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**COMMISSION STAFF WORKING DOCUMENT**

**Business Journey on the Single Market: Practical Obstacles and Barriers**

**Accompanying the document**

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

**Identifying and addressing barriers to the Single Market**

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# OBJECTIVES, APPROACH, AND CAVEATS

## Objectives

**The European Council has invited the Commission to identify obstacles that keep the single market from integrating further and from providing a level playing field to businesses attempting to benefit from it.** At its meeting of 21 - 22 March 2019, the European Council concluded that ‘the single market should be further deepened and strengthened (...)’ and called on the EU and its Member States to act, adding that ‘remaining unjustified barriers must be removed, building on the Commission Communication of November 2018, and no new ones created’. Building on this initial request, the May 2019 Competitiveness Council called on the Commission to ‘complete, by March 2020, the assessment of the remaining regulatory and non-regulatory obstacles and opportunities within the single market, with a special focus on services, building on the European Council conclusions of December 2018 and March 2019 and on the Commission’s November 2018 report, taking the perspective of businesses and consumers...’<sup>1</sup>

**This staff working document contributes to the response to this request.** The document aims to identify current obstacles to the single market. It is clear that the integration of the single market is an ever-evolving process, influenced by regulatory initiatives at EU or national level, by everyday decisions of various actors, businesses, consumers, investors, workers, etc., and also by technological, society or international change. It is therefore essential to keep in mind that this study provides only a snapshot of the current situation.

**In 2019, the Commission issued a report on the performance of the single market in the context of the European Semester**<sup>2</sup>, relying mostly on indicators related to the integration of the Single Market. It intends to publish such a performance report on an annual basis. That report differs significantly from this one, which identifies general and sector-specific barriers, from a business journey perspective. The two reports therefore complement each other.

**This study focuses on the obstacles most often reported by businesses themselves**, without claiming to be exhaustive, and proposes the ‘business journey’ framework to identify obstacles and hurdles faced by businesses in the different steps involved for the export of goods and services to or for the establishment in another Member State. That framework simplifies what is actually a complex reality. Obstacles to the single market typically occur in many variations and sub-types, and are often complex and multi-layered. An obstacle experienced by a business, such as not being allowed to sell its product, can be due to different root causes, or underlying obstacles, or even to a complex combination of factors. It is therefore not possible to exhaustively identify and analyse all obstacles in their totality, multiplicity, and complexity.

**This document aims to provide a fact base** and foster a common understanding of the current obstacles to the single market faced by businesses. It also aims to provide input into potential future discussions about appropriate single market policies. It supports the Communication ‘Identifying and addressing barriers to the single market’ (‘the Communication’)<sup>3</sup>, adopted today,

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<sup>1</sup> European Council conclusions, meeting on 21 and 22 March 2019:

<https://data.consilium.europa.eu/doc/document/ST-1-2019-INIT/en/pdf> and Competitiveness Council conclusions on "A new level of ambition for a competitive Single Market", meeting on 27 May 2019: <https://data.consilium.europa.eu/doc/document/ST-9743-2019-INIT/en/pdf>

<sup>2</sup> [https://ec.europa.eu/info/publications/2020-european-semester-single-market-performance-report\\_en](https://ec.europa.eu/info/publications/2020-european-semester-single-market-performance-report_en)

<sup>3</sup> “Identifying and addressing barriers to the Single Market”, COM/2020/93.

which aims to describe the most relevant areas of concern for businesses and consumers, identify their root causes and set out ways to address them. This staff working document underpins the Communication from the business perspective, through the ‘business journey’.

## **Approach and caveats**

**The starting point of this study is the obstacles experienced by businesses in the single market as reported by them.** This means, in practice, that this study first describes the barriers as reported by businesses. In a second step, the study also analyses their root causes in its relevant policy context. This starting point differs from a more policy or legal-oriented starting point, which has often been the approach followed by prior studies. This allows to shed a new light on how the integration of the single market is perceived by its active users, the businesses, in their efforts to reach its other active users, the customers and clients.

**Consequently, the study addresses the freedoms of circulation of goods, services and capital, and also the free movement of persons to the extent it concerns labour force mobility.** The study also touches on some of the EU policies that flank the internal market such as competition rules, judicial cooperation in civil matters, public procurement or social policy related to cross-border issues.

**The opinions collected in this study reflect this approach.** Businesses, chambers of commerce, and other business organisations reported obstacles as they perceive them, and in their own words. They study both regulatory and non-regulatory obstacles. Sometimes, even if a given obstacle affects domestic businesses and non-domestic businesses equally, it can amount to a barrier to entry and may distort competition. Sometimes, a given obstacle represents a hard, ‘binding’ constraint; other times, it could be surmountable, if taken in isolation and using enough effort, time and money. In this document, the word ‘obstacle’ has to be understood as encompassing this wide range of challenges and hurdles faced by businesses across the single market.

**This study primarily use sources that capture the perceptions of businesses that intend to become or are already active across the single market,** via exports, imports and/or establishments in other Member States. The existing sources included surveys of businesses, databases and analyses. In addition, a specific consultation of chambers of commerce was conducted to gain a more comprehensive picture of different obstacles. Finally, the analysis also builds on in-house expertise at the Commission. Evidence has been collected from two channels, allowing a more comprehensive approach to the issues identified: non sector-specific sources (‘general obstacles and barriers’) and sector-specific sources (“obstacles identified per sector”). While most obstacles have been found in both channels, some are sector specific.

## Main sources

### External surveys and reports

- Eurochambres, ‘Business survey – EU Internal Market: Barriers and Solutions’, 2019 (Eurochambres 2019 survey)
- World Bank Group, ‘Doing Business 2019’, 2019 (World Bank Doing Business report)
- Centre for European Policy Studies (CEPS), ‘Hidden Treasures: Mapping Europe’s sources of competitive advantage in doing business’, 2019 (Hidden Treasures report)
- The Association of German Chambers of Commerce and Industry (DIHK), ‘DIHK Survey on Single Market Obstacles 2019: Services, Goods and Investments’ (DIHK 2019 survey)
- Dutch Ministry of Economy, Dutch export agency, ‘Doing Business in Europe’, 2018 (Dutch Doing Business in Europe survey)
- Estonian Ministry of Foreign Affairs and Communications, ‘Mapping: applicable regulatory requirements for a construction company on its export journey to Estonia, Finland, and Sweden’, 2018
- Governments of Ireland, Denmark, Finland and Czechia, and Copenhagen Economics, ‘Making EU Trade in Services Work for All: Enhancing innovation and competitiveness throughout the EU economy’, November 2018

### Dedicated reports, surveys and contributions received from chambers of commerce and other business organisations

- Austrian Chamber of Commerce
- Croatian Chamber of Economy
- Cyprus Chamber of Commerce and Industry
- Czech Chamber of Commerce
- Confederation of Danish Industry
- Confederation of Finnish Industries
- French Chamber of Commerce and Industry
- Latvian Chamber of Commerce and Industry
- Malta Chamber of Commerce
- Spanish Chamber of Commerce
- Confederation of Swedish Enterprise

### Internal and external databases and reports

- European Commission, ‘Annual report on European SMEs 2017/2018’, 2018
- SOLVIT database, European Commission
- European Central Bank, ‘Investment Barriers 2019’, 2019
- European Enterprise Network
- Intellectual Property SME Scoreboard 2019
- Safety Gate

*Additional sources are referenced in the text.*

**Obstacles were included in this study if a significant percentage of surveyed businesses and/or if different sources consistently reported them as an obstacle.** In that respect, it is striking how often the various sources revealed similar obstacles. While this study used many sources, the obstacles identified should in no regards be seen as exhaustive, in particular for obstacles that occur relatively less frequently and/or that are specific to sectors not under review. It is important to keep in mind that this study provides only a snapshot of the obstacles to the

single market. Completely new obstacles that might emerge in the future are beyond of the scope of this study.

The study provides some quantification to assess the prevalence and, where available, economic importance of obstacles. This quantification and other figures might not include the most recent economic and political developments, in line with the report's approach of providing a snapshot. In particular, when data is provided for the EU, it includes the UK (EU28), unless otherwise specified. Beyond quantification, the relative importance of an obstacle also needs to be assessed qualitatively, in relation to its impact on key objectives of industrial policy, such as digital transformation or the transition to a carbon neutral economy, and other megatrends.

As a complement to the description of the obstacles as expressed by businesses, the study also provides a preliminary analysis of their root causes and their link to the policy context. This analysis was performed by the Commission services.

The root causes of each obstacle can at times be complex and involve a combination of factors (regulatory or not). For some obstacles mentioned by businesses, further research is needed to positively identify their root cause(s).

## SUMMARY: PRACTICAL OBSTACLES AND BARRIERS TO THE SINGLE MARKET

### Different perspectives on the achievements of the single market

The EU's single market is the world's largest interconnected market, comprising more than 500 million<sup>4</sup> people and 27.5 million companies<sup>5</sup>. Designed to allow goods, services, capital and people to move freely across borders, the single market makes it easier for firms and professionals to reach customers and suppliers all across Europe. The level playing field provided by the single market has helped increase the level and fairness of competition and the quality and supply of goods and services. It has been liable to lead to price reductions, improved productivity and strengthened the economies of the EU's Member States.

- **The single market has a positive impact on GDP.** A recent study by the European Commission estimates that, compared to a counterfactual scenario in which EU countries trade under WTO rules, the economic benefits of the single market range between 8% and 9% higher GDP on average for the EU. Abstracting from trade and focusing only on the effect of increased competition, the benefits still amount to about 2% of GDP.<sup>6</sup>
- **The single market has a positive impact on trade.** The increasing globalisation does not reduce the importance of the single market. While extra-EU exports in goods stood at almost EUR 2 trillion in 2018, intra-EU cross-border trade were more than EUR 3.5 trillion in 2018<sup>7</sup>. For services, the picture is similar, with a total of EUR 1.2 trillion intra-EU cross-border trade and EUR 0.9 trillion extra EU exports.<sup>8</sup>
- **The single market has reduced mark-ups and increased productivity.** According to a recent study, the welfare gain from the single market for EU Member States would amount to about EUR 427 billion per year. A large part of this benefit comes from higher productivity and lower mark-ups. While there are major differences between European regions, estimates indicate that all regions benefited from belonging to the single market.<sup>9</sup>
- **The single market also has a positive impact on employment,** mainly thanks to the impact on GDP and productivity. Calculating the number of additional jobs that exist thanks to the single market is very difficult, but according to some rough estimates, up to

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<sup>4</sup> Source: Eurostat, Population change - Demographic balance and crude rates at national level [demo\_gind]. The figure refers to 2019. Excluding the UK, the population is 447 million.

<sup>5</sup> Source: Eurostat, Business demography by legal form, [bd\_9ac\_l\_form\_r2]. The figure refers to the business economy, except the activities of holding companies, for 2017 (latest available here at the moment of writing). Excluding the UK, the number of firms is 25 million.

<sup>6</sup> J. in 't Veld (2019), Quantifying the Economic Effects of the single market in a Structural Macromodel, European Economy Discussion Paper 094, European Commission Directorate-General for Economic and Financial Affairs.

<sup>7</sup> Source: Eurostat, Intra and Extra-EU trade by Member State and by product group [ext\_lt\_intratrd]. Data refers to EU-28.

<sup>8</sup> Source: Eurostat, [bop\_its6\_det]

<sup>9</sup> Mion and Ponattu (2019), Estimating economic benefits of the Single Market for European countries and regions, Bertelsmann Stiftung Policy Paper.

56 million jobs in the EU could depend on trade within the single market<sup>10</sup>. Focusing on services only, the number of employees dependent on cross-border services may have almost doubled in the EU since 2000, recording a 94% increase as compared to a 5.5% raise in total employment.<sup>11</sup> These estimates rely on the assumption of a linear relationship between employment and production, and so should be interpreted with caution. Nonetheless, they can be illustrative of the magnitude of the positive impact on employment of the single market.

- **The single market has a positive impact on investment.** If the single market did not exist, the EU capital stock could fall by 10% according to recent Commission estimates.<sup>12</sup> Moreover, a recent study from the European Central Bank shows that, on average, joining the EU increased inward foreign direct investment (FDI) flows from other EU countries by 44 %.<sup>13</sup> As a result, EU Member States are by far the most important investors in almost all countries of the EU: more than 50 per cent of international investments are held by other EU Member States.<sup>14</sup>
- **The single market is the go-to market for European SMEs.** It accounts for 70% of the value of SME exports of goods, while 80% of all exporting SMEs sell to other Member States.<sup>15</sup> Still, only 16.5% of SMEs in industry export to other Member States and this proportion has been relatively stable in recent years<sup>16</sup>. There exists a clear relationship between enterprise size and internationalisation, with medium-sized and large enterprises more often exporting than micro and small enterprises.
- The single market is a key enabler of efficient **value chain integration** across the EU, which is increasingly important in both manufacturing (e.g., car production, Airbus) and services (e.g., Uber). A recent IMF study<sup>17</sup> suggests that, based on a simple global value chain participation index, Europe is significantly more integrated into international value chains than the Americas and Asia. Between 2000 and 2013, the share of European exports involved in global value chain trade increased by 10 percentage points (pps), reaching about 70% of total exports of goods and services. Over this period, this ratio increased by only 2 pps in the Americas and 6 pps in Asia. While this might also be due to the ability of European firms to find opportunities abroad, the IMF points also to the role played by the single market and the European monetary union.
- The single market has been a valuable asset in multilateral and bilateral trade negotiations, and in our push for global and sectoral standard setting, as foundations of a rule-based international order. The European economic sovereignty will be further

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<sup>10</sup> Højbjerg Brauer Schultz (2018), '25 years of the European Single Market', Study funded by the Danish Business Authority.

<sup>11</sup> IW Consult GmbH (2019), 'Cross border services in the internal market: an important contribution to economic and social cohesion', study for the European Economic and Social Committee.

<sup>12</sup> J. in 't Veld (2019), Quantifying the Economic Effects of the single market in a Structural Macromodel, European Economy Discussion Paper 094, European Commission Directorate-General for Economic and Financial Affairs.

<sup>13</sup> Federico Carril-Caccia and Elena Pavlova (2018), Foreign direct investment and its drivers: a global and EU perspective, Published as part of the ECB Economic Bulletin, Issue 4/2018.

<sup>14</sup> Højbjerg Brauer Schultz (2018), '25 years of the European Single Market', Study funded by the Danish Business Authority.

<sup>15</sup> 2017/2018 Annual Report on European SMEs – SMEs growing beyond borders.

<sup>16</sup> [EU-28 Small Business Act factsheet](#)

<sup>17</sup> International Monetary Fund (2019), Trade Tensions, Global Value Chains, and Spillovers: Insights for Europe, No 19/10.



reinforced with the modernisation of the single market to support the green and digital transition.

But despite all these positive achievements, **when businesses are asked about their perception of the single market, they often draw a different picture.**

- In October 2018, at the final European Parliament of Enterprises of the 2014-2019 legislative term, **69,3% of entrepreneurs replied “No”** to the question *“Is the single market sufficiently integrated, allowing your company to operate and compete freely?”*<sup>18</sup>.
- While the majority of companies agree that legislation in the EU helps ensure the quality and safety of goods and services (65% agree, 29% disagree) and improves access to suppliers and customers (55% agree, 35% disagree), opinions are more evenly divided on whether it reduces or removes the differences in legal requirements in different Member States to the benefit of companies (46% agree; 39% disagree), helps to create a level playing field for all companies (45% agree; 48% disagree), to be competitive (44% agree; 47% disagree) and to encourage companies to invest (43% agree; 44% disagree).<sup>19</sup> In addition, the lack of means for debt recovery is a major problem for 49% of businesses.<sup>20</sup>
- According to the Annual report on European SMEs 2017/2018, only 4% of European SMEs undertake FDI in the EU. Medium-sized firms that experienced strong growth in turnover and that belong to an international group are more likely to undertake FDI. The Flash Eurobarometer 451 reveals that many SMEs do not think that EU legislation is supportive of investment.
- **Most companies perceive legislation in the EU as complex and burdensome**, increasing the amount of paperwork (70%) and the cost of administrative processes (67%)<sup>21</sup>. This is confirmed by several sources and has not substantially changed in the last years. For instance, according to an Executive Opinion Survey run by the World Economic Forum, the burden of (domestic) government regulation has only slightly improved in recent years, moving from 3.21 out of 7 (with 7 corresponding to “Not burdensome at all”) in 2014 to 3.35 in 2018. Similarly, according to the Flash Eurobarometer 457, the share of businesses who think that the complexity of administrative procedures is a problem when doing business has changed only from 63% in 2013 to 60% in 2017. **The burden can be even higher when crossing borders**, to the extent that different rules and procedures require further adaptation from firms<sup>22</sup>.

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<sup>18</sup> Eurochambres, ‘Business survey – EU Internal Market: Barriers and Solutions’, 2019

<sup>19</sup> Businesses that work, trade, or offer services in other countries are generally more likely to see the benefits of legislation that applies to businesses in the EU than those operate only in their own country. When looking only at companies that are active abroad, companies that are active in three or more EU countries do not generally have views that differ much from those that are active only one or two other countries.

<sup>20</sup> Flash Eurobarometer 457, [Businesses’ attitudes towards corruption in the EU](#), October 2017

<sup>21</sup> Flash Eurobarometer 451, [Business perceptions of regulation](#), March 2017

<sup>22</sup> For an average cross-border business, administrative costs have been found to be more than 50% higher than for an average domestic business. At the same time, where implemented, e-government solutions apply more to the domestic context than to a cross-border perspective, while interoperability of public authorities’ e-systems is still limited. (Ecorys Netherlands in association with Mazars, [‘Study about administrative formalities of important procedures and administrative burdens for businesses’](#), European Commission, April 2017)

- Also according to the **‘Hidden Treasures’ report by the CEPS (2019)**, businesses often perceive Europe negatively when it comes to entrepreneurship and innovation: a land of red tape, a mix of precaution and bureaucracy where doing business is difficult if not impossible.
- The analysis of the **World Bank Doing Business Report** can also help identify some patterns within the single market. The table below shows how EU Member States rank according to different indicators that measure the ease of doing business for small and medium-sized domestic firms in the largest business city of each economy<sup>23</sup>. None of the indicators is tailored to measure the performance of the single market<sup>24</sup>, but a visual analysis of the table suggests marked differences in the performance of Member States. The red cells identify countries ranking below 50, while the green cells identify countries in the top 10. In column 8, a star identifies Member States whose main trade partners (both for import and export) are other EU Member States. Overall, the table suggests that EU Member States perform very well in the indicator measuring the ease of trading across borders, with 16 countries earning the maximum score and top rank<sup>25</sup>. This amounts to 80% of the countries whose main trading partners are within the EU. The situation is relatively less positive for other indicators, as for instance the ease of getting credit, dealing with construction permits or starting a business, for which several Member States rank below 50.

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<sup>23</sup> Since 2015, in economies with a population of more than 100 million, the second-largest city is also included.

<sup>24</sup> The World Bank Doing Business methodology does not differentiate between nationals and foreigners starting a business, or between domestic and non-domestic companies registering property, asking for a construction permit, etc.

<sup>25</sup> The indicator ‘Trading across borders’ measures the time and cost to export the product of comparative advantage and to import auto parts (page 19, World Bank Doing Business Report 2020). It is based on the ease of trade with the most important import and export partners, which in the EU are not necessarily other EU Member States. In particular, it is assumed that each economy imports a standardised shipment of auto parts from its natural import partner, i.e. the economy from which it imports the largest value of auto parts. Moreover, it is assumed that each economy exports the product of its comparative advantage (defined by the largest export value) to its natural export partner, i.e. the economy that is the largest purchaser of this product. While for most European Member States the natural trade partner is another Member State, this is not always the case. For instance, the main export partner of Ireland is the USA.

