the EU patent research exemption would lead, among other things, to a smooth supply of active pharmaceutical ingredients throughout the Single Market.

The EU and its Member States also need to step up their support for SMEs to be able to take full advantage of protecting their investments. A recent study by the Office for Harmonization in the Internal Market (OHIM) has shown that only 9 % of SMEs in Europe own intellectual property rights, but that - on average - those SMEs that do own such rights generate 32 % more revenue per employee than those that do not.<sup>48</sup> As a follow-up to the 2014 action plan on the enforcement of intellectual property rights (IPR),<sup>49</sup> the Commission will help smaller firms to more effectively secure, manage and enforce intellectual property rights by better coordinating information availability and financial assistance programmes. The Commission will also take work forward on how to make the most of Europe's traditional know-how and follow up on the public consultation on the protection of non-agricultural geographical indications.

Finally, as announced in the Digital Single Market Strategy for Europe, the Commission will review the IPR enforcement framework, to respond to the increasingly cross-border nature of infringements. It will favour a 'follow the money'<sup>50</sup> approach to deprive commercial-scale infringers of their revenue flows, since it is these IPR infringements that do the most harm to the EU economy. In line with the objectives of this Strategy, specific attention will be paid to SMEs, with a view to helping them enforce their intellectual property rights.

***Actions:*** *The Commission will come forward with initiatives to consolidate and modernise the intellectual property framework, including measures to support the use of intellectual property by SMEs. It will consult, consider and propose further measures, as appropriate, to improve the patent system in Europe, notably for pharmaceutical and other industries whose products are subject to regulated market authorisations. As announced under the Digital Single Market Strategy, it will review the EU intellectual property enforcement framework in 2016, supporting a 'follow the money' approach to commercial-scale infringements.*

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<sup>47</sup> Vanda Vicente and Sergio Simoes, 2014, Manufacturing and export provisions: Impact on the competitiveness of European pharmaceutical manufacturers and on the creation of jobs in Europe.

<sup>48</sup> OHIM, 'Intellectual property rights and firm performance in Europe: an economic analysis', Firm-Level Analysis Report, 2015.

<sup>49</sup> COM(2014) 392.

<sup>50</sup> Rather than penalising the citizen for infringing – often unknowingly – IP rights, a 'follow the money approach' is seeking to deprive commercial scale infringers of the revenue flows that draw them into such activities.

## **4. ENSURING PRACTICAL DELIVERY**

### **4.1. A culture of compliance and smart enforcement**

Effective compliance is essential to deliver the opportunities and benefits of the Single Market. In mid-2015, around 1 090 infringement proceedings were pending in the area of the Single Market.<sup>51</sup> On average, national administrations, with the help of the Commission, need almost 30 months to resolve an infringement proceeding. In addition, many people and companies are still unaware of the possibilities available to them with regard to having their rights respected. All this weakens the Single Market and lowers people's confidence. This needs to change.

Changing this means pursuing a holistic approach, covering all stages of policy-making from policy design, implementation, to information, in line with the Better Regulation approach. This includes better integration of evaluation and enforcement aspects in policy design, better assistance and guidance to Member States in the implementation of Single Market rules and a more consistent and efficient enforcement policy aimed at improving overall compliance with Single Market rules and EU law in general. The Commission is determined to bring this about.

To deliver this, the Commission is relying on its Better Regulation guidelines and promoting an enhanced partnership with Member States through a number of initiatives, such as implementation plans for major new legislation; compliance dialogues with each Member State on a yearly basis; and using a comprehensive array of compliance-promoting tools.<sup>52</sup> The Commission will step up its efforts to carry out systematic compliance checks of national legislation. It will also seek to develop a data analytics tool, which could help to better detect non-compliance.

The Commission will also draw up and apply sectoral strategies to streamline the monitoring system of the application of EU law. Following the 2012 Communication on Better Governance for the Single Market, a number of enforcement measures have been taken to make swift progress on key areas for growth. This Strategy has delivered some positive results. Based on the lessons learned from this exercise, the Commission will reflect on the possibility of further expanding the scope of sectors subject to these measures.

The Commission will in particular propose a regulatory initiative on a market information tool for the Single Market, enabling it to collect information from selected market players. The ability to obtain timely, comprehensive and reliable quantitative and qualitative information from selected market players will improve the Commission's ability to monitor and enforce EU rules in priority areas. It will also help the Commission to propose improvements where evaluation shows that enforcement deficits are due to flaws in the relevant sectoral legislation. This new tool would only be used once a proper screening of all available information has been conducted, showing the need to gather directly from market players comprehensive and reliable information on companies' market behaviour, and having regard to best practice with regard to Member States' existing practices affecting the proper functioning of the Single Market. On the basis of this, the Commission will publish a report, taking into account the confidential nature of some of the information collected. The new

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<sup>51</sup> [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/infringements/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/infringements/index_en.htm)

<sup>52</sup> E.g. networks and expert committee meetings and guidelines.

market information tool will help the Commission to better target its cooperation with Member States, reinforce the basis for infringement action and also help determine where regulatory solutions are needed.

Together with Member States, the Commission will also strengthen and streamline the existing Single Market problem-solving tools such as SOLVIT.<sup>53</sup> Problems are best resolved early and at national level. In particular, it will consider giving appropriate follow-up to recurrent or structural cases that could not be resolved through SOLVIT. It will also improve awareness among citizens and companies of their rights and the use of national redress mechanisms, including through the Single Digital Gateway.

**Actions:** *The Commission will apply a smart enforcement strategy, including sectoral strategies. It will propose a regulatory initiative allowing it to collect reliable information directly from selected market players, with a view to safeguarding and improving the functioning of the Single Market. It will further deepen its partnership with Member States through implementation plans for new major legislation, compliance dialogues organised on a yearly basis with each Member State and the possible development of a data analytics tool to improve the monitoring of Single Market legislation. Finally, the Commission will strengthen and streamline the Single Market problem-solving tools, including the SOLVIT network, and promote awareness among citizens and companies of their rights.*

#### **4.2. Improving the delivery of the Services Directive by reforming the notification procedure**

To ensure that all new regulatory measures imposed by Member States are non-discriminatory, justified by public interest objectives, and proportionate, the Services Directive obliges Member States to notify the Commission of new regulatory measures affecting services.

Yet despite this, there are still a multitude of varying national rules and regulations and the notification procedure is often not complied with. Seven Member States have failed to notify any new regulations since the entry into force of the Services Directive in 2009. Five Member States have notified only very few new regulations. By contrast, other Member States have sent large numbers of notifications.

In addition, the possibility for the Commission or other Member States to effectively intervene is severely limited by the fact that Member States mostly notify final laws instead of draft laws.<sup>54</sup>

Moreover, the notifications are not transparent: affected consumers and businesses have no access and can only react by complaining at a later stage when they are already suffering from the regulatory burden and additional costs. This is clearly at odds with the Transparency

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<sup>53</sup> SOLVIT is a service provided by the national administration in each EU country and in Iceland, Liechtenstein and Norway. It aims to find solutions within 10 weeks, starting on the day a case is taken on by the SOLVIT centre in the country where the problem occurred.

<sup>54</sup> Between September 2013 and February 2015, the Commission received 277 notifications from the Member States; 198 of these notifications referred to final legislation and 79 to draft legislation meaning that 71 % of the notified requirements were already in force.

Directive,<sup>55</sup> which provides for transparency for stakeholders operating in the field of goods and information society services.

Finally, the existing notification framework does not provide for an in-depth proportionality assessment. As a consequence, Member States often have difficulties assessing the proportionality of new requirements for services. A preventive system as part of an improved notification system could therefore significantly improve the identification of possible alternatives and less intrusive measures to reach the objectives pursued.

Given the many shortcomings, the Commission will propose legislation to improve the notification procedure under the Services Directive. This proposal will extend the successful features of the existing procedure for goods and information society services to other services, including the requirement to notify draft legislation and transparency for stakeholders. As a consequence, a measure that has not been notified should be considered void and a standstill period is to be applied. Due account will also be given to the need to conduct a proper proportionality assessment.