#### World Bank Ease of doing business ranking - Focus on EU Member States

Economy	Global Ranking	1. Starting Bus.	2. Constr. Permits	3. Getting Electricity	4. Registering property	5. Getting credit	6. Protecting min. investors	7. Paying taxes	8. Trading across borders	9. Enforcing contracts	10. Resolving insolvency
Denmark*	4	45	4	21	11	48	28	8	1	14	6
United Kingdom	8	18	23	8	41	37	7	27	33	34	14
Sweden	10	39	31	10	9	80	28	31	18	39	17
Lithuania	11	34	10	15	4	48	37	18	19	7	89
Estonia*	18	14	19	53	6	48	79	12	17	8	54
Latvia*	19	26	56	61	25	15	45	16	28	15	55
Finland	20	31	42	24	34	80	61	10	37	45	1
Germany	22	125	30	5	76	48	61	46	42	13	4
Ireland	24	23	36	47	60	48	13	4	52	91	19
Austria*	27	127	49	29	31	94	37	44	1	10	22
Spain*	30	97	79	55	59	80	28	35	1	26	18
France*	32	37	52	17	99	104	45	61	1	16	26
Slovenia*	37	41	119	23	54	119	18	45	1	112	8
Portugal*	39	63	60	52	35	119	61	43	1	38	15
Poland*	40	128	39	60	92	37	51	77	1	55	25
Czech Republic*	41	134	157	11	32	48	61	53	1	103	16
Netherlands*	42	24	88	58	30	119	79	22	1	78	7
Slovak Republic*	45	118	146	54	8	48	88	55	1	46	46
Belgium*	46	48	45	108	139	67	45	63	1	56	9
Croatia*	51	114	150	37	38	104	37	49	1	27	63
Hungary*	52	87	108	125	29	37	97	56	1	25	66
Cyprus*	54	50	125	75	71	80	21	29	50	142	31
Romania*	55	91	147	157	46	25	61	32	1	19	58
Italy*	58	98	97	38	26	119	51	128	1	122	21
Bulgaria	61	113	43	151	66	67	25	97	21	42	61
Luxembourg*	72	76	14	45	93	176	93	23	1	18	93
Greece*	79	11	86	40	156	119	37	72	34	148	72
Malta	88	86	57	73	152	144	51	78	48	41	121
Countries assessed	190										

These contrasted views call for a deeper analysis of obstacles experienced by the users of the single market, i.e. businesses which attempt to do business across the single market.

### Analytical approach

This study follows a two-step approach, centred on the journey of businesses attempting to do business across the single market.

The starting point of the approach chosen for this study is the obstacles as experienced and reported by businesses active on the single market. It therefore reflects how the integration of the single market is perceived by its active users – businesses – in their efforts to reach its other active users, the customers and clients.

The study builds on several sources: existing business surveys or analyses, databases and a dedicated consultation of chambers of commerce and other business organisations. The Commission services also provided valuable input. Obstacles were included in this survey if a significant percentage of surveyed businesses and/or if different sources consistently reported them as an obstacle.

The analysis of the study follows the journey of a business attempting to benefit from the single market. This allows us to identify the actual obstacles that it reports that it encounters. This journey typically starts with an analysis of the market opportunity and feasibility of exporting to or establishing a business in another Member State. When the business starts exporting, it may be asked to comply with regulatory or administrative requirements, will need to access its clients, deliver its goods or services, or might face micro-economic obstacles to competition. It will also have to meet tax obligations and ensure after-sales service and obligations. If and when it establishes itself in another Member State, a business may need to set up its business activity, hire staff (locally or from its headquarters), find local suppliers, invest and finance itself locally, and meet its local tax obligations.

This approach and framework addresses the freedoms of circulation of goods, services, capital (in the business journey steps of establishment, investments and financing), and also freedom of movement to the extent it concerns worker mobility.

In the second step, the root causes of each identified obstacle are analysed in their relevant policy context. This analysis mainly relies on the sector and policy expertise of the Commission

services. It is important to be mindful of the unavoidable limitations of the causal analysis in this report. Indeed, it is sometimes difficult to reliably understand root causes without further investigation. Often the root causes are a complex combination of several factors; sometimes obstacles are linked, and their root causes must be analysed more holistically.

In addition, the study analyses the practical obstacles and barriers in a sample of economic sectors, to better appreciate sector specificities. The selection of sectors included in the sample does not imply prioritisation, but was composed to ensure sufficient representation of different sector characteristics: size, importance for other sectors, relevance to the green and digital transitions, and a balance between manufacturing and services and domestic or export orientation.

## List of obstacles to the single market

The following table sets out the general obstacles reported by businesses that apply to all or most sectors of the EU economy.

Business journey step		Obstacle / barrier
<i>1. Steps before expanding</i>		
	1	Insufficient information about business opportunities and partners as well as applicable rules
<i>2. Steps to selling cross-border</i>		
a) Product and services regulation	2	Difficulties in meeting requirements to sell goods or services
	3	Problems with mutual recognition affecting the free movement of goods not covered by EU harmonisation legislation
	4	Fragmentation of rules for digital services
	5	Differences in consumer protection
	6	Uneven access to public procurement
	7	Differences in liability rules and insurance requirements
	b) Marketing and access to clients	8
c) Delivering goods and services	9	Transport bottlenecks, lack of access and restrictions
	10	Insufficient internet and cloud infrastructure
	11	Burdens and obstacles in the context of posting workers to other Member States
d) Barriers to entry and uneven playing field	12	Market power
	13	Price regulations
	14	Problems with recognition of electronic identification
e) Taxes	15	Burdensome procedures due to differences in tax systems and administrations
	16	Tax reimbursement refusals and double taxation
	17	Uneven playing field due to taxation differences
f) After-sales (debt collection, guarantees, dispute resolution, etc.)	18	Heterogeneous rules on guarantees and contractual remedies
	19	Ineffective contract enforcement and dispute resolution
	20	Costs and delays of collecting payments and recovering debt
	21	Barriers to data availability and unclear data privacy rules
	22	Obstacles to effective intellectual property rights protection
<i>3. Additional steps for establishment</i>		
a) Setting up a business	23	Hurdles to starting a business
b) Staffing	24	Lack of skilled workers and limited worker mobility
	25	Difficulties with accessing a regulated profession
	26	Complex, burdensome and/or uneven labour and social regulations
c) Sourcing and suppliers		<i>No frequently reported barriers or obstacles in this step</i>
d) Investing and financing	27	Obtaining finance for operations in another country of the single market
	28	Restrictions on corporate ownership

	29	Insufficient credit information
e) Taxes, subsidies and other public help	30	National tax exemptions for direct taxes, subsidies, and financial contribution requirements
<i>Throughout the business journey</i>		
	31	Language

The following table sets out the identified obstacles for a sample of sectors.

<b>Sector</b>	<b>Obstacle / barrier</b>	
<i>Accounting and Tax advice</i>	32	National entry and exercise requirements for the profession of accountant/tax advisor
	33	Lack of comparability in national accounting/tax standards and practices
<i>Architecture and engineering</i>	34	National entry and exercise requirements for architects and engineers
<i>Audit</i>	35	National adaptation of audit regulatory requirements under audit directives and regulations
<i>Automotive</i>	36	Different national rules on spare parts
	37	Market of used vehicles: different national rules for the import and registration of vehicles
<i>Chemicals</i>	<i>Few identified legislative barriers remain</i>	
<i>Construction</i>	38	Market access and exercise requirements for construction services
	39	Burdensome and complex building permit procedures
	40	Posting of workers and cross-border service provision by self-employed persons
	41	Late payments
	42	Additional national requirements for construction products
<i>Electronic communications networks and services</i>	43	Economic and legal barriers to deployment of electronic communications networks
	44	Legal and economic barriers to accessing networks and services at reasonable prices and under non-discriminatory conditions
<i>Energy</i>	45	Inefficient unbundling may create market distortions
	46	Access to markets for demand response aggregators
	47	Retail price regulation hinders free competition; uncertainty concerning future regulatory developments
	48	Data critical for operations is difficult to access or of low quality
	49	Flat taxes and charges reduce importance of price signals for end-users
<i>Food and beverages</i>	50	Additional national requirements on food labelling
<i>Hotels and accommodation</i>	51	Authorisation and registration requirements for hotels or other accommodation providers and related detailed requirements
<i>Industrial machinery</i>	52	Undue additional national markings, standards and requirements
	53	Uneven market surveillance and enforcement creating uneven playing field for industrial machines
	54	Different regulatory requirements among Member States for modifying or refurbishing construction and agricultural machinery in use
<i>Intellectual Property Agents</i>	55	National entry and exercise requirements for patents and trademark agents
<i>Legal</i>	56	National entry and exercise requirements for legal services
<i>Pharma</i>	57	Restrictions to e-commerce of medicines based on health grounds
	58	Restrictions regarding the establishment, ownership and advertising of pharmacies and health care service providers
	59	Labelling language requirements
<i>Retail</i>	60	Restrictions to retail establishment
	61	Restrictions to retail operations
	62	E-commerce: complexity and uncertainty of applicable rules for cross-border sales and purchases
<i>Transport</i>	63	Information on market opportunities: difficulty for small road transport operators to have access to market information (market opportunities)
	64	Information on market opportunities/network: lack of information on service facilities and services offered to railway undertakings

	65	Lack of information on posting rules, enforcement and road traffic restrictions
	66	Excessive complexity of rules on inland waterways
	67	Inconsistent and unclear rules in public procurement in transport, and access to these rules is too restrictive
	68	Lack of flexibility linked to driving time restrictions
	69	Restrictions on work time in inland waterways
	70	Different enforcement practices in road transport among Member States
	71	Staffing: Skills shortages and mismatches in the rail sector
	72	Territorial supply constraints and/or sourcing restrictions: availability of adapted rail rolling stock
	73	Restrictions on cabotage in road transport
	74	Lack of interoperability in railways
	75	Lack of harmonised processes for authorisation of railway products and for safety certification of railway operators
	76	Lack of rail network coordination
	77	Fragmented EU airspace with 28 separate air traffic management systems
	78	Fragmentation of the aviation radio band spectrum
<i>Waste management</i>	79	Lack of information on the availability of materials
	80	Non-harmonized end-of-waste criteria
	81	Absence of standardised system to demonstrate the performance of recycled materials
	82	Insufficient enforcement of European environmental legislation
	83	Heterogeneity of Extended Producer Responsibility schemes in Member States

Obstacles have been found to limit businesses in their cross-border operations in four ways:

- The most extreme way is when a business is **prevented from providing its goods or services or from establishing itself** in another Member State. This can occur when a local authority does not grant an authorisation, for example, or when a business cannot get access to the distribution infrastructure.
- The second way is when a business faces significant additional costs or **burdens in order to find basic information**. This might be information about multiple and complex regulatory requirements and administrative procedures, or information about market opportunities and business partners.
- The third way is when a business **faces delays and uncertainty in its operations**. This can occur when administrative procedures cause delays or when businesses find it hard to access capital or skilled workers. It can also occur in cases of weak or slow enforcement of legal rights, and legal uncertainty.
- The fourth way is when the obstacles **create an uneven playing field** by giving some businesses a competitive advantage over others. This can occur when some regulatory or non-regulatory requirements disproportionately affect businesses expanding from another Member State.

**In practice, these obstacles accumulate.** Additional costs or burdens can be overcome when dealt with one by one. However, a business often faces several constraints at the same time when doing business in another country (such as obtaining a product authorisation, dealing with tax forms and procedures, labour and social requirements for hiring staff, setting up the business activity, understanding and complying with local consumer protection laws). This burden of combined constraints multiplies by the number of Member States where the business would like to expand, as the differences in the procedures of Member States allow for very limited economies of scale.

Together, these constraints deter many SMEs from doing business across borders in the EU and therefore from taking their most natural direction for growth, which is the single market. For micro-enterprises, the cumulative effect of a few of those can weaken the business case for venturing beyond borders, to the point that entrepreneurs prefer to pass on the opportunity. Similarly, administrative delays can even make it impractical to operate or sell in another Member State in some sectors, and generate uncertainties on potential cross border operations.

**Some obstacles affect domestic and cross-border businesses alike.** Local and foreign businesses may face the same challenges, such as access to skilled staff or complex local administrative procedures. Nevertheless, obstacles can in practice affect businesses from other Member States relatively more than local businesses. For instance:

- Non-harmonised rules and/or procedures force businesses to inquire about and deal with this diversity and associated complexity. As the differences found in Member States do not allow for economies of scale, the burden increases in proportion to the number of Member States across which a business is active. This favours businesses that focus on their domestic markets, and protects incumbents.
- The scarcity of some resources (such as skilled staff, energy or high-speed broadband) favours incumbents that enjoy a first mover advantage for these scarce resources, and may even prevent the entry of new business models that depend on access to these resources.

Since the launch of the single market, obstacles that were both regulatory and discriminatory have been the first ones addressed. The tangible achievements of the single market, as shown in external assessments such as the World Bank Doing Business report, demonstrate how successful the EU has been in reducing such obstacles. The list of obstacles reported by businesses demonstrates that to deepen the single market today, it is necessary to look also at non-regulatory and non-discriminatory obstacles, and often very practical obstacles.

This also helps explain the apparent contradiction between the tangible achievements of the single market and external policy analyses on the one hand, and the views of businesses on the other.

When looking at a sample of sectors representative of the diversity of the economy, the same or similar general barriers were identified. For instance, entry and exercise requirements are found to be important barriers for many regulated professions (such as accountants, tax advisers, auditors, construction tradespeople, architects and engineers, legal professions or intellectual property agents).

Some general barriers are especially important for some sectors. For instance, undue additional markings, standards and requirements for products already complying with harmonised legislation are particularly prevalent in the industrial machinery or construction product sectors.

In addition, some barriers are sector-specific. For instance, the lack of rail network coordination on issues such as IT tools for traffic management or performance of maintenance work can discourage new entrants in the market.

## **Root causes and link with EU policy**

Root causes of these practical obstacles and barriers vary. Often, one obstacle is due to a combination of root causes. This study identified five main types of root causes.

1. Some barriers originate in **regulatory choices at EU level and national level**. These can be:

*Restrictive national rules and limited role of EU legislation*

Businesses active across the single market often face restrictive national rules, in particular in policy areas where Member States take different regulatory approaches, including areas characterised by innovation and new business models. Divergent and restrictive regulatory approaches also occur in areas where the EU has no or limited legislative competences, and/or where there are unanimity requirements in the Treaty (taxation/social security or education). Finally, the limited role of the EU can also be due to the need to comply with the principles of subsidiarity and proportionality in a given area.

*EU legislation may leave flexibility in the level of harmonisation and/or Member States' practice ('gold plating')*

In some areas, minimum harmonisation leaves room for Member States to set standards above an identified baseline. This may lead to divergent rules across the single market, which impose burdens on market actors. Member States often consider that setting additional requirements at national level is necessary for certain public policy purposes, such as safety or environmental protection. While there may indeed be good reasons to exceed the requirements of EU legislation when transposing them into domestic law, this often translates into additional administrative burdens for companies, thus undermining the single market, with a particular impact on SMEs.

Gold plating can be particularly severe in services provision. In some cases, as for instance the interpretation and application of requirements for industrial machinery, it can even be considered as the real cause behind regulatory differences.

*Requirements justified for public policy reasons*

Some of the concerns reported by users can stem from situations in which the EU legislation pursues other legitimate policy objectives, striking a balance between such objectives and the imperative of market freedoms within the single market. These policy objectives include consumer protection and protection of social rights (e.g. the posting of workers directive).

*Complex EU legislation*

The interaction between various pieces of legislation, often at EU and at national level, and frequently changing legislation are a challenge. This may generate legal uncertainty as well as compliance costs, and thus adversely affect the business environment and economic activities, with a particular impact on SMEs. In addition, a more green and digital economy requires adapted rules for products at EU level.

2. Some barriers originate in the **transposition, implementation and enforcement of EU legislation**. This can be:

*Imperfect transposition of EU directives*

The lack of timely and correct transposition of EU directives by Member States undermines the proper functioning of the single market by increasing regulatory fragmentation. This may be for example the case of selling goods or services cross-border.

*Inadequate implementation of Union Law*

In addition to correctly transposing EU directives, Member States are also responsible for the correct implementation of EU legislation. Several existing principles (e.g. mutual recognition, administrative simplification such as the points of single contact, etc.), while potentially formally transposed by Member States, often lack (full) implementation in practice. This generates unnecessary or disproportionate obstacles for businesses active



across the single market. The issue of implementation and application of EU law is also important at the level of regional and local authorities in the Member States.

*Inadequate enforcement of EU legislation*

Detecting, investigating and addressing situations of non-compliance is key for a well-functioning single market. Different types of enforcement responsibilities are held at both EU and national levels. Failure to resolve breaches of EU law results in barriers faced by businesses remaining unaddressed, or illegal products continuing to circulate across the single market.

3. Some barriers originate in **administrative capacity and practices**. These can be:

*Insufficient or incompatible e-government solutions at national level*

Insufficient development of e-government solutions can hamper the development of the single market. This is particularly an issue for access to information on rules and requirements. This is also a root cause of the difficulties linked with national formalities or procedures to meet requirements for selling goods or services cross-border.

*Insufficient coordination between the Commission and national administrations and among national administrations*

This particular situation is a major factor undermining trust and fair competition on the single market. This issue often arises when businesses or professionals try to grow their business in another Member State. Insufficient cooperation is particularly relevant in the area of market surveillance, where different views of product market surveillance authorities have been identified as an obstacle, but is also relevant in the area of services. Due to limited exchange of information between Member States, national procedures often do not take account of requirements that service providers have already complied with in their home Member State. As a result, controls are unnecessarily duplicated, adding complexity for cross-border service providers.

*Insufficient staff or expertise at national, regional or local level*

Insufficient administrative capacity dedicated to implementing single market rules, including at regional and local level, undermines trust in the single market and the level playing field. This root cause is relevant when businesses or professionals want to grow their business in their home or another Member State (including in the field of public procurement).

4. Some barriers originate in the **general business environment** in Member States. To a large extent, the business environment is common to domestic businesses and to those active across borders. Such barriers are not specific to cross-border activities, yet affect businesses active across Member States and are thus reported by them as obstacles. They include regulatory and administrative burdens, lack of predictable regulatory frameworks, and relate to the quality of governance and institutions. Barriers include dealing with construction permits (for instance in the area of telecoms infrastructure), entry and exercise requirements for certain activities or professions, getting electricity, solving business disputes in and out of court and paying taxes.
5. Some barriers are **not linked to public policy**. Root causes of barriers may not be linked to public policies, whether national or EU. Markets in different Member States exist within broader cultural contexts. Different consumer preferences or languages throughout the EU make cross-border activities more complex than domestic ones. The commercial choices by private parties – which can be perfectly legitimate – or logistical issues can explain certain difficulties reported by companies, such as in the case of rejection or redirection of cross-border purchases or territorial supply constraints on retail businesses.

General macroeconomic and microeconomic conditions can play a role. Geographical and infrastructural features can also create barriers to accessing a market, for example due to increased transport times and distances, or natural barriers to entry.

## GENERAL OBSTACLES AND BARRIERS

This section lists practical obstacles and barriers as reported by most surveyed businesses, irrespective of their sector. As noted previously, the list is based on what the businesses currently report, and might therefore not reflect emerging or future developments.

### Summary table: general obstacles and barriers

Business journey step		Obstacle / barrier
<i>1. Steps before expanding</i>		
	1	Insufficient information about business opportunities and partners as well as applicable rules
<i>2. Steps to selling cross-border</i>		
a) Product and services regulation	2	Difficulties in meeting requirements to sell goods or services
	3	Problems with mutual recognition affecting the free movement of goods not covered by EU harmonisation legislation
	4	Fragmentation of rules for digital services
	5	Differences in consumer protection
	6	Uneven access to public procurement
	7	Differences in liability rules and insurance requirements
	b) Marketing and access to clients	8
c) Delivering goods and services	9	Transport bottlenecks, lack of access and restrictions
	10	Insufficient internet and cloud infrastructure
	11	Burdens and obstacles in the context of posting workers to other Member States
d) Barriers to entry and uneven playing field	12	Market power
	13	Price regulations
	14	Problems with recognition of electronic identification
e) Taxes	15	Burdensome procedures due to differences in tax systems and administrations
	16	Tax reimbursement refusals and double taxation
	17	Uneven playing field due to taxation differences
f) After-sales (debt collection, guarantees, dispute resolution, etc.)	18	Heterogeneous rules on guarantees and contractual remedies
	19	Ineffective contract enforcement and dispute resolution
	20	Costs and delays of collecting payments and recovering debt
	21	Barriers to data availability and unclear data privacy rules
	22	Obstacles to effective intellectual property rights protection
<i>3. Additional steps for establishment</i>		
a) Setting up a business	23	Hurdles to starting a business
b) Staffing	24	Lack of skilled workers and limited worker mobility
	25	Difficulties in accessing a regulated profession
	26	Complex, burdensome and/or uneven labour and social regulations
c) Sourcing and suppliers		<i>No frequently reported barriers or obstacles in this step</i>
d) Investing and financing	27	Obtaining finance for operations in another country of the single market
	28	Restrictions on corporate ownership
	29	Insufficient credit information
e) Taxes, subsidies and other public help	30	National tax exemptions for direct taxes, subsidies, and financial contribution requirements
<i>Throughout the business journey</i>		
	31	Language

# General barriers and obstacles along the business journey

## Step 1 Steps before expanding

### 1. Insufficient information about business opportunities and partners as well as applicable rules

#### Practical obstacles and barriers reported by businesses

Businesses report difficulty to access several types of information: i) commercial information (e.g., on market size, clients, potential partners) from the private sector, ii) business registers, and iii) information on rules and regulations applicable in another Member State.