**Actions:** *The Commission will present a legislative proposal modelled on the successful features of the notification procedure under Directive (EU) 2015/1535 for services currently not covered by that Directive. This will improve the existing notification procedure under the Services Directive. This will allow for more upstream verification of the justification and proportionality of new national regulations restricting the free movement of services.*

### 4.3. Strengthening the Single Market for goods

Goods generate around 75 % of intra-EU trade. In 2014, trade in goods between EU Member States was valued at EUR 2 900 billion. Regulatory obstacles have been removed for over 80 % of industrial products through the adoption of common rules and, where no such Union rules exist, through the principle of mutual recognition.

In areas where no EU legislation exists, the principle of mutual recognition means that goods that are lawfully marketed in one Member State enjoy the right to free movement and can be sold in another Member State. However, inadequate application of mutual recognition makes it harder for companies seeking access to markets in other Member States. In addition, the increasing presence on the market of products that are not compliant with EU rules puts law-abiding operators at a disadvantage and endangers consumers.

Despite the high degree of market integration in the area of goods, this leads to lost opportunities for the economy at large.

The Commission will therefore act to improve the application of mutual recognition and to take action against illegal and non-compliant goods.

The adoption of the **Mutual Recognition Regulation**<sup>56</sup> in 2008 has been crucial in transferring the burden of proof that products are lawfully marketed elsewhere from economic operators to national authorities.

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<sup>55</sup> Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations ('Transparency Directive'). This Directive has been replaced by Directive (EU) 2015/1535 of 9 September 2015.

However, national regulations and practices continue to create barriers. National authorities often require specific proof of lawful marketing or simply refuse access to their national market. Economic operators are often required to produce specific documentation or carry out additional tests for their products. This increases the costs for economic operators or discourages them from expanding to new markets. While these problems occur in many industrial sectors, they are particularly present in the fields of construction, foodstuffs, food supplements and fertilisers. This translates into lost business opportunities, less competition and higher prices for consumers.

The Commission will therefore present an EU-wide Action Plan to raise awareness of the principle of mutual recognition, including specific actions for sectors in which mutual recognition could achieve the greatest increase in EU competitiveness (e.g. construction). It will also revise the Mutual Recognition Regulation to address administrative fragmentation and streamline the documentation required to prove that a product is being marketed lawfully in a Member State.

This will be achieved by making it possible for economic operators to issue a self-declaration on the product being lawfully marketed in another Member State. The corresponding presumption of compliance will make it easier for companies to market their goods in another Member State, unless an official decision is adopted and notified to both the Commission and the relevant economic operator. To support the offering of integrated products and services, synergies with the ‘services passport’ will be examined.

The Commission will use the tools of the Transparency Directive more strategically to promote mutual awareness and trust among Member States.

To improve the functioning of the Single Market for health products, the Commission will introduce an initiative of health technology assessments,<sup>57</sup> to increase coordination in order to avoid multiple assessments of a product in different Member States.

The increasing number of **illegal and non-compliant products** on the market distorts competition and puts consumers at risk. In the field of radio equipment, for instance, evidence indicates a very low rate of fully compliant products which ranges between 28 % and 56 %.<sup>58</sup> Similar percentages of non-compliance are seen for other categories of industrial products.

For consumer products, Member States submitted almost 2 500 notifications on dangerous products through the European Rapid Alert System for dangerous products ‘RAPEX’ in 2014. This is 3 % more than in 2013 and almost 90 % of all notifications concerned products which posed a serious risk to consumers.

Many economic operators disregard the rules either through lack of knowledge or intentionally to gain a competitive advantage. More deterrence is needed, and the responsible market surveillance authorities are often underfunded and constrained by national boundaries, while economic operators are active at European or even global level. In the case of e-commerce in particular, market surveillance authorities have great difficulty tracing non-

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<sup>56</sup> Regulation (EC) No 764/2008.

<sup>57</sup> Health Technology Assessments guide national decisions in relation to pricing and reimbursement of health interventions.