##### *i) Commercial information*

Stakeholders report difficulties in obtaining commercial information in order to expand their business abroad. Surveys from both Eurochambres 2019 survey and the Dutch Doing Business in Europe survey find that entrepreneurs need more information about networks and opportunities to do business in other Member States. In particular, respondents to a survey of the Confederation of Finnish Industries identify difficulties “across the value chain, from assessing and finding good dealers and partners even before entering the market and in the bidding phase, to after sale services (e.g. installation and construction of equipment)”.

The problem is particularly prominent among SMEs. The Latvian Chamber of Commerce and Industry reports that entering foreign Member States’ markets can be even more difficult for SMEs because they do not have sufficient resources to do a proper evaluation of market risks and opportunities. Similarly, the Interim Evaluation of the COSME programme finds that SMEs are in need of information to help them develop their activities outside their home country. It states that “the limited capacity of SMEs to internationalise their activities and their challenges in ‘finding customers’ can be considered an information asymmetry failure.”<sup>26</sup>

##### *ii) Access to business register information*

Legal and financial information on other businesses may be costly. Such information is available in a business register, but majority of business registers charge a fee to provide company information. For example, the Austrian Chamber of Commerce reports insufficient free access to commercial registries data. For example, the central portal of the German business register does not provide information in machine-readable formats and charges “high administration fees”. Similarly, the Czech Chamber of Commerce reports “insufficient reliable information about legal status and financial situation of potential business partners in other Member States” as an obstacle.

At the same time, national business registers have been connected through the Business Registers Interconnection System (BRIS)<sup>27</sup> since 2017. BRIS allows companies and entrepreneurs to search and obtain free information on EU limited liability companies in a multilingual and user-friendly way through the e-Justice Portal.

*iii) Information on rules and regulations applicable in another Member State*

This obstacle has different dimensions. On the one hand, the national rules themselves can be complex and unclear. Participants in a 2016 public consultation claimed that, even when online information about applicable national rules related to doing business in another Member State exists, it is difficult to find or understand it or it is too general.<sup>28</sup> The Confederation of Finnish Industries, for example, states that the “complexity of regulations and bureaucracy,” reinforced by difficulties in finding correct information, is a frequent issue that companies face. Similarly, the DIHK 2019 survey mentions a lack of information or understanding of the different rules that apply in each Member State as a frequent barrier. On the other hand, online information on rules can be missing, incomplete or unclear. In a survey by the Czech Chamber of Commerce, the inaccessibility to information on rules and requirements was highlighted to be an extremely significant or significant barrier. The Confederation of Danish Industry highlights that because many references to standards are not published, some companies might be forced to use third-party certification before they can market their products.

## **Available quantification**

7 out of 11 business organisations that replied report issues related to this barrier. More specifically:

*i) Commercial information*

The Czech Chamber of Commerce reports that 52 % of Czech companies say that a lack of accurate and clear information is a serious or a very serious obstacle. For 53% of SMEs, “identifying business partners abroad is too difficult” according to the 2017/2018 Annual Report on European SMEs. This makes it one of the top five obstacles to exporting.<sup>29</sup>

Similarly, 31% of SMEs with exporting experience and 21% of SMEs without such experience mention the “difficulty to identify business partners” in another Member State as a barrier to doing business across the single market, according to the Centre for European Policy Studies. In addition, 22% and 11%, respectively, also report “not knowing where to find information about potential market”.

In the area of public procurement, availability of information on public procurement opportunities varies greatly across Member States in the EU in spite of a single point of access at EU level (Tender Electronic Daily – TED). The table below illustrates this variation.

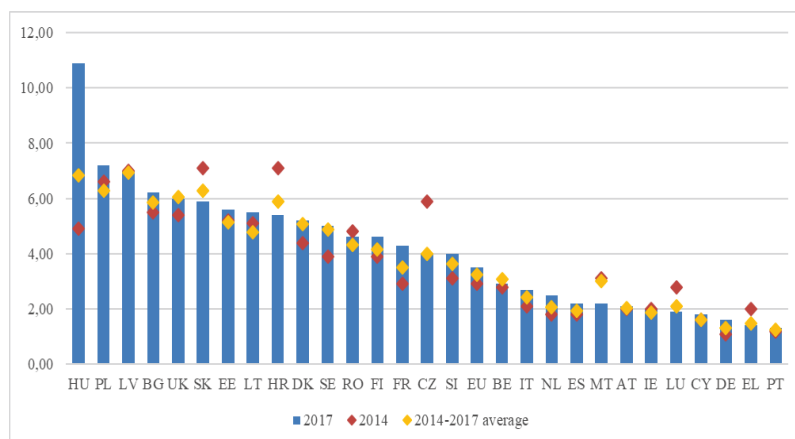
Publication rate (value of procurement published in TED as a share of the GDP):

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<sup>27</sup> [Directive 2012/17/EU](#) of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers

<sup>28</sup> Commission staff working document - Synopsis report on the stakeholder consultation on the Single Digital Gateway, SWD(2017) 212 final, p.4.s

<sup>29</sup> Commission staff working document - Synopsis report on the stakeholder consultation on the Single Digital Gateway, SWD(2017) 212 final.



Source: European Commission, TED

### *ii) Access to business register information*

According to the Eurochambres 2019 survey, “insufficient legal/financial information about potential business partners in other countries” ranks eight in obstacles to the single market, reported by 58.9% of respondents. It is particularly important for companies with less than 10 employees.

Nonetheless, the available statistics about the Business Registers Interconnection System (BRIS), show a constant increase in its use, including by companies and entrepreneurs, with over 732,000 company searches since BRIS went live in June 2017.

### *iii) Information on rules and regulations applicable in another Member State*

According to the Eurochambres 2019 survey, “inaccessibility to information on rules and requirements” ranks third in obstacles to the single market, reported by 69.1% of respondents. According to the Hidden Treasures report, “not knowing the rules which have to be followed” is a barrier for 31% of SMEs in the five largest Member States.

## **Analysis of the reported practical obstacles and barriers**

As regards *Commercial information about business opportunities ((i) above)*, there is **limited role of EU legislation** to provide information about business opportunities for the private sector. Finding such information is, to a large extent, dealt at firm level. Still, Member States have put in place networks and dedicated administrations to support their exports.

In the area of public procurement opportunities, there is a problem of **inadequate enforcement**, notably, with uneven publication rates among Member States (cf. graph).

As regards information on companies available in *business registers ((ii) above)*, Directive (EU) 2017/1132 requires EU Member States to ensure disclosure of information on limited liability companies. Such information includes important documents such as instruments of constitutions, statutes and name of legal representatives. Business registers can charge fees for those documents, which must not exceed the administrative cost incurred by the business register. This Directive also requires Member States to provide additional information free of charge through the system of interconnection of registers (BRIS), including names of legal representatives, object of the company and information on their branches.

The issue of *information on rules and regulations applicable in another Member state ((iii) above)* seems to be a problem of **inadequate implementation of EU legislation**. For example, the Services Directive requires Member States to make information on rules and requirements

easily accessible at a distance and by electronic means through the so-called Points of Single Contact. In particular during the implementation of the Services Directive, the Commission invested major efforts in partnership with Member States, with a view to making them reach concrete achievements on that front.<sup>30</sup> In view of some persistent shortcomings, the Commission has recently launched infringement procedures to solve Member States' partial inaction on that front. It is also linked to other broader aspects of the **general business environment** in Member States. The issue **has recently been addressed at EU level through the Single Digital Gateway**. Regulation (EU) 2018/1724 establishing a Single Digital Gateway aims at facilitating online access to the information, administrative procedures and assistance services that businesses need to get active in another EU country. By the end of 2020, through a single point of access, they will be able to find reliable, qualitative information on EU and national rules that apply to them when they want to exercise their single market rights, know how to carry out administrative procedures and what steps they need to follow. In addition, if users are still confused about which rules apply or have trouble with a procedure, they will be guided to the EU or national assistance service most suited to address their problem.

In addition, specifically as regards information about company law related procedures and requirements, Directive (EU) 2019/1151 requires Member States to provide such information free of charge through the single digital gateway and, where applicable, on the e-Justice Portal and at least in a language broadly understood by the largest possible number of cross-border users. This includes information on the formation of limited liability companies and registration of branches online. Member States will also make national online templates available for the formation of private limited liability companies (and can decide to provide such templates also for other types of companies). The timely transposition of this Directive by Member States will be important in this context.

## Step 2a Steps to selling cross-border: product and services regulation

### 2. Difficulties in meeting requirements to sell goods or services

#### Practical obstacles and barriers reported by businesses

Businesses report four different categories of difficulties in meeting requirements to sell goods or services: i) they are prevented from providing their goods or services or they have to adapt them, ii) unfair competition of non-compliant products, iii) they face administrative burdens to conform to technical requirements and other national rules, and iv) difficulty to access information on requirements (see section of access to information).

*i) Businesses are prevented from providing their goods or services or they have to adapt them*

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<sup>30</sup> See for ex. Commission Decision of 2 October 2009 setting out the practical arrangements for the exchange of information by electronic means between Member States under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market. See also COM/2011/0020 final, Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive.

Sometimes, goods lawfully marketed in one EU country are refused market access in another without good reason, as reported by the Austrian Chamber of Commerce.<sup>31</sup>

For example, the Spanish Chamber of Commerce reports issues with the acceptance of products in several Member States. Specifically, this organisation reports that electrical equipment and electrical safety and security systems exported to some Member States must be certified by the certification authority of that country. Other European certifications are not accepted. In addition to the certification costs, exporters are reportedly required to pay the certification authority a share of their sales revenue as a fee.

Businesses, particularly SMEs that are faced with national rules preventing them from marketing their products, which have already been lawfully marketed in another Member State, tend to either adapt their products instead of relying on mutual recognition or not enter that market.

In the construction sector, the Confederation of Danish Industry reports that several Member States continue to require national quality marks and documentation. This often goes beyond the CE marking laid out in the Construction Product Regulation. An example is fire safety, where Sweden, Belgium and France appear to require several certificates which cover the same characteristics as the CE marking. The demand for additional certificates “constitutes a heavy bureaucratic burden for manufacturers wishing to export their products to the aforementioned markets”.

Similarly, the Confederation of Finnish Industries reports that technical standards for constructions and building materials are frequently divergent, which leads to a need to locally adapt projects.

The Confederation of Danish Industry reports that temperature requirements for semi-preserved foods vary throughout Europe. This causes problems for companies that produce their products in one Member State and wish to export them to other Member States. For example, as Danish legislation requires lower temperature, a foreign company had to send its products to external cooling facilities to comply with the Danish temperature requirements.

Several business organisations and multiple SOLVIT cases report that “Member States use different requirements on entering of products in their domestic markets, ignoring the EU rules on mutual recognition,” as formulated by the Czech Chamber of Commerce. The DIHK 2019 survey reports that there are “difficulties with the mutual recognition of national regulation in other EU Member States”. The survey adds “For instance, certain companies complain about the inconsistent recognition of professional qualifications in the single market. The same applies to eSignatures”. DIHK claims that there should be guaranteed freedom to provide services under the EU law (including in the European Court of Justice case law), but that in practice, it is “not always effectively implemented”.

“Different national service rules” are the second most significant obstacle to the single market, indicated as significant or very significant by 71% of respondents to the Eurochambres 2019 survey (81% and 60% for service providers and producers, respectively). The majority of respondents to a survey by the Czech Chamber of Commerce highlight that different national service rules are an extremely significant or significant problem. Similarly, “different technical standards” are reported as an obstacle by 18% of self-employed, according to the Dutch Doing Business report.

For example, the Greek Chamber of Commerce states that when exporting, different product and services market regulations per country “make business more complex and increase cost to

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<sup>31</sup> The Chamber of Commerce also adds “These are individual cases and no pattern can be derived from that. In practice, our member companies rarely face obstacles, delays and additional costs.”



comply”. Similarly, Malta Chamber of Commerce argues that “once a product is registered in the EU, it should not have to be re-registered”.

In the area of goods, certain national measures may have a restrictive effect on goods leaving the territory of that Member State. Such measures can be a direct ban or restriction of exports, such as, an obligation to sell the entire production or a percentage of it (gas, electricity, wood, etc.) on the domestic market, which prevents economic operator from selling their products in another Member State. It can also take the form of a national measure indistinctly applicable to domestic and foreign economic operators that may have a greater (restrictive) effect on goods leaving the territory of that Member State, such as an obligation to draw up all invoices relating to cross-border transactions exclusively in the official language of that Member State. Export restrictions are in principle prohibited under Article 35 TFEU. Therefore, Member States putting in place such national measures need to demonstrate that these are justified by a public objective, and proportionate as to achieve the said objective. Furthermore, where the matter is harmonised by EU rules, Member States must comply with those rules.

#### *ii) Unfair competition of non-compliant products*

There are still many unsafe and non-compliant products sold on the EU market, although one would expect that EU rules should be applied uniformly throughout the EU. This not only endangers consumers, but also puts compliant businesses at a competitive disadvantage. For instance, third-country products could in some instances be unsafe and also therefore non-compliant with EU legislation. However, Member State authorities can have difficulties to control this trade for several reasons. One reason is that it is problematic for them to take efficient action against the responsible operator when located outside the EU. In particular, this is the case in relation to consumer products not covered by EU harmonisation legislation. Other reasons can include lack of administrative capacity for market surveillance authorities or lack of cooperation between them cross border. Again, this results in an unequal level playing field for companies.

#### *iii) Businesses face administrative burden to conform to technical requirements and other national rules*

Even when information about technical requirements is available and businesses have to legally undergo a given procedure and meet certain requirements, the process of registration and approval of a given product or activity can be seen as slow and administratively heavy.

These administrative delays can create hurdles for companies, as two SOLVIT cases illustrate. In one case, an agrochemical company reported that it applied for a parallel trade permit to another Member State for two plant protection products. Two months later, the Member State’s authorities confirmed they received documents to assess one of the applications. Another month later, they confirmed they received documents for the other application. However, the applicant still has not received a decision on either of their applications three months later.

In another SOLVIT case, a foreign company reports that it was in contact with a company interested in the sale of their nutritional and cosmetic products in that company’s Member State. The products had been sold on the foreign company’s market for more than 10 years and are regularly registered in the Member State. The foreign company requested a registration at the Member State’s authorities. However, two years later, these authorities are still analysing whether the products can be approved.

### **Available quantification**

10 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier. More specifically:

*i) Businesses are prevented from providing their goods or services or they have to adapt them*

Up to 71% of SMEs were faced with a market access denial decision after using mutual recognition for entering a market<sup>32</sup>

‘Different national service rules’ are the second most significant obstacle to the single market, indicated as significant or very significant by 71% of respondents to the Eurochambres 2019 survey (81% and 60% for service providers and producers, respectively). Similarly, ‘different technical standards’ are reported as an obstacle by 18% of self-employed, according to the Dutch Doing Business in Europe survey.

*ii) Unfair competition of non-compliant products*

The number of unsafe and non-compliant products sold on the EU market is deemed to be as many as 32% of toys, 58% of electronics, 47% of construction products or 40% of personal protective equipment inspected<sup>33</sup>. This is particularly relevant as, over the last few years, the share of people ordering goods or services online increased steadily. 60% of EU consumer purchased products online in year 2018 (Eurostat). More and more of the dangerous products notified in the Rapid Alert System for non-food dangerous products are sold online. In 2018, a total of 2257 alerts were circulated in this system. 53% of products notified in the Rapid Alert System originate from China.

*iii) Businesses face administrative burden to conform to technical requirements*

“Complex administrative procedures” are the most serious obstacle to the single market, indicated as significant or very significant by 79% of respondents to the Eurochambres 2019 survey (80% and 78% for service providers and producers, respectively). Similarly, according to the Hidden Treasures study, administrative procedures are an obstacle for 37% of SMEs without exporting experience and 26% of SMEs with exporting experience.

According to the Dutch Doing Business in Europe survey, 20% of self-employed respondents mentioned major obstacles in the area of importing and exporting services, particularly regarding the complexity and duration of the process in order to receive consent for delivering a service.

For example, in only a quarter of Member States does the consumer protection authority take a decision in a case covered by EU consumer law in less than three months on average, according to the Hidden Treasures report.

A recent assessment shows that the administrative costs created by national sector-specific requirements in the areas of regulated business services and construction services can go up to EUR 10,000 and more.<sup>34</sup> Per company level total compliance costs for European businesses are estimated to amount to 0,48 % of turnover.<sup>35</sup>

The problem is also prevalent among SMEs. According to a EU Flash Eurobarometer, 24% of respondents reported that administrative procedures for exporting are too complicated.

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<sup>32</sup> Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition on goods lawfully marketed in another Member State, SWD (2017) 471 final.

<sup>33</sup> Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on procedures for compliance with and enforcement of Union harmonisation legislation on products, SWD (2017) 466 final.

<sup>34</sup> Ecorys, “Administrative formalities and costs involved in accessing markets cross-border for provisions of accountancy, engineering and architecture services”, 2017; Ecorys, “Study on costs involved in accessing markets cross-border for provision of construction services”, 2018

<sup>35</sup> <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=9966151>

## Analysis of the reported practical obstacles and barriers

The problems that businesses may be forbidden from providing their goods or services and may have to adapt them, are in most cases due to either **restrictive national rules (and a limited role of EU legislation)**, or **EU legislation leaving flexibility** to Member States, as well as an **inadequate enforcement and implementation of EU law**. On these issues it is worthwhile differentiating services from goods as they have different legal frameworks. It should also be added that as regards e-commerce, criteria triggering goods requirements are not always clear and consistent (see barrier 59 on complexity and uncertainty of applicable rules for cross-border sales and purchases).

In addition, many intra-EEA trade barriers and obstacles to cross-border e-commerce are rooted in private behaviour of businesses rather than regulation. In recent years, the Commission has intervened through competition enforcement action to stop certain companies' illegal practices that partitioned the Single Market and prevented licences in Europe from selling products cross-border and across customer groups.

### *Goods*

In the opinion of Confederation of Danish Industry, there is a lack of a systematic follow-up on Member States' obligations to enforce common EU rules, insufficient reporting of the surveillance, and a lack of publication of references to European harmonised standards.

Enforcement differences can indeed create an uneven playing field. Sometimes, one Member State's market surveillance authority may consider that a product is compliant with EU legislation, whereas in other Member States, authorities may take a different view. In those cases, a company may be requested to take corrective actions and even take the product out of the market, which can create significant economic losses.

However, it is important that there is a common understanding among market surveillance authorities of what are non-compliant products. To this end, the recently adopted Market Surveillance Regulation 2019/1020 (which builds on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011), will reinforce the coordination among Member States market surveillance authorities in the harmonized area, with the set-up of the EUPCN (European Union Product Compliance Network). Among other aspects, the EUPCN will facilitate the exchange of information via the electronic portal ISCMS on the outcome of the inspections, and will also allow authorities to share and agree on product-specific risk-assessment methodologies.

Requirements linked to the need to ensure the safety of products also might constitute an obstacle. This is, nonetheless, a justified obstacle to ensure health and safety. On the other side, the different regime in place for harmonised and non-harmonised products constitute an avoidable obstacle. There is therefore the need to have a more coherent safety regime for both type of products.

Additionally, a procedure called "safeguard clause" is foreseen in the harmonised legislation to allow Member States and the Commission to take a position concerning a national restrictive measure.

The sectoral sections on **industrial machinery** and **construction** provide concrete examples of these problems, which also can find their origin in sector-specific legislation.

### *Services*

The main root causes seem to be related to inadequate **implementation of EU law** and more generally the **general business environments in Member States**.

Both Treaty and secondary legislation like the Services Directive clearly distinguishes between the rules applicable to establishing service providers and those applicable to providers of temporary cross-border services (e.g., service providers like lawyers or IT specialists when posted in another Member State). It requires Member States to abstain from imposing their own requirements on temporary cross-border service providers except in cases justified by a limited number of overriding reasons of public interest. This means that the requirements Member States can impose on these temporary service providers are limited. In practice nevertheless, service providers still face regulatory obstacles when providing temporary services in other Member States. Furthermore, there is often a lack of clarity in the legislation of Member States as well as for example on the points of single contact whether and how national requirements apply to temporary cross-border providers.

#### *Administrative capacity*

The root cause of the administrative burden borne by businesses seems to be often linked to insufficient **administrative capacity and practices** for the implementation of EU law by national authorities. Administrative burden can in certain circumstances be justified in order to protect public interests, such as safety or health, but must be in compliance with rules such as the principles of non-discrimination and proportionality and going along with at least partly harmonised market regulation, which is properly enforced. Lack of capacity for effective market surveillance is discussed in the next section.

The Services Directive addresses the issue of administrative burden faced by companies to comply with national requirements. It requires Member States to abolish unjustified authorisation schemes, simplify administrative procedures and formalities for those services and areas falling into this ambit of application. Moreover, under the Services Directive, authorisation procedures must comply with a number of requirements such as clarity, publicity, impartiality, reasonable waiting period. Information on requirements should be easily accessible and service providers should be able to complete procedures at a distance and by electronic means (through the national "points of single contact"). To make these rules operational, the Commission has carried out over the years substantial work together with Member States.<sup>36</sup> There is still important scope for improving the implementation of these provisions by Member States. Administrative capacity and the dedication of national resources plays an important role in this regard.

### **3. Problems with mutual recognition affecting the free movement of goods not covered by EU harmonisation legislation**

This barrier is a part of the previous section on difficulties in meeting requirements to sell goods and services. However, it is of such importance that it requires a section of its own.

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<sup>36</sup> See Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73); see also Commission Decision of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market; Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

## Practical obstacles and barriers reported by businesses

Building on the previous section, business organisations point out general issues in particular on the free movement of goods not covered by EU harmonisation legislation, which cover a wide range of consumer goods (such as textiles, footwear, childcare articles, jewellery, tableware or furniture).

As reported by the Austrian Chamber of Commerce, in some instances goods lawfully marketed in one EU country are refused market access in another without good reason<sup>37</sup>. Similarly, “different technical standards” are reported as an obstacle by 18% of self-employed, according to the Dutch Doing Business in Europe survey. The Greek Chamber of Commerce states that when exporting, different product and services market regulations per country “make business more complex and increase cost to comply”. Similarly, Malta Chamber of Commerce argues that “once a product is registered in the EU, it should not have to be re-registered”. According to a survey by the Confederation of Finnish Industries, 44% of respondents mention different standards as a barrier and 36% mentioned regulatory differences as a barrier. The Czech and German chambers of commerce as well as multiple SOLVIT cases report that Member States use different requirements on entering of products in their domestic markets, ignoring the EU rules on mutual recognition.

## Available quantification

The share of goods in intra-EU trade makes up significant part of the single market. It generates around 25% of EU GDP and 75% of trade in goods between EU Member States. The EU accounts for around one sixth of the world’s trade in goods. Trade in goods between EU Member States was valued at EUR 3,063 billion in 2015.

According to a EU Flash Eurobarometer, more than one third of SMEs (36%) have imported from another country within the EU, while 30% have exported to another EU country. Additionally, 7 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

A wide range of consumer products are not harmonised by EU legislation (the so-called “non-harmonised goods” such as textile, footwear, childcare articles, jewellery, tableware or furniture). Up to 71% of SMEs who tried the existing mutual recognition system were faced with a market access denial decision. The lower intra-EU trade for textiles could be explained by strong imports from third countries. In 2018, the EU imported EUR 115 billion in textiles and clothes. In particular, for clothes imports are very large, with over EUR 80 billion in 2018.

## Analysis of the reported practical obstacles and barriers

**EU legislation leaves flexibility** for the free circulation of goods not covered by EU harmonisation legislation by relying on the principle of mutual recognition.

**Inadequate enforcement of EU law** and insufficient **administrative capacity and practices**: there is often limited information about national and EU rules that have to be complied with. This includes procedures and guidance, documents templates and information, or information about relevant authorities. Some aspects of products may be partially covered by EU harmonisation

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<sup>37</sup> The Chamber of Commerce also adds “These are individual cases and no pattern can be derived from that. In practice, our member companies rarely face obstacles, delays and additional costs.”

legislation. It might be complicated to identify the applicable national technical rule for certain types of goods and it is not always easy to find the right authority at the national level to provide the necessary information.

The mutual recognition principle ensures that products not subject to EU-wide harmonisation legislation can, in principle, move freely within the single market, if they are lawfully marketed in one Member State. This principle should in theory allow manufacturers to sell their products across Europe without any additional requirements. To make the principle faster, simpler and clearer in practice, the EU adopted Regulation (EU) 2019/55 on the mutual recognition declaration which was adopted in March 2019 and will start applying as of 19 April 2020, together with an action plan to speed-up the implementation of the mutual recognition principle. The new Regulation 2019/515 establishes a voluntary Mutual Recognition Declaration, stronger administrative cooperation and alternative business friendly problem solving procedure in case of denial. The Regulation also foresees that Product Contact Points of Member States provide economic operators with the necessary information concerning their products (e.g. the applicable technical rules, the contact details, etc.)- Guidance on Regulation 2019/515 shall also ease the application by economic operators and authorities of the principle of mutual recognition in the EU single market.

## **4. Fragmentation of rules for digital services**

### **Practical obstacles and barriers reported by businesses**

This barrier is a part of the section on difficulties in meeting requirements to sell goods and services. However, as it plays out differently for digital services, it deserves a section of its own.

Digital services face different legal requirements across the single market. This fragmentation is increasingly burdensome and leads to ineffective supervision of digital services. As a consequence, the protection of citizens' safety and rights online can be more difficult. This affects disproportionately small businesses that offer innovative online services.

### **Available quantification**

Conservative estimates point to around 10 000 EU start-ups established in Europe that might be struggling with the fragmentation of digital services<sup>38</sup>. More data is currently being collected and analysed in the context of the evidence-gathering and consultation exercise feeding into the Digital Services Act that the Commission has announced for the end of 2020.

### **Analysis of the reported practical obstacles and barriers**

The root cause of this barrier relates to the **renewed need for harmonisation at EU level**.

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<sup>38</sup> Based on the Dealroom database, which assembles data on innovative companies on a global and European scale.

The regulatory framework for digital services dates back to 2000, when the landscape of services was significantly different from today. The current legal framework for digital services, anchored in the Treaty's freedoms for establishment and service provision, is set out in the e-Commerce Directive, which harmonised several key aspects relating to the free provision of digital services across in the internal market of the EU.

With 20 years of case law interpreting the E-Commerce Directive, sometimes in diverging ways, the legal notions on the services covered and their respective responsibilities lack precision. Member States are also regulating in this field, in particular to address legitimate public policy concerns raised by the dissemination of illegal content on their territories. This creates a patchwork of national rules and fragmentation in the Digital Single Market, as well as legal uncertainty which is discouraging for businesses, particularly SMEs, from benefitting from the opportunities that the single market has to offer.

Moreover, the cooperation procedures amongst competent authorities are not being used today, and Member States are taking further unilateral actions.

A number of recent policy and regulatory interventions have addressed specific challenges for the dissemination of content online, in particular with regard to the illicit dissemination of copyrighted content (Copyright Directive) or cover specific types of platforms and a subset of illegal content (Audiovisual Media Services Directive covering video-sharing platforms). A Commission Recommendation of 2018 sets general lines for the actions expected from all hosting services (including online platforms).

Against this background, the President of the European Commission announced a Digital Services Act to 'upgrade our liability and safety rules for digital platforms, services and products, and complete our Digital Single Market'.

## 5. Differences in consumer protection

### Practical obstacles and barriers reported by businesses

Despite the existing set of consumer laws at EU level, **businesses, as reported for instance by the DIHK 2019 survey, widely reported that they face divergent consumer protection rules** in such areas as consumer rights, consumer sales and guarantees, contract terms, price indication and disclosure, which create additional costs, especially for retailers.

**According to the businesses, differences in national rules related to consumer protection create additional costs, particularly for retailers.** Businesses perceive that this problem may be exacerbated by the Geo-blocking Regulation. Even if, from a strictly legal point of view, the Geo-blocking Regulation does not oblige entrepreneurs to sell to consumers in another Member State<sup>39</sup>, businesses warn that prohibiting them from discriminating on the basis of the customer's nationality, residence or establishment when selling can lead in practice to the same result.

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<sup>39</sup> The Regulation does not impose an obligation on traders to sell across the EU, although it does prohibit them from discriminating on the basis of the customer's nationality, residence or establishment when selling. Furthermore, the Regulation does not introduce an obligation to deliver across the EU. It defines specific situations where customers cannot be denied access to the goods or services of the trader for reasons relating to their nationality, residence or establishment.

Beyond the Geo-blocking regulation, the Commission has contributed through competition law enforcement to tackle anti-competitive cross-border trade restrictions and geo-blocking practices that limit the availability of products for European consumers.

**The Commission undertook a comprehensive evaluation of general EU consumer protection legislation** during 2016-2017, which identified limited redress possibilities for consumers and diverging enforcement across Member States as the main issues hindering the effectiveness of EU consumer legislation.

### **Available quantification**

**Differences in consumer protection rules and contract law -including legal advice- was considered a ‘very important’ or ‘fairly important’ obstacle** to the development of cross-border sales to other EU countries by 42 % of retailers using face-to-face sales channels and by 46 % of retailers using distance sales channels. In particular, differences in national rules that currently exist in some Member States and go beyond the minimum harmonisation level of the Consumer Sales and Guarantees Directive were reported as causing moderate to major costs for retailers, such as the free choice of remedies as opposed to the hierarchy of remedies (54%), periods of reversal of burden of proof longer than 6 months (38 %), the absence of an obligation for consumers to notify a defect within 2 months (37 %) and a longer legal guarantee period (36 %).<sup>40</sup>

**In addition to different substantive rules, barriers related to consumer protection stem also from the national consumer protection proceedings.** In only a quarter of Member States does the consumer protection authority take a decision in a case covered by EU consumer law in less than three months on average<sup>41</sup>.

**In the Eurochambres 2019 survey**, “differences in national (online) consumer rights” are reported as an obstacle by 36.30% of respondents. Finally, 6 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

### **Analysis of the reported practical obstacles and barriers**

The main root cause of this potential hurdle stems from the fact that **EU legislation leaves flexibility in the level of harmonisation**, which creates space for differences in national rules. There may be legitimate reasons for Member States to maintain specific national rules in some cases. The revised Consumer Protection Cooperation Regulation (EU) 2017/2394, which strengthens enforcement cooperation procedures and the powers of national authorities to address cross-border and widespread infringements of EU consumer law, entered into application on 17 January 2020. Additionally, in e-commerce, criteria triggering regulatory/consumer protection obligations and jurisdiction are not always clear and consistent (cf. barrier 59 on complexity and uncertainty of applicable rules for cross-border sales and purchases).

*i) Significant EU rules leave flexibility in the level of harmonisation*

**Consumer protection is embedded in a broad scope of EU legislation.** While the Consumer Rights Directive and the Unfair Commercial Practices Directive follow, in general, a full

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<sup>40</sup> Consumer legislation – 2017 Fitness Check (SWD(2017) 209 final)

<sup>41</sup> Hidden Treasures, Mapping Europe’s sources of competitive advantage in doing business, Donald Kalff and Andrea Renda, CEPS (Centre for European Policy Studies), Brussels, 2019



harmonisation approach (with exceptions in certain areas and allowing Member States several regulatory choices), the other four substantive legal acts (Consumer Sales and Guarantees Directive<sup>42</sup> 1999/44/EC (CSGD); Unfair Contract Terms Directive 93/13/EEC (UCTD); Price Indication Directive 98/6/EC (PID); Geo-blocking Regulation) provide for minimum harmonisation.

*ii) Recent relevant initiatives*

**The revised Consumer Protection Cooperation Regulation, entered into application on 17 January 2020.** It provides a new procedure to address Union wide violations of consumer law and a better surveillance system. The Commission also has a stronger coordination role and is able to prompt coordinated enforcement investigations in the event of Union wide infringements.

**In addition, a new regulation on Market Surveillance and Compliance is expected to address some of the challenges mentioned** above when it comes to products covered by EU-wide harmonisation legislation. It will come into force in 2021.

**The issue of differences in national laws has also been partly addressed by the recently adopted Directives on sales of goods and the supply of digital content/digital services:** Directives (EU) 2019/770 and 2019/771 fully harmonise certain key contract law rules that were identified as obstacles to cross-border trade of goods and of digital content/digital services within the EU. These include rules on conformity requirements, as well as consumer remedies in the event of a lack of conformity and the conditions for their exercise. However, the length of the legal guarantee period remains subject to minimum harmonisation.

Finally, the Geo-blocking Regulation provided a harmonised approach to blocking the access to online interfaces and other discriminatory practices, with a view to favour access to offers by consumers in specific situations, while providing *ex lege* clarifications as to the applicable provisions in these cases.

Beyond the Geo-blocking Regulation, the Commission's competition enforcement has tackled certain companies' illegal practices that partitioned the Single Market to the ultimate detriment of European consumers. In 2018, the Commission fined four consumer electronics manufacturers (Asus, Denon & Marantz, Philips and Pioneer) for resale price maintenance ("RPM") in relation to a number of widely used consumer electronics products. In the case of Pioneer, the infringement also covered restrictions to cross-border trade between EU Member States. The Commission also fined the US clothing company Guess for imposing, among others, restrictions of cross-border sales to consumers (contractual geo-blocking) and RPM. Between March 2019 and January 2020, the Commission fined three brand-owners and licensors of rights for merchandising products (Nike, Sanrio and NBC Universal) for their licensing and distribution agreements restricting cross-border and online sales of merchandising products such as bags, toys, school accessories and clothes, notably for children.

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<sup>42</sup> Which will be replaced by the newly adopted Directive (EU) 2019/771 on contracts for the sales of goods.

## 6. Uneven access to public procurement

### Practical obstacles and barriers reported by businesses

There is a perception among chambers of commerce and other business organisations of several Member States that local suppliers tend to be favoured over foreign ones, which discourages companies from making the effort and taking the time to bid across borders. Although overall transparency has increased during recent years, cross-border activities as measured by the number of contracts awarded to non-domestic suppliers, are limited. For instance, the Confederation of Danish Industry reports that between 2009 and 2015 only 2% of tenders were won by European companies in another Member State. According to the Dutch Doing Business in Europe survey, access to public procurement is the single most significant obstacle for SMEs: 32% of self-employed and 42% of SMEs in the area of services say they face barriers in gaining access to public procurement. This is also a barrier for the export of products, according to 37% of respondents to the same survey.

The Austrian Chamber of Commerce reports that, in the summer of 2015, a company producing vehicle restraint systems was excluded from participating in a public tender in another Member State on the grounds that the product suddenly no longer complied with the local safety provisions'. However, the product was CE marked and was legally and properly used as a vehicle restraint system in all other countries.

The Confederation of Finnish Industries reports that each Member State has its own process, which can include requirements for a priori references within a very specific field, obviously favouring a preferred supplier; requests in specific languages, requirements for service attention (e.g. response time) that effectively prohibit remote bidders from complying; extensive documentation requirements regarding the bidder's organisation, business plans, ownership, other business, key employee background, etc. In addition, businesses report that in Italy, the anti-corruption regulation seems to cause disproportionate administrative burdens for non-local companies participating in public tenders.

Other business reports suggest that the main issues affecting public procurement systems in many Member States are the lack of professionalism regarding procedures, preparation of tender documents and use of criteria for evaluation of tenders; as well as lack of legal or technical training that leads to lack of specific skills and capacities. The Czech Chamber of Commerce reports that 69% of Czech companies find public procurement practices arbitrary and would prefer to establish a single EU-wide repository where they can enter company data and documentation required or public tender processes in order to avoid multiple requests.

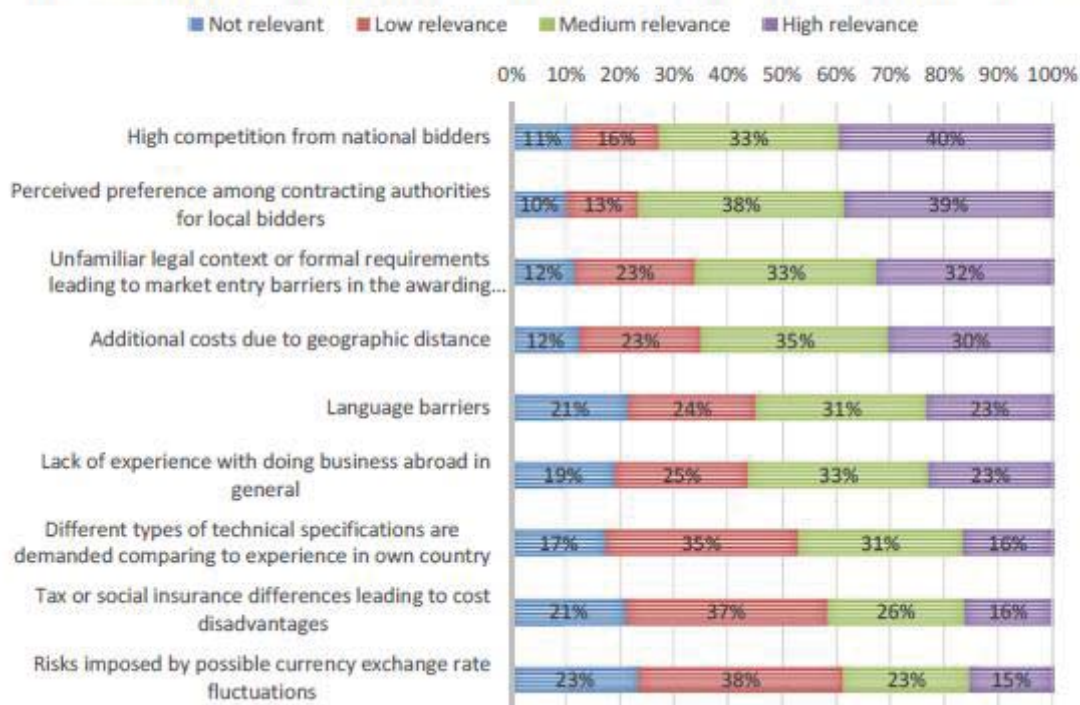
Businesses reported in a recent survey<sup>43</sup> the following main obstacles for bidding cross-border (in parenthesis the percentage of respondents that perceived each of these as a "high relevant barrier"):<sup>44</sup> High competition from national bidders (40%); Perceived preference among contracting authorities for local bidders (39%); Unfamiliar legal context or formal requirements (e.g. contract, labour law, certificates to provide such as special permits necessary for offering services abroad etc.) leading to market entry barriers in the awarding country (32%); Additional costs due to geographic distance (i.e. implementation of contract is more expensive compared to delivery of contract close to own location) (30%); Language barriers (23%).

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<sup>43</sup> Survey DG GROW, cross-border study

<sup>44</sup> *Idem. Idem.* Final European Commission report on the Measurement of impact of cross-border penetration in public procurement, February 2017...

**To what extent do the following factors create barriers to cross-border public procurement?**



Finally, architects report a certain number of difficulties with procurement rules. The majority of architectural practices (more than 99%) are small companies with fewer than 50 employees. This can create obstacles related to the public procurement requirements such as minimum turnover. In response to the Architects' Council of Europe survey in 2018, 78% of architects said that they had experienced difficulties as part of the bidding process for OJEU advertised projects. About 40% of these respondents reported they had difficulty in fulfilling the minimum turnover threshold, while nearly as many felt the process was too onerous. More than 30% thought the bidding process was too costly, or that they had insufficient past experience. According to the same survey, currently around 17% of the architectural companies' turnover is on average generated through public tenders<sup>45</sup>. The vast majority of architectural/engineering contracts registered in the TED database (around 98%) is still awarded domestically.

### Available quantification

Cross-border contracts (direct or indirect i.e. through a subsidiary) represented approximately 1/4 of the number of awarded contracts in the EU and of the total value of the contracts between 2009 and 2015. The direct cross-border share in the number of awards was below 5% in the majority of the 28 Member States<sup>46</sup>. At EU level, on average, SMEs only win 55 % of the contracts published in TED<sup>47</sup> (this does not reflect their share in the EU economy).

According to the Dutch Doing Business in Europe survey, access to public procurement is the single most significant obstacle for SMEs: 32% of self-employed and 42% of SMEs in the area of

<sup>45</sup> 2018 ACE sector study.