<sup>58</sup> See Staff Working Document (2012) 300 of 17 October 2012, ‘Executive summary of the impact assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on the harmonisation of laws of the Member States to the making available on the market of radio equipment’.

compliant products imported from non-EU countries and identifying the responsible entity within their jurisdiction.

The Commission will therefore introduce an initiative to strengthen product compliance by providing the right incentives to economic operators, intensifying compliance checks and promoting closer cross-border cooperation among enforcement authorities, including through cooperation with customs authorities. It will consolidate the existing framework for market surveillance activities; encourage joint actions by market surveillance authorities from several Member States; improve the exchange of information and promote the coordination of market surveillance programmes.

In addition, based on the existing Product Contact Points, the Commission will set up a ‘first port of call’ available for business on EU product legislation. This will help raise awareness and understanding of the applicable legislation. Economic operators will also be offered a system which will allow them to demonstrate product compliance to competent authorities, and potentially also consumers, by digital means (e-compliance). This will facilitate compliance checks by authorities while reducing costs for the economic operators and helping renew consumer confidence.

***Actions:*** *The Commission will present an EU-wide Action Plan to increase awareness of mutual recognition and revise the Mutual Recognition Regulation. In order to make it easier for companies to market their products in another Member State, the Commission will introduce a voluntary self-declaration as regards the compliance with the relevant legislation, which companies can use if they so wish. The Commission will also launch a comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market by strengthening market surveillance and providing the right incentives to economic operators.*

## 5. CONCLUSION

The Commission set out to create a deeper and fairer Single Market with a strengthened industrial base. To achieve this objective, we need to upgrade our Single Market in line with today’s economic realities of increased digitalisation, new business models and increasing links between manufacturing and services in today’s global value chains. The Single Market Strategy proposes a concrete and ambitious set of actions to remove economically significant barriers that hold back Europe’s jobs, growth and investment agenda. The Commission counts on the European Parliament and the Council, as well as on all stakeholders, to strongly support this ambitious and urgently needed programme and help make a significant step forward in the interests of citizens and businesses across Europe. Most importantly, it is essential for this programme to be carried forward by the Member States at national, regional and local level, for there can only be a Single Market with their support and commitment.

The actions envisaged in this Strategy will be launched in 2016 and 2017. By the end of 2017, the Commission will review progress on its implementation and, on the basis of comprehensive economic analysis, consider whether additional action is needed to meet its objective of a deeper and fairer EU Single Market.

## Roadmap to delivering on the Single Market Strategy

Actions	Timetable
Guidance on how EU law applies to collaborative economy business models	2016
VAT Action Plan	2016
Legislative initiative on business insolvency, including early restructuring and second chance	2016
Initiatives to facilitate the use of digital technologies throughout a company's lifecycle and cross-border mergers and divisions	2017
Start-up initiative	2016
Guidance on reform needs for Member States in regulation of professions	2016
Analytical framework for Member States to use when reviewing the existing or proposing additional regulation of professions	2016
Legislative action to address targeted regulatory barriers in key business services and construction services	2016
Legislative initiative to introduce a 'services passport' for key sectors of the economy such as construction and business services	2016
Communication setting out best practices to facilitate retail establishment and reduce operational restrictions	2017
Legislative action to prevent discrimination against consumers based on nationality or country of residence	Mid-2016
Joint initiative on Standardisation	2016
Dedicated guidance on service standardisation	2016
Public procurement: voluntary <i>ex ante</i> assessment mechanism for large infrastructure projects	2017
Initiatives for better governance of public procurement through the establishment of contract registers, improved data collection and a networking of review bodies	2017-2018
Initiatives to modernise the intellectual property rights (IPR) framework, including a review of the EU IP enforcement framework	2016-2017
Data analytics tool for monitoring Single Market legislation	2017
Proposal for market information tools allowing the Commission	2016



to collect information from selected market players	
Legislative proposal modelled on the successful features of the current notification procedure under Directive (EU) 2015/1535 for services currently not covered by that Directive	2016
Action Plan to increase awareness of the mutual recognition principle	2016
Revision of Mutual Recognition Regulation	2017
Comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market (including a possible legislative initiative)	2016-2017