<sup>46</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/european-semester\\_thematic-factsheet\\_public-procurement\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_public-procurement_en_0.pdf)

<sup>47</sup> Tenders Electronic Daily - the online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement

services say they face barriers in gaining access to public procurement. In the Eurochambres 2019 survey, “arbitrary public procurement practices” are reported by 38.2% of respondents. Additionally, 6 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

As regards enforcement and remedies, the available data show many divergences in the design and functioning of national remedies systems:<sup>48</sup>

- There are specialised review bodies in 16 Member States; in 11 Member States, non-specialised administrative or common courts are in charge of the review. The appointment of members of review bodies is different in administrative review bodies and in judicial review bodies, and the number of their members varies from 3 to 70.
- The median length of the review fluctuates from around 15 days (Poland, Romania) to almost 267 days (Luxembourg). For some Member States, data is not available. Moreover, time limits for delivering decisions are different or non-existent in some Member States. The number of decisions as a percentage of the number of calls for competition published in TED per year varies from 1.7 % (Luxembourg) to 59.7 % (Romania).
- Review fees differ significantly among Member States. While in a few Member States the review is free (France, Spain, Luxembourg, Sweden, Latvia), in some countries the fees can be as high as EUR 380,000 (Czech Republic). In some Member States, the fees take form of a refundable deposit, in others it is non-refundable. As for the proportion of appealed first instance decisions, while in Denmark only 3 % of decisions are appealed, almost half of decisions are appealed in Bulgaria.

### **Analysis of the reported practical obstacles and barriers**

Based on the analysis of the general performance of the EU public procurement market, a number of barriers can be identified as follows: (i) access to and awareness of public procurement opportunities; (ii) geographical distance, unfamiliarity with the legal context, cultural differences; (iii) weak administrative capacity, bureaucracy, lack of professionalisation; (iv) barriers to enforcement and remedies. These relate to **EU legislation leaving flexibility as regards implementation and different policy objectives, inadequate enforcement of EU legislation, and insufficient administrative capacity and practices.**

*The diversity of the national enforcement systems* generates in some cases legal uncertainty and practical problems especially for cross-border economic operators.

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<sup>48</sup> Data collected through the Network of first instances review bodies (not published);

Report from the Commission to the European Parliament and the Council on the effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as modified by directive 2007/66/EC, concerning review procedures in the area of public procurement, COM/2017/028 final;

Final report - Study to explore data availability at the national level in order to develop indicators for evaluating the performance of the Remedies Directives;

Study to explore data availability at the national level in order to develop indicators for evaluating the performance of the ‘Remedies Directives’ Annex 2: Country Fiches.

The Remedies Directives introduce minimum level of protection of economic operators' rights during public procurement procedures and minimum requirements on national public procurement review systems. Nevertheless, Member States remain free in how to establish their national remedies systems and in their choice of the body responsible of the review.

Potentially affecting all bidders (national and foreign alike), diversified remedies systems can deter economic operators from taking part in public procurement procedures, which can lead to a decreased transparency and ultimately to limited competition across the single market.

*Insufficient administrative capacity* (of EU and national public procurement rules). Contracting authorities often face a lack of administrative capacity, lack of knowledge of the rules and of technical expertise. Administrative capacity to manage public procurement processes varies greatly between Member States and limitations can be perceived at all levels, but administrative capacity is frequently weakest at the level of local authorities. The lack of administrative capacity, adequate systems, and effective governance structures have been identified as main challenges in complying with procurement rules when implementing ESI funds.

*Complex EU legislation.* As single market instruments, the public procurement directives regulate only those contracts that are above the EU thresholds. Mindful of the principle of subsidiarity the directives regulate the most important issues and give Member States a large margin of manoeuvre in their implementation.

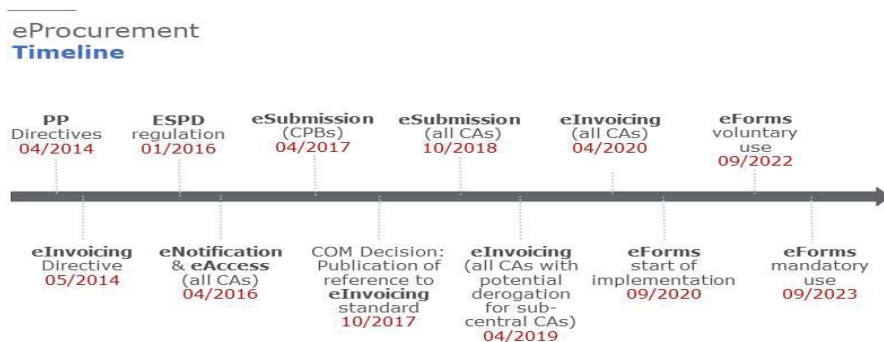
Furthermore, through the new public procurement framework, public buyers are encouraged to use more quality criteria *justified by public policy reasons* (e.g. green, social, innovative), whose introduction might create challenges to economic operators during the transition to sustainable procurement practices.

#### Recent initiatives

In terms of relevant policy context, EU public procurement rules have been fundamentally modernised with the adoption of the new generation of EU public procurement directives in 2014, in force since 2016 but transposed by Member States with an average delay of 2 years.

The Commission facilitated the creation of the Network of First Instance Remedies Bodies with the aim to strengthen cooperation and to increase the EU-wide efficiency of review. The European Commission develops guidance and good practices on green, social and innovative procurement as well as access of third country operations to the EU market.

Professionalisation of public procurement aims to improve the whole range of professional skills and competences of the people conducting or participating in tasks related to procurement. The new rules on e-procurement introduced by the 2014 Directives are expected to increase efficiency and transparency by simplifying the process and result in significant savings for all parties. The e-procurement timeline is shown below.



## 7. Differences in liability rules and insurance requirements

### Practical obstacles and barriers reported by businesses

**Respondents to the Dutch Doing Business in Europe survey highlight that small businesses face obstacles because liability rules differ between Member States.** For example, “in some Member States, it must be demonstrated that there are sufficient financial resources to pay out in the case of liability, or it must be demonstrated that there is liability insurance that covers sufficient risks.” But finding corresponding insurance can be especially problematic for small businesses, especially because liability, insurance and risks are handled differently.

In many Member States there are national rules which oblige service providers to cover risks related to their professional liability through a mandatory insurance. This is an additional safeguard for customers of the services concerned, but businesses allege that such requirements on professional indemnity insurance constitute a market entry barrier, in particular for operators active across the single market. There are several potential issues, including:

- There are large differences regarding obligations on professional indemnity insurance between different Member States within the same services sector and activity, leading to fragmentation of single market rules, complicating the free movement of services in particular for SMEs;
- Host Member States often do not take into consideration the insurance coverage previously acquired by service providers in other Member States. This leads to duplications, complexities and additional costs for service providers which are active cross-border. In addition, they might find it difficult to find sufficient offer on the market for their specific (cross-border) insurance needs.

### Available quantification

**Problems reported by cross-border service providers related to insurance requirements** have been repeatedly highlighted by stakeholders.<sup>49</sup> One survey showed, for example, that over 20% of service providers active cross-border highlighted specific problems related to complying with the insurance requirements of the host Member State.

**These requirements are widespread in different services sectors such as professional services<sup>50</sup> and construction<sup>51</sup>.** For example, in the construction services sector there is an ever-increasing discrepancy in the regulation of liability and insurance. While certain Member States (e.g. BE, FR) impose a stringent and legally compulsory decennial insurance on a range of construction works and companies taking part in the construction process, in others Member States there is no legal obligation for construction parties in terms of insurance.

### Analysis of the reported practical obstacles and barriers

Due to the strong civil law traditions in the Member States, **the role of EU legislation is limited** to liability for defective products. The Product Liability Directive 85/374/EEC (the Directive)

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<sup>49</sup> For example SWD(2014) 130 final - Access to insurance for services provided in another Member State. An updated analysis on the impact of insurance requirements in services is currently ongoing.

<sup>50</sup> See COM(2016) 820 final

<sup>51</sup> See <http://www.elios-ec.eu/sites/default/files/elios2-final-report.pdf>

ensured a harmonised system of compensation for consumers who suffered damage from defective products through strict liability of producers.

Given the changing nature of our economy, the **rules we have no longer fully reflect our reality and can therefore lead to legal uncertainty and become barriers to the full development of the single market in themselves**. It may be necessary to assess the extent to which current rules on liability should be updated to reflect the evolution of technologies and to prevent a fragmentation of national frameworks.

Regarding insurance requirements, the highlighted issues seem primarily related to **restrictive national rules** and **insufficient implementation and enforcement of EU legislation**. Member States are generally not applying the requirements set by EU law, in particular the Services Directive, to take into account essentially equivalent or comparable insurance requirements set by other Member States.

Two recent developments may address some of these issues.

- The Commission issued in 2017 detailed guidance to Member States on reform needs in regulation of professional services for seven professions (architects, engineers, lawyers, patent agents, accountants/tax advisors, real estate agents and tourist guides) and also covered professional indemnity insurance requirements.
- A Directive on a proportionality test before adoption of new regulation of professions or amendments to existing rules was adopted in June 2018. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. This also covers rules concerning professional indemnity insurance requirements.

## Step 2b Steps to selling cross-border: marketing and access to clients

### 8. Burdensome advertising and marketing restrictions

*See also related barriers in the pharmaceutical sector.*

#### Practical obstacles and barriers reported by businesses

Restrictions on advertising and promotion can be detrimental for businesses exporting on the single market. Such restrictions may have the effect of favouring domestic goods and services, and render it more difficult for goods and services lawfully marketed in other Member States to penetrate the market of the importing Member State. This is reported by SMEs in the Dutch Doing Business in Europe survey, by a variety of SOLVIT cases, and by several business organisations. Specifically, “restrictions on advertising, promotions and pricing” are reported as an issue when exporting by the Maltese Chamber of Commerce. Similarly, “Language / translation requirements for marketing” and “local advertising restrictions or different rules for marketing” are reported as barriers by respondents to the Confederation of Finnish Industries survey.

Based on data from the Technical Regulation Information System, Member States sometimes propose regulations on local content in marketing materials. For example, one Member State’s

legislation added a requirement according to which everyone marketing agricultural products and foodstuffs was required to ensure that at least half of the products originated in that Member State.

As a specific example of this barrier, in a SOLVIT case, a hospital in one Member State tried to place a job advertisement for doctors in another Member State's medical journal. However, the journal only accepted advertisements from its own Member State's employers. In another example, a respondent to a Confederation of Finnish Industries' survey stated that "direct marketing rules in B2B relation are too strict in EU, especially as applied in Germany". It takes several years to be able grow with own customer contact data for direct marketing and this gives local companies the advantage of a historical contact network that cannot be bought or shared by new players from other countries.

### **Available quantification**

"The marketing of a service has to adhere to different standards" is reported as a barrier by 27% of SMEs, according to the Dutch Doing Business in Europe survey. "Language / translation requirement for marketing" and "local advertising restrictions or different rules for marketing" are reported as barriers by 35% and 19% of respondents to the Confederation of Finnish Industries survey, respectively.

### **Analysis of the reported practical obstacles and barriers**

This barrier mainly originated in **restrictive national rules, an inadequate of implementation of EU law** by Member States, **Member States' general business environment**, and **requirements justified by public policy reasons**.

The EU Service Directive allows restrictions to commercial communication, provided these are proportionate and non-discriminatory. Member States have to remove unnecessary restrictions on commercial communications (including advertising), while at the same time safeguarding the independence and integrity of the regulated professions. Absolute bans by Member States on commercial communications by regulated professions are not allowed. For example, under that provision, a national ban on canvassing has been regarded in the case law as a total prohibition on commercial communications and thus unlawful.

In addition, a Directive on a proportionality test before adoption of new regulation of professions or amending the existing rules was adopted in July 2018<sup>52</sup>. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. This also covers rules regarding advertising in regulated professions. Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

Concerning goods, restrictions on advertising and promotion may be in some circumstances often considered as selling arrangements. However, they may constitute measures having equivalent effect under Article 34 TFEU when they have legally (*de jure*) and factually (*de facto*) discriminatory effects, that is, when they result into more limited marketing opportunities for imported products, for instance, than for domestic ones.

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<sup>52</sup> Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, *OJ L 173, 9.7.2018, p. 25*



Restrictions on internet advertising may fragment the internal market and endanger a well-functioning and competitive digital single market<sup>53</sup>.

## Step 2c Steps to selling cross-border: delivering goods and services

### 9. Transport bottlenecks, lack of access and restrictions

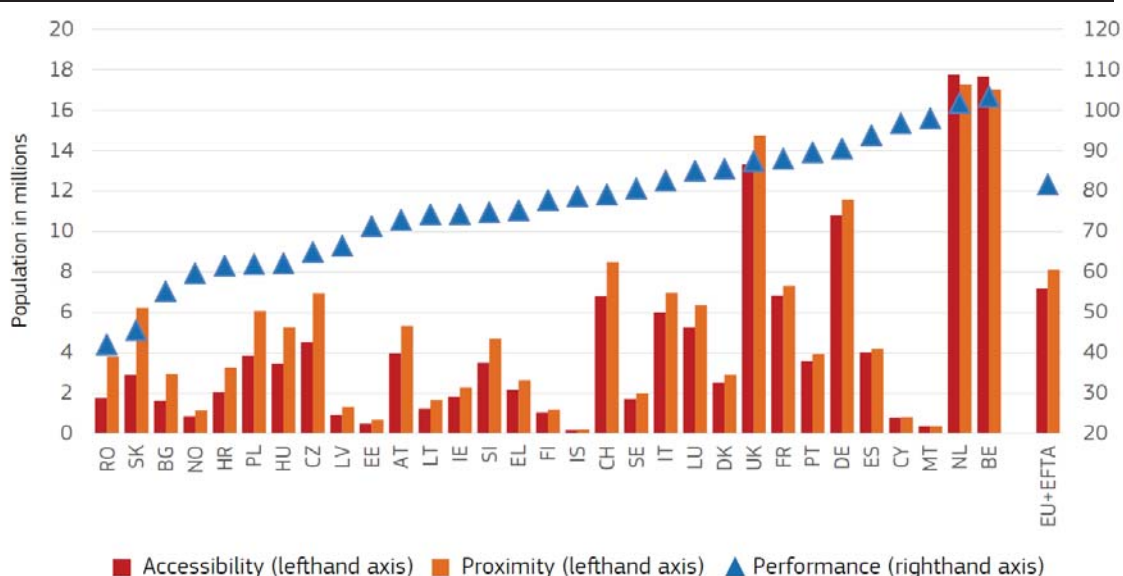
#### Practical obstacles and barriers reported by businesses

Businesses face transportation obstacles related to i) **access to transport network**, ii) **geographical barriers for remote regions**, iii) **bans** on categories of goods, and iv) **other sector-specific barriers**.

#### i) Access to transport network

**Transport infrastructure varies considerably across Member States.** The Commission analysis has shown that road transport performance can be measured as a function of accessibility (number of destinations that can be accessed in a fixed time) over proximity (number of destinations within a fixed geographical radius).<sup>54</sup> The following graph summarises the Commission's findings and indicates that the transport performance is significantly higher in Western and Southern EU countries, as compared to Central and Eastern Europe.

**Figure 3.5: Accessibility, proximity and transport performance by road per country, 2016**



**Source:** European Commission, DG REGIO

<sup>53</sup> If the paid reference concerns a service in the information society, the e-commerce Directive applies – in this case, please refer to discussions on barrier 4 fragmentation of digital services

<sup>54</sup> [https://ec.europa.eu/regional\\_policy/sources/docgener/work/2019\\_02\\_road\\_transport.pdf](https://ec.europa.eu/regional_policy/sources/docgener/work/2019_02_road_transport.pdf).

**The situation in the EU is heterogeneous, and potentially jeopardises transport connectivity in the single market.** In particular, countries that have joined the EU since 2004 still need to catch up with the performance level of older Member States. In addition, returns on investments in transport infrastructure, skills and deployment of new technologies become visible only in the long term. In addition, 15% of respondents to the September 2019 survey of the Confederation of Finnish Industries mention bottlenecks and barriers to transport as an issue when doing business in the single market.

*ii) Geographical barriers for remote regions*

**Remote regions** face additional barriers to market integration in this area due to high transport costs. For example, Malta is geographically isolated from the trans-European transport network. **Barriers related to remote/geographically isolated areas are mentioned by 4 out of 11 business organisations (that replied to a Commission survey).**

*iii) Transportation bans on categories of goods*

Sectoral driving bans on categories of goods that cannot be transported across Member States may represent an obstacle to the free movement of goods under Article 34 TFEU. Such sectoral driving bans can hamper the integration of the internal market, and if considered disproportionate, be qualified as a measure of equivalent effect to a quantitative restriction, contrary to Article 34 TFEU on the free movement of goods. The recently amended sectoral driving ban in the Austrian A12 highroad includes additional categories of goods that are not allowed to transit, unless carried by EURO VI type D heavy duty vehicles registered after September 2018. The importance of motorway A12 is significant, since it is part of the Scandinavian-Mediterranean TEN-T core network corridor.

*iv) Other sector-specific barriers*

**Many other sector-specific barriers affect each of the transport modes:** difficulty for small road transport operators to access market information; lack of information on service facilities and services offered to railway undertakings; lack of information on posting rules, enforcement and road traffic restrictions; excessive complexity of rules on Inland waterways; complex rules in public procurement in transport, and access to these rules is too restrictive; lack of flexibility linked to driving time restrictions; restrictions on work time in inland waterways; different enforcement practices in road transport among Member States; staffing: Skills shortages and mismatches in the rail sector; sourcing problems; availability of adapted rail rolling stock; restrictions on cabotage in road transport; lack of interoperability in railways; lack of harmonised processes for authorisation of railway products and for safety certification of railway operators; lack of rail network coordination; fragmented EU airspace with 27 separate air traffic management systems; fragmentation of the aviation radio band spectrum.

**In addition, evidence suggests that cross-border parcel delivery services are three to five times more costly than the equivalent domestic service.** The recently adopted Regulation on cross-border parcel delivery services aims to address this issue; it complemented the Directive in so far that it increased regulatory oversight and price transparency for domestic and cross-border parcel delivery services. In order to reduce price transparency deficits it mandated the Commission to publish tariffs for the delivery of single-piece postal items subject to the universal service. It also increased the regulatory oversight of the national authorities by requiring them to assess, for a defined set of universal postal services others than items of correspondence, if cross-border tariffs are unreasonably high.

## Available quantification

4 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

**Total freight transport activities in the EU in 2015 amounted to an estimated EUR 3,516 billion tonne-kilometres and are predicted to increase by a further 50% until 2050.** Almost half of these activities are currently carried out by road, followed by sea (31.6%), railway (11.9%), inland waterway (4.2%) and oil pipeline (3.3%). Only 0.1% of goods were transported by air. Freight transport activities are subject to various sectoral rules and are accompanied by a large amount of information, which in vast majority cases still involves paper documents at one stage or another.

## Analysis of the reported practical obstacles and barriers

### *i) Access to transport network*

**The explanation of infrastructure related barriers firstly stems from the inadequate implementation of TEN-T.** Additionally, the **policy design of TEN-T** leaves behind some regions and does not remove all geographical bottlenecks and does not fully take into account spill over effects.

As regards intermodal transport, the **EU legislation leaves flexibility in the level of harmonisation.**

### *ii) Geographical barriers for remote regions*

Remote regions face additional barriers to market integration in this area due to the distance involved and because of the low population and population density, which translates into low economic activity. All of these factors prevent building up economies of scale in transport activities and lead to high unit costs of transport in these areas. Remote islands are particularly strongly affected by this issue. The root cause is **not linked to public policy.**

### **Zooming in on barriers to intermodality**

In the highly competitive economy, industries depend on efficient multimodal logistics chains to organise the transport of raw materials and goods. However, in Europe **discrepancies in sectoral and modal legislations at both the EU and national levels** lead to significant operational inefficiencies and excessive administrative costs. The underlying reason is that **currently, the EU and national regulatory framework for different modes of transport is mostly elaborated separately** and from the perspective of a multimodal operator this and creates considerable costs and impedes efficient functioning of transport system..

**Firstly, the legal framework for freight transport information in the EU is patchy and burdensome.** The range of legal instruments concerned is very broad, including the rules applicable to vehicles (technical, safety and environmental norms and standards), personnel manning them (e.g. professional qualifications, working time), services (access to market) and goods (e.g. customs, rules applicable to dangerous goods). This is accompanied by a request to make available a large amount of information, which in vast majority of cases still involves paper documents at one stage or another. At national level, legislation on acceptance by authorities of electronic freight transport information differs, depending on the mode of transport or regulatory purpose. Technical systems for the electronic exchange of transport information also vary between and within countries and transport modes

**Secondly, price signals related to multimodal transport are incoherent between the modes, Member States or geographic areas.** The positive and negative spill-over effects of regulating/taxing/charging one mode (and not the other) are not always sufficiently considered.

**Thirdly, the coordination of technical norms and standards between Member States and between different modes of transport continues to be inefficient.** For complicated multimodal operations, this causes considerable cost disadvantages and delays. Different rules exist on same corridors for example on size of loading units, length of trains, languages, safety equipment, transshipment equipment etc.

**Lastly, there is room to improve the coordination of policy and infrastructure developments,** both at Member State and EU level. In addition, no designated rules exist at EU level for multimodal investment projects neither as regards state aid nor for project assessment. Improving the collection of data on multimodal and intermodal operations would allow to enhance the data analysis across sectors and, by so doing, better plan infrastructure investment and transport policy.

**Harmonisation and streamlining of applicable rules** and technical norms as well as digitalisation of information exchange could make the multimodal transport of goods much more efficient and reliable and generate significant savings<sup>55</sup> while supporting decarbonisation. The industry is asking for a coherent EU approach that demands better co-operation and co-ordination between different dimensions of transport policy and beyond. A horizontal EU level fitness check of rules applicable to multimodal transport may be necessary to achieve this.

## 10. Insufficient internet and cloud infrastructure

### Practical obstacles and barriers reported by businesses

Lack of high-speed internet networks and cloud infrastructure hinders business operations on the single market.

The existence of high-speed electronic communications networks is a pre-requisite for the development of the digital single market. Coverage of high-speed broadband networks has improved significantly over recent years but there is still a gap to close for people and businesses, in particular in rural and remote areas. Such areas cannot yet benefit from modern digital services (e.g. eHealth, eGovernment, eLearning) and cannot access or provide online cross-border offers.

Cloud computing is essential for the uptake of emerging technologies, such as artificial intelligence, blockchain, internet of things and high performance computing. The global cloud market is dominated by non-European (American and Chinese) providers. In 2018, Amazon, Microsoft and Google accounted together for almost 75% of the cloud infrastructure market and Alibaba is on the rise. The European cloud infrastructure and service providers are very scattered and the largest European provider (OVH) only holds 1% of the market share.

The lack of reliable, energy-efficient, trusted and secure cloud infrastructure and service providers has an impact on the development of services, in particular the take-up of cloud

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<sup>55</sup> Impact assessment accompanying electronic Freight Transport Information Regulation assessed that by digitising information required for land transport cargo only could save industry between EUR 20 and EUR 27 billion between 2018 and 2040, [https://eur-lex.europa.eu/resource.html?uri=cellar:810e3b10-59bb-11e8-ab41-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:810e3b10-59bb-11e8-ab41-01aa75ed71a1.0001.02/DOC_1&format=PDF)

services in Europe. There is also a considerable gap in cloud take-up between the Member States. In addition, the gap is also increasing in cloud take-up between large businesses and SMEs, according to the Digital Economy and Society Index.

### **Available quantification**

The EU has made some progress in recent years in terms of broadband coverage (with substantial differences among Member States). But it still has insufficient superfast ‘gigabit’ broadband connections and adequate broadband in rural areas. By the end of 2018, 83% of European homes were covered by fast broadband with at least 30 Mbps (up from 67% in 2014) and 41% of European households have a subscription (as opposed to 16% in 2014). Ultrafast connectivity of at least 100 Mbps is available to 60% of households. 20% of homes use ultrafast broadband: this is four times higher than in 2014. Average 4G mobile coverage stands at 94% of the EU population (85% 2 years ago), while there are 96 mobile broadband subscriptions per 100 people (67 in 2014).

However, in rural areas the figures decrease to only 53% for broadband connections above 30 Mbps and to 19% for broadband connections above 100 Mbps, with significant variations between Member States.

The future economic success of our key industries depends on data processing infrastructures and services. More than 60% of artificial intelligence will run over the cloud, according to an IDC report. But despite the significant reduction of IT costs and scalability of cloud, only one out of four businesses uses cloud computing in Europe in 2018.

### **Analysis of the reported practical obstacles and barriers**

To an extent, this barrier **is not linked to public policy** but to geographical realities and lag in technological uptake. It is however reinforced by **complexity of EU legislation** and **inadequate implementation of EU legislation**.

In the case of *internet networks*, the economics of the sector is typically characterised by very high sunk cost (for network deployment, spectrum licences). Additionally, inefficiencies in the deployments of electronic communications networks (mainly in terms of administrative burden) are regularly reported as one key problem for the sector. Furthermore, there may be problems of market access, which can ensue not only from public measures but also from private behaviour (e.g. anticompetitive practices or abuse of dominance).

Despite the existing sectorial rules encouraging investments, there are thus still some areas which telecoms providers consider non-profitable. Public support can only target part of those due to the level of public resources available and the administrative red tape it generates. Moreover, the current state aid rules are based on the targets for 2020 (focus on areas with no broadband or only basic broadband). As a result, all public investment in Gigabit networks in areas with 30 Mbps require a Commission approval (with processing time of at least a year).

The EU regulatory framework for electronic communications has brought competition, better prices and quality services to consumers and businesses. The telecoms rules were reformed last year through the European Electronic Communications Code, which aims to create a pro-competitive and investment-friendly regulatory environment. Member States need to transpose the Code into national legislation by 21 December 2020.

However, Member States sometimes tend to apply inadequate/insufficient and inconsistent regulations. This is a problem that needs to be addressed at EU level. It is particularly urgent

because the market is rapidly evolving through technological changes. These challenges include setting termination rates for voice calls markets, ensuring that benefits of “Roam like at home” are maintained after the expiry of the roaming rules, or harmonizing regulatory measures on various aspects (in particular prices).

Finally, there are also a number of ongoing funding initiatives: European Structural and Investment Funds 2014-20, Connecting Europe Broadband Fund (CEBF) launched in 2018, WiFi4EU initiative to support free connectivity in public spaces launched in 2018, and Connecting Europe Facility (CEF2 Digital) which is part of the MFF negotiations.<sup>56</sup>

In the case of *cloud infrastructure*, insufficient sustainable capacities and take-up is caused by underinvestment in the past and a lack of support for businesses (of all sizes) and public administrations. In addition, a horizontal framework with clear rules for cloud infrastructure and service providers is missing in Europe. Open source could become an essential enabler to accelerate the green transition of cloud to edge infrastructure.

The EU has put in place key regulatory principles for cloud services providers (GDPR, Regulation on Free Flow of non-personal Data, NIS Directive, EU Cybersecurity Act) and has been working to develop European compliance tools to raise the level of security and trust. Ongoing work includes industry-led codes of conduct in the area of data protection and data portability and preparatory work for a European security certification scheme for cloud service providers.

As announced in the Communication on a European strategy for data<sup>57</sup>, combined investment in a High Impact Project on European Data Spaces and the European federation of energy-efficient and trustworthy cloud infrastructures should together reach EUR 4-6 billion. The Commission itself proposes investment as high as EUR 2 billion. The European data spaces would encompass data sharing architectures (e.g. including standards for data sharing) and governance mechanisms. The start of the implementation of the project is foreseen for 2022.

## **11. Burdens and obstacles in the context of posting workers to other Member States**

### **Practical obstacles and barriers reported by businesses**

From the perspective of companies who post workers abroad, requirements related to posting workers often create administrative burdens and other difficulties or obstacles to doing business across the single market. This is the case for both businesses in the services sectors and in those sectors where services are increasingly offered alongside a manufactured good (such as repair and maintenance in the context of after-sales). Businesses say they face obstacles that can be divided into three main categories, namely i) lacking, fragmented or unclear information, ii) high administrative burdens and/or administrative delays on the side of national authorities and iii) practical and other constraints to meet requirements.

#### *i) Obstacles relating to information*

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<sup>56</sup> For the 2021-2027 EU budgetary period, the Commission has proposed EUR 3 billion for digital service infrastructures, of which a significant fraction in support of large scale deployment of 5G corridors along pan-European transport paths.

<sup>57</sup> COM(2020) 66.

First, businesses claim that lacking, fragmented or unclear information can make posting workers a laborious and uncertain process. For instance, the Danish and Finnish business organisations report that companies struggle to understand which documentation and registration requirements to adhere to, and which authorities to refer to. Similarly, the French Chamber of Commerce and Industry states that “differences in posting of workers rules and procedures between Member States lead to confusion [...]” Finally, the Maltese Chamber of Commerce states that companies would like to see labour and social regulations simplified in terms of “[posting] employees in a different jurisdiction [...] access to information [applying] national labour laws to that posting in other [Member States].”

According to the Confederation of Danish Industry, in some Member States, companies have to consult several websites — sometimes only available in the local language — to obtain a clear picture of all the requirements. Because of the fragmented information, they are often not certain they have everything in order. The organisations quotes the experience of a company as an example: “[...] the lack of transparency puts this company in a very uncomfortable situation when fulfilling their service contracts”.

*ii) Obstacles relating to high administrative burden and/or administrative delays on the side of national authorities*

Second, businesses report high administrative costs for complying with national and EU legislation related to posting workers. Member States may require a large number of documents concerning posted workers for each and every service provision. For example, the Confederation of Finnish Industries reports that the implementation of the Directive 2014/67/EU on posting of workers is “deemed admin-heavy, including reporting obligations to local authorities”. As reported by the organisation, following the rules can be difficult even when posting within a group of companies.

The DIHK 2019 survey states that “the EU legal framework creates barriers for businesses in providing services, discouraging them from posting their workers to other Member States.

A concrete example of an administrative burden observed by businesses in the field of posting relates to the obligation for prior notification when sending a worker abroad. A complaint filed with SOLVIT by a construction company working in another country illustrates issues of practical constraints relating to the legislation. Because of the nature of the work, the company frequently changes building sites, sometimes even several times in one day. However, the legislation in the country where the work is carried out requires a posting notification to be made at least one week in advance. Since orders are rarely placed early enough, it is hard to plan which workers will be present on a site that early. The company tried to use a provisional declaration, stating they “expect a periodic presence in next 3 months“, but that was not sufficient.

Other specific problems are reported with the Portable Document A1 (A1 form), which is required to demonstrate the affiliation to the social security system of the home Member State when going abroad. In a SOLVIT case, a company described a concrete problem it faced when trying to meet the administrative requirements. The employees of this company were working in another Member State, contributing to the social security scheme of that country. After a year, the social security authority in the host Member State notified the employees to submit A1 forms to prove that they were covered by a social security scheme. The employees contacted the home Member State authorities and requested the A1 forms, because in the requested period, they had worked there. However, the authorities did not provide the form, because during that period, the employees were also residing in the host Member State and were covered by the law of that country. Instead, the authorities issued certificates other than then the A1 form proving that they were covered by the national social security scheme. However, the authorities of the home Member State did not accept documents other than A1 forms.

A frequently mentioned obstacle is administrative delays in obtaining A1 forms from the national authorities to prove social security coverage in the home Member State. In some cases, interactions with the authorities are paper-based rather than digital. Similarly, the Confederation of Swedish Enterprise describes issues with A1 forms for bus companies operating in another Member State: the forms are required even for trips scheduled only days or weeks ahead, but Member State authorities can take several months to produce them.

Businesses often complain that the prior notification and the A1 forms are in principle required for any type of cross-border work, including business trips and very short term postings, which is seen as disproportionate and excessively burdensome. As described by the Czech Chamber of Commerce, requirements to provide the A1 form create a burden for workers on business trips, and even participants in conferences, exhibitions and meetings.

### *iii) Practical and other constraints to meet requirements*

Third, businesses complain about uneven or unclear enforcement of the rules. The Maltese Chamber of Commerce cites an experience from another country where “authorities are using the A1 certificate as an excuse to stall [the process of] posting of workers. This is [discouraging] several companies from dealing with this country.”

The Austrian Chamber of Commerce also reports problems with enforcement of the rules on minimum rates of pay applicable to posted workers. If wages do not comply with the posting of workers directive, Austrian authorities issue fines to companies abroad. However, they have “no information if these fines are executed” by the Member States in which such companies reside.

## **Available quantification**

Service providers often report burdensome and complex requirements linked to the posting of workers as a major obstacle to offering services across the single market. In particular, this is the case for SMEs who report facing difficulties if they wish to expand in the single market, due to a lack of resources and expertise to overcome burdensome administrative requirements.

The relative importance of this barrier varies greatly depending on the sector and the frequency of posting therein. For instance, with 40% of all postings taking place in the construction sector, requirements related to posting are often identified as the leading obstacle to cross-border service provision.

However, apart from frequent reports about excessive red tape and legal uncertainty linked to posting obligations, the associated costs (such as for external legal advice or resources needed to complete paperwork) and other consequences (such as business decisions not to explore certain cross-border opportunities due to administrative complexity) have not been specifically quantified.

Different enforcement and implementation of the rules for posting workers to another Member State are considered a barrier by 58% of the respondents to the Eurochambres 2019 survey. About 13% of SOLVIT cases analysed relate to this barrier.

8 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier. Additionally, 22% of the respondents to the survey done by the Confederation of Finnish Industries report this as a barrier and 51% of Czech companies consider this a significant or a very significant obstacle (according to a survey focusing on obstacles on single market).



## **Analysis of the reported practical obstacles and barriers**

A number of root causes to these perceived obstacles can be identified. Firstly, whereas the Treaty guarantees the free provision of services, EU legislation has also created **requirements justified by public policy reasons** to safeguard the protection of workers. Secondly, **EU legislation left flexibility in the implementation** by the Member States. Thirdly, **insufficient administrative capacity** and **inadequate implementation of EU legislation** by national authorities also produces obstacles, which in certain circumstances may be unjustified or disproportionate. The structure of this section is organised in the following way. First, a brief reminder of the legislative context sets the scene for the subsequent analysis of the root causes. Second, a number of recent initiatives at the EU level to address these issues are accounted for in each barrier section.

At the EU level, the rules governing the posting of workers are established in the Posting of Workers Directive (96/71/EC, amended version 2018/957 to be transposed by 30 July 2020) and the Posting of Workers Enforcement Directive (2014/67/EU). The latter, also known as the 'Enforcement Directive', provides key tools to fight circumvention and abuse of EU rules on posting of workers and to improve administrative cooperation and exchange of information between Member States to this end.

The rules on the coordination of social security systems as established in Regulation (EU) 883/2004 and Regulation (EU) 987/2009 provide further requirements specifically with regard to the social security affiliation of workers in cross-border situations. This includes among others the obligation for the company to send a notification to the national authorities prior to sending a worker abroad, whenever possible, and also the requirement for the national authorities to provide the Portable Document A1 (the A1 form), which serves to demonstrate the affiliation to the social security system of the home Member State.

### *Public policy objectives*

EU law defines a set of (mostly minimum) requirements regarding the terms and conditions of employment for posted workers. These serve to balance the freedom to provide services across the EU with safeguarding the protection of workers. A level playing field between Member States in terms of employment conditions is needed to guarantee that these rights and working conditions are protected throughout the EU. This serves to avoid that foreign service providers undercut the legally minimum social conditions applicable to the concerned category and thus unfairly compete with local service providers. Moreover, sometimes requirements that are experienced as concrete burdens, such as the requirement to provide a PD A1 form, also serve the purpose of protecting citizens, for instance by ensuring that people only have to pay contributions in one country (which is a pillar of the social security coordination rules) without depriving these persons from the required social security coverage while being posted.

The applicable set of rules, created to balance different legitimate interests, sometimes creates obligations and the need to follow administrative procedures for businesses. Nevertheless, the Commission services are aware that some concrete requirements, for instance the current administrative requirement for notifying any cross-border activity in advance, can be disproportionately burdensome or excessively difficult to fulfil, especially when a posting is of a short duration and/or organised at a short notice (such as the requirement for the A1 form for business trips). Moreover, the Commission has been supportive of justifiable exemptions such as business trips in the context of the ongoing revision of the Social Security Coordination.

### *Flexibility of implementation*

Member States have put in place various measures concerning posted workers further to the Posting of Workers Directive (96/71/EC, revised version 2018/957 to be transposed by 30 July 2020) and the Posting of Workers Enforcement Directive (2014/67/EU).

The administrative and control measures imposed by Member States can include a notification obligation concerning posted workers, covering a number of information elements on the service provider, the posted workers and the location and timings of the service provision. In addition to the notification obligation, an A1 form needs to be obtained from the home national authority. In 2017, 2.8 million A1 forms were issued across the EU<sup>58</sup>.

The concrete requirements put in place by Member States are rather diverse, in particular when it comes to the process of notification, the documentation and translation requirements. This is a root cause for complexity for businesses and difficulty to obtain the correct information.

Measures taken by Member States based on the Posting of Workers Enforcement Directive need to be proportionate and justified, balancing the need for administrative and control measures and other requirements with the freedom to provide services. Certain Member States have introduced some administrative and control measures which were found to be unjustified or disproportionate. Furthermore, sanctions for violations of administrative requirements related to posting of workers need to be non-discriminatory, sufficiently predictable and proportionate.

In 2019, the Commission published an Implementation report concerning the Posting of Workers Enforcement Directive as well as a Practical Guide on Posting, intended to help citizens, businesses and national authorities in understanding the rules and to facilitate their application.

#### *Administrative capacity and implementation*

Many problems also stem from administrative operational issues. These include lack of efficient IT (on-line) tools or slow implementation thereof, and difficulty in finding information (on-line). This lack of electronic tools adds to the still hampering cooperation between Member State administrations, and administrative capacity (and willingness) to provide documents and/or respond to queries from administrations from other Member States.

#### *Recent initiatives that could address some of these difficulties*

In all matters concerning labour mobility, the new European Labour Authority (ELA) supports the Commission and Member States in implementing and enforcing the rules, and facilitate administrative cooperation between Member States. Besides tasks such as coordinating and supporting concerted and joint inspections, the Authority will facilitate the exchange of information between national authorities. Moreover, in case of dispute regarding any particular aspect of administrative cooperation between two or more Member States on posting matters, the Authority will provide a mediation system to solve the issue. Furthermore, the Commission services are working with the Member States when it comes to identifying best practices, to ensure appropriate control without imposing disproportionate burdens on social security institutions or on economic operators.

Moreover, the Electronic Exchange of Social Security Information (EESSI) made available in 2017 should contribute to reducing administrative delays in social security coordination. The EESSI is an IT platform connecting electronically thousands of social security institutions of Member States plus Iceland, Liechtenstein, Norway and Switzerland. It aims at making the exchange of social security information easier and more secure.

When it comes to the applicable terms and conditions of employment concerning posted workers, Member States are obliged to ensure access to information and to set up single national official websites. However, shortcomings remain when it comes to the clarity and accessibility of information, leading to legal uncertainty. The Single Digital Gateway will facilitate clarity and

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<sup>58</sup> De Wispelaere, F. & Pacolet, J. (2018), *Posting of Workers – PD A1 Questionnaire, Network Statistics FMSSFE*, European Commission.

accessibility of information. By the end of 2020, the Gateway will through a single point of access provide businesses and citizens with information notably on posting of workers.

## Step 2d Steps to selling cross-border: barriers to entry and uneven playing field

### 12. Market power

#### Practical obstacles and barriers reported by businesses

**Businesses aiming to trade across the borders are confronted with the market power of some of their competitors.** A consultation led by the European Commission concluded in 2018 showed that around three quarters of respondents considered fair competition as an important challenge for the EU<sup>59</sup>.

**Stakeholders' perception of importance of challenges covered by the Single Market Programme, by respondent type.**

(Question 29. – answers: "very important" and "rather important")

Challenges:	Respondent type:		Citizens and NGOs*		SMEs		Public authorities	
	No.	%	No.	%	No.	%	No.	%
• Facilitate access to finance, in particular to SMEs	1	82%	4	76%	1	92%	3	82%
• Facilitate digital transition of the economy, industry, services and society	2	82%	3	79%	3	78%	1	92%
• Promote and protect public health	3	79%	1	85%	5	75%	7	60%
• Support industrial development	4	78%	6	72%	2	85%	2	83%
• Ensure fair conditions of competition in the EU	5	75%	5	75%	6	74%	5	71%
• Promote a safe and sustainable food chain	6	75%	2	82%	7	67%	6	63%
• Improve quality of public institutions (including digitalisation)	7	71%	7	72%	8	66%	4	76%
• Ensure that existing rules are applied and enforced consistently across the EU	8	69%	8	70%	9	64%	8	57%
• Promote financial stability	8	69%	9	68%	4	76%	13	49%
• Ensure smooth circulation of goods both within EU and at EU borders	10	61%	11	61%	11	59%	9	55%
• Ensure a high level of consumer protection and effective redress	11	60%	10	63%	12	55%	11	51%
• Support capital flows and investment	12	58%	13	54%	10	64%	11	51%

**Capturing the variation of intensity of this barrier over time is not easy.** Findings in the US show that concentration in many sectors has increased over the past two decades<sup>60</sup>, but whether this has been the case in Europe still needs to be determined. However, there are still some remaining gaps in the single market in several strategic sectors, including in sectors such as manufacturing, telecoms, electricity, gas transport, and financial services, as well as the digital market:

**As regards the manufacturing sectors, EU manufacturers suffer cartel overcharges.** These manufacturers rely on efficient supply chains along which to source competitively priced inputs. However, cartel overcharges - often in the interval of 10-20% - harm EU manufacturers, especially in sectors exposed to fierce global competition such as the automotive industry. Such collusion raises the price of components for manufacturers selling cars in Europe, damaging their ability to compete internationally.

<sup>59</sup> Impact assessment accompanying the Commission's proposal for a Single Market Programme.

<sup>60</sup> Report by the President's Council of Economic Advisers.

**In the telecom sectors, competitors tend to suffer from the market power of national incumbents.** Europe's telecoms markets used to be national public monopolies, but they were opened up by several legislative packages starting in 1988 and culminating in full liberalisation in 2002. In this sector, some incumbents found it hard to play by the new rules.

**As regards digital markets, competitors have been confronted with the rise of a limited number of incumbents.** Adapting to an increasingly digital environment has been a major challenge for the enforcement of EU competition policy in recent years, with the rise of a limited number of (mostly non EU) incumbents, whose relative market power or strategic position can restrict access to markets and consumers, notably through high concentration levels, network effects and control over data and analytics.

**In the energy sector, the market power of historic market players is extremely strong.** The inefficient unbundling of DSOs and suppliers has led to a number of concerns around market functioning. In several Member States, the separation of distribution and supply activities cannot be considered complete, which could result in market inefficiencies. For example, some have argued that if the DSO and the retailer work in close cooperation, the DSO can forewarn the supplier about planned consumer switching, or in an extreme case obstruct the switching process. The incumbents benefit from information imbalance, compared with new market entrants.

**In the transport sector, it remains difficult for small road transport operators to get access to market information.** For instance, small operators involved in international transport find it harder to access information about demand for transport services abroad than well-established larger operators. Often they end up working in sub-contracting chains for intermediaries (freight forwarders) who have better access to market information.

## **Analysis of the reported practical obstacles and barriers**

**The root causes of market power barriers vary by sector and market.**

However, they are often **not linked to public policy**. They can be a legacy from the past, with incumbents remaining prevalent in spite of the liberation of the sectors in which they operate, or are related to the behaviour of dominant players, or to the intrinsic characteristics of the sector that foster barriers to entry, exit or an uneven playing field. This includes network effects, which are prevalent in network sectors (e.g., transportation, energy, telecommunications), but also in (emerging) digital markets.

**EU Competition policy ensures the constant scrutiny** of mergers, State aid and cartel/antitrust controls.

## **13. Price regulations**

### **Practical obstacles and barriers reported by businesses**

**Price regulations impact certain businesses** when they are exporting their goods and services to other Member States. There are price regulations in many Member States for medicines, alcoholic beverages, tobacco and books, as well as certain services. These price regulations prevent businesses from competing either on price or on quality. There are also restrictions on sales at a loss or on the remuneration of marketing services.

“Price regulations” are also listed as a barrier by 9% of respondents to the Confederation of Finnish Industries' survey. A chamber of commerce mentions a national law on unfair terms and

conditions in the food trade which “[prohibits] to sell below cost price” and “[restricts] remuneration for marketing services”.

### **Available quantification**

**According to the Dutch Doing Business in Europe survey**, “Different maximum/minimum prices per country” are considered a barrier by 18% of self-employed who export of products. “Price regulations” are also listed as a barrier by 9% of respondents to the Confederation of Finnish Industries’ survey.

### **Analysis of the reported practical obstacles and barriers**

Price regulation is a competence of Member States, with **limited role of EU legislation**.

Price regulation is usually considered a ‘selling arrangement’ under Article 34 TFEU, which, according to the European Court of Justice is not such as to hinder directly or indirectly, actually or potentially, trade between Member States, on condition that those provisions apply to all relevant traders operating within the national territory and that they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. This is not the case when, for example, the price regulation triggers the prohibition of any discounts or bonuses. For example, in the case of a German legislation which provided for a system of fixed prices for the sale by pharmacies of medicinal products, the Court considered that “price competition is capable of providing a more important factor of competition for mail-order pharmacies than for traditional pharmacies, since price competition lays the basis for their potential to access the German market directly and to continue to be competitive in it. Consequently, and in so far as sales by mail order constitute a more important means of accessing the German market directly for pharmacies established in Member States other than Germany, if not, given the particular characteristics of the German market evidenced in the documents in the case file submitted to the Court, potentially the only means of accessing that market directly, the national legislation at issue in the main proceedings does not affect the sale of national medicinal products in the same way as it affects the sale of medicinal products originating in other Member States” (C-148/15, Deutsche Parkinson Vereinigung, paragraphs 24 and 25).

In the area of services, in the Services Directive the EU legislator has required Member States to review their rules imposing fixed or minimum or maximum tariffs. Fixed or minimum/maximum tariffs are sometimes imposed on service providers such as certain regulated professions. They can only be kept in place in case they are non-discriminatory, justified by an overriding reason related to the public interest and proportionate. The proportionality analysis encompasses the need to be part of a coherent regime (see the recent case regarding tariffs for architects and engineers in Germany).

In the area of goods, national price control regulation takes various forms. Minimum and maximum price regulation often affect imported products, when these are relying on price competition to penetrate a new market. Minimum fixed prices can restrict imports if it prevents their lower cost to be reflected in the retail selling price, because importers are deprived from their competitive advantage. A maximum fixed price can also restrict export, if fixed at a level which renders the sale of imported products impossible or more difficult than that of domestic products. These policies are trying to address unfair commercial practices and consumer protection. Fixed prices in the pharmaceutical sector concern prescription only medicinal products, and are often linked to the organisation of the national social security system, reimbursement policies, and the need to control increasing healthcare costs. For books, price regulation is generally for the Member States a measure to organise the protection of books as

cultural products. The CJEU has considered "the protection of books as cultural objects" as an overriding requirement in the public interest capable of justifying measures restricting the free movement of goods (C-531/07, *Libro*, paragraph 34). However, the Court has also held that measures that aim to ensure the protection of books as cultural objects need to be appropriate for achieving the objective fixed and to not go beyond what is necessary to achieve it.

## 14. Problems with recognition of electronic identification

### Practical obstacles and barriers reported by businesses

Businesses operating on the single market face problems with electronic identification (electronic signatures, seals, time stamps, registered delivery services or certificates for website authentication). Historically, each Member State had implemented its own electronic identification systems and legal frameworks. This causes fragmentation and increases transaction costs. The Commission has been aware of this problem since 2008, and has been working in partnership with Member States to make cross-border e-procedures technically secure, legally certain and possible in practice.<sup>61</sup> The eIDAS regulation was designed to unify the systems, but its low level of enforcement/application uptake limited its effectiveness.<sup>62</sup>

For example, the DIHK 2019 survey reports that in one Member State, it is mandatory for managing directors to electronically sign the financial statements. In principle, it should be possible to use an e-signature valid in another EU Member State. But in practice, only e-signatures issued in the specific Member State are accepted.

Implementation of eID under eIDAS has been slow, and uptake of national eIDs by the private sector limited. Member States are hesitant to open their national eID systems up to authentication services. The absence of a common approach at the EU level on access conditions to eIDAS for private service providers increases fragmentation of the single market.

### Available quantification

According to a 2019 study on eIDs and SMEs, 46% of SMEs (in surveyed countries) used electronic signatures. For 22% of SMEs, one of the motivations for adopting eID and trust services was to "operate more easily across the borders in the EU". 50% "were interested in further digitalising their business".<sup>63</sup>

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<sup>61</sup> See Commission Decision of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market; Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

<sup>62</sup> Study on a marketing plan to stimulate the take-up of eID and trust service for the digital single market: <https://op.europa.eu/en/publication-detail/-/publication/132cadac-49c5-11e8-be1d-01aa75ed71a1/language-en/format-PDF/source-search>

<sup>63</sup> EIDAS study on pilots for replication of multipliers: <https://op.europa.eu/en/publication-detail/-/publication/712f9ce2-5042-11e9-a8ed-01aa75ed71a1>

## **Analysis of the reported practical obstacles and barriers**

Building on a previous comitology decision pursuant to the Services Directive, eIDAS (adopted in 2014) has created an exemplary cross-border framework for digital identity. Nonetheless, **flexibilities left by EU legislation, inadequate implementation of EU legislation, and complexity of EU legislation** make it difficult to provide flexible, convenient, and trusted eID solutions cross-border.

In terms of flexibilities and inadequate implementation, mutual recognition of national eID schemes is mandatory only for notified eID schemes. However, Member States are not obliged to perform the notification (only 15 have notified their eID schemes). In practice, this prevents Member States from mutually accepting each other's' eID schemes. Citizens from the 13 Member States that have not gone through the notification process thus cannot use their national eIDs to prove their identity elsewhere in the EU.

There are also complexities in the design of eIDAS. The regulation limits the information that can be reliably disclosed to third parties. In the case of regulated trust services, the eIDAS provides the possibility of including additional specific attributes. However, it does not set standards for interoperability and acceptance of those attributes. Additionally, eIDAS only covers digital identities of natural and legal persons. This restricts its uptake in other cases such as internet of things devices or connected cards.

Finally, eIDAS focuses on the public sector and does not impose any obligation on the private sector. This leads to the development of private digital identity services and solutions, such as those provided by online platforms. While these provide convenient identification services, they are not necessarily aligned with the EU vision of trusted digital identity, e-privacy and personal data protection.

### **Step 2e Steps to selling cross-border: taxes**

## **15. Burdensome procedures due to differences in tax systems and administrations**

### **Practical obstacles and barriers reported by businesses**

Member States have different tax systems and administrations, which according to companies may create burdens. Taxation is often costly to comply with in one Member State, and because of differences between Member States, these costs add up when operating across the single market.

As stated by a German trade organisation, different “national tax procedural rules [are] a considerable obstacle.” It adds that specifically, “different provisions of the respective national substantive law pose great difficulties for SMEs in particular.” A European Startup Network position paper of 2019 stated that the difficulty in obtaining ‘VAT recovery hampered trade’, especially e-commerce trade.

For exporting companies, calculating and processing VAT payments in different Member States often means hiring additional specialists.

As reported by several trade organisations, differences in VAT may be hard to navigate. This is particularly the case for VAT compliance for services. For example, while the French chamber of commerce welcomes reforms of the service provision system, it says that ‘exceptions to the general scheme [...] are still too numerous and generate differences in interpretation and qualification by the national tax administrations, which could be detrimental to service

companies.’ It also reports that SMEs often experience troubles with properly following requirements of VAT regimes. On a more technical level, businesses complain that the VAT information exchange system (VIES) does not allow for checking the name of the company attached to the number for every country. This makes it even more difficult for exporting companies to calculate and process VAT payments.

In the case of services, according to a German trade organisation, companies have to consider many factors, such as ‘whether the vendor or the customer has to pay the tax’, which tax rate and other national regulations are applicable, and in which Member State the VAT is to be paid. The simplification rule of reverse charge, which shifts the liability to account for the VAT on a supply from the supplier to the customer, still does not cover all cross-border services, such as real estate services. In addition, the conditions for the application of the reverse charge differ between Member States in some ways.

Another reported obstacle is different VAT and registration requirements. A Finnish trade organisation survey highlights this issue. Survey respondents cited “VAT compliance and registration-related difficulties or problems in recovering input VAT” as a barrier to doing business in the single market.

Moreover, using the transport industry as an example, the Swedish trade organisation points out obstacles caused by VAT differences and registration requirements. “All countries have different regulations and requirements [and] detailed information is often only available in the country’s local language,” states the organisation’s report, adding that “in recent years, several European countries introduced VAT rules and requirements for VAT registration” for specific fields such as international bus passenger transport. As a result, for example, calculating VAT is a complex task for bus companies planning a trip through Europe. They must know what costs and expenses arise at which part of the trip and combine that with specific rules of each country. These rules differ significantly in both rates and calculation methods. Additionally, if the trip goes through certain Member States, a registration requirement complicates the task further.

### **Available quantification**

According to the Annual Report on European SMEs 2017/2018, “dealing with foreign taxation issues is too complicated” is reported as a barrier to exporting for 63% of SMEs. According to a CEPS study, ‘foreign taxation’ is considered to be too complicated and/or too costly according to both SMEs with exporting experience (32%) and those without (19%).

60,4% of respondents to the Eurochambres 2019 survey find differing VAT procedures to be an obstacle to doing business in the single market. Issues with VAT are also linked to 24% of the SOLVIT complaints analysed. Non-VAT related taxation issues are also considered an obstacle to the single market by respondents to the Eurochambres 2019 survey (54,2%).

According to the Dutch Doing Business in Europe report, 20% of SMEs (and 18% of self-employed) report settling VAT as ‘hard or costly’. Similarly, according to a survey by the Finnish trade organisation, 17% of respondents experienced VAT compliance as a “barrier to business in the single market”.

VAT compliance costs of SMEs (companies with turnover below EUR 100,000) are estimated at a total of EUR 68 billion per year.<sup>64</sup> This discourages them from trading cross-border and prevents their growth: evidence suggests that only about 15% of SMEs trade cross-border.<sup>65</sup>

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<sup>64</sup> Within this figure are included three main groups of businesses: businesses using the SME exemption, businesses using domestic standard VAT regimes and businesses engaged in cross-border trade irrespective of whether or not they use the SME exemption for their domestic transactions.



A recent study by KPMG-GFK<sup>66</sup> estimated the relative (direct and indirect) tax compliance burden across 19 EU Member States. It showed that the average enterprise with cross-border activities faces much higher tax compliance costs (about 67% higher) than enterprises active only in their home country. However, in relation to a company's turnover ratio, the relative tax compliance burden for companies engaged in cross-border trade is 0.86 percentage points lower than for similar companies engaged only in their domestic markets<sup>67</sup>.

Tax compliance costs are also frequent in the field of direct taxation. Estimated direct tax compliance costs for large companies amount to about 2% of paid taxes, while for SMEs the estimate was about 30%. The shares of sales are 0.02% for large companies and 2.6% for the small ones. Compliance costs are estimated to increase with cross-border activity and with the proliferation in the numbers of subsidiaries.<sup>68</sup>

### **Analysis of the reported practical obstacles and barriers**

This barrier originates in **regulatory choices at EU level and national level**. For direct taxation, the barriers are linked to the lack of EU legislation and harmonisation, leading to diverging regulatory frameworks. As regards indirect taxation, the barriers relate to the lack of full harmonisation (for exemptions in particular).

Currently, taxpayers (for either direct or indirect taxes), with cross-border activity in the single market have to comply with up to 27 divergent tax systems. The co-existence of different tax systems inevitably generates uncertainty for cross-border investment. Significant tax obstacles to cross-border business activity include the possibility of unrelieved double taxation on cross-border income and capital. Taxpayers also face difficulties in finding information about the exact tax rates applicable in different Member States. In addition, differences and inconsistencies between the various tax systems of Member States lead to burdensome procedures.<sup>69</sup>

#### *Recent initiatives to address these barriers*

Twice a year, the Commission publishes tables with the applicable VAT rates in all EU Member States. It also strives to make all information available in the Taxes in Europe database<sup>70</sup> and to accommodate specific requirements arising from the implementation of the rules on e-commerce due for 2021.

Cumbersome registration requirements will be mitigated by the recently adopted new detailed measures that will lead to the smooth transition to new VAT rules for e-commerce that come into

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<sup>65</sup> Data based on an Directive 2006/112/EC Amendment Impact Assessment ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/18012018\\_impactassessment\\_vat\\_smes\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/18012018_impactassessment_vat_smes_en.pdf)) and

Special scheme for small enterprises under the VAT Directive 2006/112/EC ([https://ec.europa.eu/taxation\\_customs/business/vat/vat-reports-published\\_en](https://ec.europa.eu/taxation_customs/business/vat/vat-reports-published_en)).

<sup>66</sup> KPMG-GFK (2018), Study on tax compliance costs for SMEs. Study commissioned by the European Commission, European Commission Tender No. EASME/COSME/2015/004.

<sup>67</sup> KPMG-GFK (2018), Study on tax compliance costs for SMEs. Study commissioned by the European Commission, European Commission Tender No. EASME/COSME/2015/004.

<sup>68</sup> <https://op.europa.eu/en/publication-detail/-/publication/0ed32649-fe8e-11e8-a96d-01aa75ed71a1/language-en>

<sup>69</sup> <https://op.europa.eu/en/publication-detail/-/publication/0ed32649-fe8e-11e8-a96d-01aa75ed71a1/language-en>

<sup>70</sup> [http://ec.europa.eu/taxation\\_customs/tedb/taxSearch.html](http://ec.europa.eu/taxation_customs/tedb/taxSearch.html)

force in January 2021<sup>71</sup>. The current simplified system to declare and pay VAT on business-to-consumer e-services (Mini One Stop Shop) in the EU will be extended to companies selling goods online and to other cross-border services.

Current legislation allows for simplified procedures for SMEs, with the objective of lowering VAT compliance costs. Many countries apply these simplified procedures, which include exemptions from VAT for companies with an annual turnover below a certain threshold. However, compliance costs for SMEs are still disproportionate, in particular when trading cross-border, because an exemption is often only available to companies established within the Member State in which the VAT is due. This also creates distortive effects on competition, both in domestic and EU markets.

In January 2018, the Commission adopted a proposal<sup>72</sup> aimed at reviewing the current rules on VAT exemptions for SMEs. The main objectives of the initiative are the following: to reduce compliance costs for SMEs, provide a more level playing field for them, and contribute to the fight against VAT fraud<sup>73</sup>. The Council has recently adopted the proposal. The new VAT scheme for SMEs will apply as of 1 January 2025.

The Commission's proposal for a Common Consolidated Corporate Tax Base (CCCTB) would lower the compliance costs for corporate income taxation by providing for a single set of rules for calculating the tax base. With the CCCTB, companies operating across borders will be able to comply with one, single EU system for computing their taxable income. They will also be able to file one tax return for all of their EU activities. The CCCTB is currently being discussed in the Council.

## 16. Tax reimbursement refusals and double taxation

### Practical obstacles and barriers reported by businesses

Inconsistencies in the taxation regimes of Member States can lead to refusals of tax reimbursement and to double taxation. This issue may concern both indirect and direct taxes.

According to the EU VAT Forum<sup>74</sup>, VAT double taxation may occur in several ways. For example, a transaction may be taxed several times in different Member States without businesses being able to recover it in either of the Member States. More generally, VAT can end up as a final cost and the principle of neutrality may not be respected<sup>75</sup>. Factors contributing to VAT

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<sup>71</sup> Council Directive (EU) 2019/1995 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods; and Council Implementing Regulation (EU) 2019/2026 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

<sup>72</sup> [https://ec.europa.eu/taxation\\_customs/business/vat/action-plan-vat/vat-scheme-for-small-businesses\\_en](https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/vat-scheme-for-small-businesses_en)

<sup>73</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/18012018\\_proposal\\_vat\\_smes\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/18012018_proposal_vat_smes_en.pdf)

<sup>74</sup> The EU VAT Forum is a working group of business representatives, Member States' tax administrations representatives, academics and the Commission.

<sup>75</sup> According to the OECD, 'The full right to deduct input tax through the supply chain, except by the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain and the technical means used for its delivery (retail stores, physical delivery, Internet)', OECD Consumption Tax Trends 2018 VAT/GST and Excise Rates, Trends and Policy Issues: VAT/GST and Excise Rates, Trends and Policy Issues.

double taxation include Member States' different qualifications of the nature of the transaction, the definition of taxable persons, the place of the transaction or the lack of a right to deduct VAT.

Two SOLVIT cases illustrate these issues. In one case, a company from a Member State asked the authority of another Member State for a VAT refund for goods that were purchased in the second country and brought back to the first. The authority of the second Member State twice requested additional information from the company, but in the end, the VAT refund was in part refused without further explanations.

In another case, a foreign company registered as a VAT intra-Community operator, was taxed with 100% VAT in a Member State on a purchase of a car to be partly used by a business client. The authorities where the car was purchased refused the VAT refund on any amount based on Directive 2008/9/EC and Directive 2006/112/EC. Despite the above, SOLVIT has received an opinion report from the tax agency of the Member State in which the business was registered, recognizing this as a clear double taxation case.

A requirement for registration and subsequent difficulties in recovering VAT is another frequent source of complaints. According to the Finnish trade organisation, the German trade organisation and the German Chamber of Commerce, it is frequently not possible to recover VAT without setting up offices in other Member States, which creates an additional burden on businesses. For instance, in certain Member States, it is necessary for a supplier to register for VAT in that country (if the supplier is the person liable for payment of VAT). This registration can take up to three months. Additionally, the supplier may need to follow numerous other formalities, such as daily attendance registration or a contract registration with the social insurance system.

In addition to VAT double taxation leading to direct costs, the EU VAT Forum stressed that indirect costs may occur when companies adapt their business flow to prevent double taxation risks. To do so, companies may choose specific manufacturing sequences, transport routes, or business partners. In some extreme cases, these may be located outside of the single market.

Double taxation is also an issue for direct taxes. Notable examples of current double taxation issues in direct taxation are:

- Cross-border business restructuring operations: For example, different interpretations of Member States in cross-border restructurings might result in the double taxation of capital gains;
- The tax treatment of transfer pricing: If a Member State unilaterally adjusts the price set by a company in a cross-border intra-group transaction, and that adjustment is not offset by a corresponding adjustment in the other concerned Member State(s), double taxation can occur.

Further, both the German Chamber of Commerce and the German trade organisation report that tax calculation (such as profit calculation) is a challenge for companies operating across the border in certain services markets.

### **Available quantification**

Trade organisations and chambers of commerce both mention these issues as barriers. For instance, according to the Finnish trade organisation, 17 % of respondents mention VAT compliance as a barrier.

60,4% of respondents to the Eurochambers 2019 survey find differing VAT procedures to be an obstacle to doing business in the single market. Non-VAT related taxation issues are also considered an obstacle to the single market by respondents to the survey (54,2%).

Complex and costly tax rules are also an important obstacle for both self-employed and SMEs, according to the Dutch Doing Business in Europe report. Specifically, procedures in the field of VAT are mentioned as an obstacle by 18 % of self-employed and 20 % of SMEs, while other taxes are only mentioned as an obstacle by self-employed (23 %).

As regards the frequency of double taxation of company profits, the number of pending mutual agreement procedures<sup>76</sup> has grown steadily in recent years. They have almost doubled between 2013 and 2018. There were nearly 2 000 pending cases in the EU at the end of 2018, with many lasting as long as 2 years and some even longer.

### **Analysis of the reported practical obstacles and barriers**

This barrier originates in **regulatory choices at EU level and national level**. Businesses face problems of double taxation for both indirect and direct taxes when supplying goods or services to other Member States.

#### *Indirect taxes – Limited role of EU legislation and diverging implementation*

According to the EU VAT Forum, VAT double taxation in cross-border transactions is mainly due to divergent interpretations of the VAT Directive<sup>77</sup> by the Member States and their implementation in national legislation in different circumstances.

#### *Direct taxes<sup>78</sup> – Limited role of EU legislation and diverging rules*

Direct taxes are primarily the responsibility of Member States. Tax rules are consequently often drafted without enough consideration of the cross-border dimension of business activities. This lack of consideration creates mismatches in the interaction between disparate national corporate tax regimes. In other words, companies operating in the single market thereby need to comply with different national tax systems. Such mismatches create risks of double taxation and double non-taxation<sup>79</sup> and thereby distort the functioning of the single market.

#### *Recent initiatives to address the issues*

To address the issue of double taxation of income, the EU adopted in 2017 the Directive on tax dispute resolution mechanisms<sup>80</sup>. The Directive entered into force on 1 July 2019. It aims to improve the swift resolution of double taxation disputes, notably through mandatory arbitration<sup>81</sup>. Shorter dispute resolution will consequently facilitate cross-border activity.

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<sup>76</sup> Mutual agreement procedures bring together two or more countries' tax authorities to resolve tax-related disputes (mostly involving double taxation).

<sup>77</sup> Council Directive [2006/112/EC](#) of 28 November 2006 on the common system of value added tax

<sup>78</sup> For additional information on direct taxation cross-border issues, see [https://ec.europa.eu/taxation\\_customs/individuals/personal-taxation/direct-tax-crossborder-problems-affecting-citizens\\_en](https://ec.europa.eu/taxation_customs/individuals/personal-taxation/direct-tax-crossborder-problems-affecting-citizens_en)

<sup>79</sup> See also CCCTB impact assessment [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/common\\_tax\\_base/com\\_sec\\_2011\\_315\\_impact\\_assesment\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/common_tax_base/com_sec_2011_315_impact_assesment_en.pdf)

<sup>80</sup> Council Directive (EU) 2017/1852.

<sup>81</sup> For more information, see Removing cross-border tax obstacles for EU citizens ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/gen\\_info/tax\\_policy/com%282010%29769\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/tax_policy/com%282010%29769_en.pdf)) and Ways to tackle cross-border tax obstacles facing individuals within the EU (<https://publications.europa.eu/en/publication-detail/-/publication/4bfee942-ca41-11e5-a4b5-01aa75ed71a1>)

The Commission's proposal for a CCCTB presents a comprehensive solution to corporate tax mismatches within the single market, while also providing a competitive corporate tax system for the EU.

Further, at the end of 2017, the Commission services put forward a non-binding code of conduct for Member States on how to withhold tax on cross-border income (such as dividends) in a more taxpayer-friendly manner. It aims at balancing the necessity to ensure that taxpayers pay their fair share with the importance of avoiding delays and excessive administrative burdens for both tax authorities and investors. Concrete suggestions in the code of conduct include single points of contact in Member State tax administrations to deal with questions from investors on withholding tax.

## **17. Uneven playing field due to taxation differences**

### **Practical obstacles and barriers reported by businesses**

Differences in taxation can also be exploited by companies, creating unfair advantages and an uneven playing field in the single market.

The French Chamber of Commerce reports that a lack of harmonisation of direct taxation, such as corporate and income taxes, is a clear barrier to a fair single market and also leads to labour cost competition and social dumping between Member States.

In addition, according to a Greek trade organisation, VAT fraud poses important issues. This includes 'fake invoices' as well as 'companies importing from the EU without VAT and then reselling within the import country'. This means that companies can collect VAT from the client without then paying it to the state. This facilitates imports and makes the imported products cheaper while also posing barriers to exports.

Multinational enterprises that engage in aggressive tax planning practices, exploiting loopholes in and mismatches between national taxation systems, benefit from a competitive cost advantage. This undermines the level playing field and can allow them to increase market shares and raise entry barriers to the detriment of other firms, hindering innovation and reducing the competitiveness of the EU as a whole.

### **Available quantification**

One out of the nine chambers of commerce that responded to the Commission's dedicated survey mentioned this barrier. Sorbe and Johansson (2017)<sup>82</sup> provide evidence that profit shifting distorts competition, leading to higher market concentration and higher mark-ups for companies engaged in tax planning.

While many studies demonstrate the existence of tax avoidance practices, it is difficult to measure revenues lost due to these practices. This is due to the complexity of the phenomenon and limitations in collecting data. A study commissioned by the European Parliament<sup>83</sup> however

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<sup>82</sup> Sorbe, Stéphane, and Åsa Johansson (2017): International Tax Planning, Competition and Market Structure. OECD Economic Departments Working Papers Series, No. 1358.

<sup>83</sup> R. Dover, B. Ferrett, D. Gravino, E. Jones and S. Merler, 'Bringing transparency, coordination and convergence to corporate tax policies in the European Union', European Parliamentary Research Service, 2015.

finds that the revenue lost from profit-shifting in the EU amounts to about EUR 50-70 billion a year<sup>84</sup>. Álvarez-Martínez *et al.* (2018) find that tax avoidance in the EU leads to annual losses of EUR 36 billion of corporate income tax revenue. Tørsløv *et al.* (2018) estimate that the EU loses around EUR 37 billion a year<sup>85</sup>. By way of comparison, corporate income tax revenues totalled EUR 445 billion in the EU in 2018.

There is clear evidence for an uneven playing field between tax-planning multinational groups and domestic firms. As shown in a study by the Leibniz Centre for European Economic Research (ZEW)<sup>86</sup>, cross-border tax planning can considerably reduce the effective average tax rate for companies using respectively hybrid financing structures (-36.3%), exploiting an intellectual property box regimes (-108.3%), and financing structures via an offshore tax treaty (-25.3%).

Empirical evidence also shows that multinational entities have obtained lower effective taxation levels. For instance, Egger *et al.* (2010)<sup>87</sup> compare the tax liabilities of multinationals with those of domestic firms. They find that foreign-owned affiliates in high-tax European countries pay 32% less tax than domestically owned companies. A similar study by Finke (2013)<sup>88</sup> for Germany finds a gap of 27%.

### **Analysis of the reported practical obstacles and barriers**

This barrier originates in **regulatory choices at EU level and national level**. Taxes have not been subject to much harmonisation in the EU, leading to national tax rules, with minimal EU harmonisation. This has led to tax competition between Member States.

The single market has eased the way businesses operate within the EU, but its sustainability is based on fair competition according to a set of common rules. The uneven playing field among Member States in taxation combined with the freedom of movement and digitalisation has led to new forms of tax competition.

Certain forms of tax competition<sup>89</sup> undermine the level playing field between businesses in the single market by providing avenues for aggressive tax planning. Companies that lower their effective tax burden benefit from an unfair competitive cost advantage, compared to companies that do not or cannot use aggressive tax planning schemes. This distorts the level playing field and allow some large firms to gain market shares and raise entry barriers to the detriment of other, often smaller, firms. Unfair tax competition also leads to subsidy races between Member States, allowing countries with the deepest pockets to give their companies an unfair competitive advantage over companies from countries with less money to spend on subsidies.

#### *Recent initiatives to address these barriers*

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<sup>84</sup> The method captures profit-shifting in the EU, excluding Spain, Hungary and Finland. It is based on the 'CIT efficiency' method, which attributes to profits shifting all differences between a Member State's CIT to gross operating surplus and the EU average of the ratio.

<sup>85</sup> Own computations based on Tørsløv *et al.* (2018), The missing profits of nations

<sup>86</sup> ZEW (2016c), The Impact of Tax-planning on Forward-looking Effective Tax Rates, forthcoming in Taxation Papers, DG Taxation and Customs Union, European Commission.

<sup>87</sup> Egger, P., Eggert, W. and Winner, H. (2010), 'Saving Taxes through Foreign Plant Ownership', *Journal of International Economics* 81(1), pp. 99-108.

<sup>88</sup> Finke, K. (2013), Tax Avoidance of German Multinationals and Implications for Tax Revenue Evidence from a Propensity Score Matching Approach, mimeo.

<sup>89</sup> Tax competition occurs when countries set their tax policies in reaction to the tax policy of others to either attract or retain mobile resources, including real activities and book profits.

The Commission has taken initiatives to address these barriers, notably by proposing a fair taxation of the digital economy<sup>90</sup> and a common consolidated corporate tax base<sup>91</sup>. In addition, it is working closely with Member States in the current international discussions on the reform of the international corporate tax system, which are articulated around two broad pillars: (1) realigning taxing rights with value creation and (2) setting a global minimum effective taxation of business profits. The Commission has also enforced State aid rules against public authorities granting a favourable tax treatment to companies engaged in aggressive tax planning.

## Step 2f Steps to selling cross-border: after-sales

### 18. Heterogeneous rules on guarantees and contractual remedies

#### Practical obstacles and barriers reported by businesses

**Businesses selling directly to consumers located in another Member State face several problems caused by differences in contractual and legal practices related to legal guarantee of conformity.** Differences between national contract law rules related to guarantees and contractual remedies, have been consistently reported by businesses as important obstacles to cross-border trade. Such differences can affect businesses selling cross-border directly to consumers (Business to consumers contracts) or to other businesses (Business to business contracts).

**In business to consumers contracts, retailers who direct their activities to consumers in another country generally choose to apply the national law of their country (not the consumer's national law).** However, they must also comply with the mandatory consumer contract law rules of the consumer's country, to the extent those rules provide a higher level of consumer protection. Therefore, businesses intending to sell to consumers in other Member States are faced with the legal costs of finding out about the consumer's national law in order to adapt their contract terms accordingly, or to assess in advance the legal and financial risk in the event of activation of the guarantees.

**Business to business contracts are governed by the principle of contractual freedom, but businesses can face an unbalanced bargaining power.** In some areas, the unbalanced bargaining power of the parties may lead to imposition of unfair contractual terms and conditions, affecting mainly SMEs and start-ups, in particular in respect of access to the online platform economy and cloud computing services.

#### Available quantification

**In the Eurochambres 2019 survey,** “Different contractual/legal practices” rank fifth in obstacles to the single market, reported by 65.6% of respondents.

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<sup>90</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/fair-taxation-digital-economy\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en)

<sup>91</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en)

**As regards business to consumer relations, EU retailers report more difficulties to comply with consumer law in other EU countries than on domestic markets.** The latest 2018 survey on retailers' attitude towards cross-border trade and consumer protection<sup>92</sup> shows that 71.5% of EU retailers find it easy to comply with consumer law on domestic markets compared to 58.1% of retailers selling to other EU countries that find it easy to comply with consumer legislation in other EU countries.

**In business to business relations, difficulties are reported as regards cloud computing.** The Study on the Economic Detriment to SMEs arising from unfair and unbalanced cloud computing contracts showed that 24% of companies using cloud computing services encounter issues related to lack of clarity and transparency of contract terms (21%) and limited liability of the provider (16%). The study estimated that, considering a usage rate of cloud computing of 16% and an incidence of contract-related problems at 24%, about 582,924 micro, small and medium enterprises suffered from these problems across the EU during the period 2016-2017.

As regards access to the online platform economy, the impact assessment<sup>93</sup> leading to the Commission proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services<sup>94</sup> found “that nearly half (46%) of business users experience problems with online platforms in the course of their business relationship, with varying impacts. Such problems include potentially harmful trading practices, (the main categories of which are set out in the following sections). Of those users that did experience problems, 21% said that these problems occurred often. Heavy users of online platforms, that is to say those that generate over half their turnover via online platforms, are far more likely to experience problems (75%) and more frequently (33%) report experiencing problems often”.

### **Analysis of the reported practical obstacles and barriers**

The root cause of this hurdle for business to consumer relations mostly relates to **regulatory choices at EU level and national level**. EU rules on legal guarantees only provide minimum harmonisation and stricter national rules exist in several countries. **Complexity of EU legislation** can also be root cause, since the interplay between some of them may generate confusion for businesses.

**Conformity and guarantees is a shared competence between the EU and the Member States, and EU legislation has intervened in the area of consumer contract law.** The Consumer Sales and Guarantees Directive 1999/44/EC regulates conformity requirements and legal guarantee obligations. However, it does so only by way of minimum harmonisation. This is the root cause of the barriers for businesses, especially in the cross-border context. As a result of the minimum harmonisation nature of these rules, many Member States have adopted national laws that go beyond the current minimum EU requirements. EU businesses must comply with these diverging national rules when targeting consumers in other Member States.

**It has been reported that the Geo-blocking Regulation, which came into application at the end of 2018, creates concerns for SMEs** regarding the impact of its combination with the already existing Directive on Guarantees. However, the Geo-blocking Regulation does not oblige entrepreneurs to deliver to another Member State under all circumstances, but prohibits refusal to

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<sup>92</sup> “Retailers' attitudes towards cross-border trade and consumer protection (main report) – 2018”, p.10, available at: [https://ec.europa.eu/info/files/retailers-attitudes-towards-cross-border-trade-and-consumer-protection-main-report-2018\\_en](https://ec.europa.eu/info/files/retailers-attitudes-towards-cross-border-trade-and-consumer-protection-main-report-2018_en)

<sup>93</sup> SWD/2018/138 final

<sup>94</sup> COM/2018/238 final



sell under the same conditions as a local for reasons related to a customer's nationality, place of residence or place of establishment, unless it is objectively justified. The Regulation does not allow a trader to discriminate against a foreign customer wanting to buy a good under the same conditions as a local (the so-called "shop-like-a-local" scenario). While specific territorial limitations regarding contractual relations between a seller and a buyer after the delivery of the product are not prohibited by the Geo-blocking Regulation, the Directive on Consumer Sales and Guarantees may be applicable. Therefore, in case of a lack of conformity, a consumer has the right to have goods brought into conformity free of charge by repair or replacement, including free of charge transportation of the goods.

**Under the new Sale of Goods Directive 2019/771, which will replace the current Directive on Consumer Sales and Guarantees as from 1 January 2022, the seller can refuse to bring the goods in conformity if both repair and replacement are impossible or would impose disproportionate costs on the seller, and the costs of postage and carriage can be considered disproportionate if the goods are located in a place different from where they were originally delivered.**

The so-called P2B Regulation<sup>95</sup> will apply from 12 July 2020. It is the first instrument to address the challenges of the online platform economy, produced notably by an imbalance of power between online platforms and their business users. It aims at reducing the regulatory fragmentation caused by emerging national rules and also lays the ground for further initiatives.

The Regulation relies on four main pillars: it obliges platforms and search engines to comply with high level transparency obligations that will provide clarity on a number of aspects, such as changes to terms and conditions, the grounds for suspension or termination of the use of a platform, ranking, etc. It ensures fairness by prohibiting the most widespread and harmful trading practices (e.g. sudden changes to terms and conditions without sufficient advance notice, retroactive changes to terms and conditions). It provides for improved internal, external and judicial redress for business users, by requiring all but the smallest platforms to put in place internal complaint-handling systems and to identify mediators, with whom they are willing to engage to resolve disputes. Finally it provides for monitoring of the evolution and emergence of issues in the digital platform economy through the EU Observatory set up by the Commission in 2018.

## **19. Ineffective enforcement of contracts and administrative decisions and dispute resolution**

### **Practical obstacles and barriers reported by businesses**

**Effective justice systems, which ensure the proper enforcement of contracts and rights or administrative decisions and resolution of disputes, are fundamental for markets to function properly and to create a business and investment friendly environment.** Where judicial systems guarantee the enforcement of rights or administrative decisions, creditors are more likely to lend, businesses face less risks and are dissuaded from opportunistic behaviour, transaction costs are reduced and innovative businesses are more likely to invest. The beneficial impact of well-functioning justice systems for the economy is supported by a wide range of

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<sup>95</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11.7.2019, p. 57

studies and academic literature, including from the International Monetary Fund<sup>96</sup> the European Central Bank<sup>97</sup>, the OECD<sup>98</sup>, the World Economic Forum<sup>99</sup>, and the World Bank<sup>100</sup>. The EU Justice Scoreboard presents an annual overview of indicators with relevance for the independence, quality and efficiency of justice, the three essential parameters of an effective justice system.

*i) Enforcement of contracts and rights and public administrative decisions*

**Businesses selling directly to consumers located in another Member State face national specificities when resolving commercial disputes.** Businesses intending to sell to consumers in other Member States are faced with the legal costs of finding out about the consumer's national law in order to adapt their contract terms accordingly, or to assess in advance the legal and financial risk in the event of disputes. Several Chambers of Commerce surveyed mentioned differences in contractual and legal practices and local specificities of resolving commercial disputes (arbitration, out of the court settlements, trade courts, etc) as a barrier. Respondents to the Eurochambres 2019 survey also mention it as a significant barrier, particularly for SMEs.

**Businesses also face difficulties when challenging administrative decisions, as for instance in public procurement or in the recognition of electronic identification.** As reported in barrier 6 on public procurement, chambers of commerce and other business organisations in several Member States perceive that local suppliers tend to be favoured over foreign ones. As reported in barrier 14, businesses face problems with electronic identification.

**The enforcement of contracts and the resolution of disputes or unfair public administrative decisions are fundamental for markets to function properly.** Good contract enforcement procedures reduce uncertainty by assuring buyers, sellers, investors that their contractual rights will be upheld by courts. When contractual disputes cannot be swiftly resolved, or when the procedures are bureaucratic and cumbersome, it may impede cross-border trade.

**The enforcement of rights in relation to public authorities is essential for investors to feel confident that their cross-border investments are protected.** The rules protecting investors from public authorities' measures affecting them negatively, and the access to effective remedies in case of problems, influence investors' decisions. EU investors reported concerns about the effective enforcement of their rights vis-a-vis -the State.

*ii) Justice systems*

**Businesses in some Member States report facing lengthy legal proceedings. This implies that companies may not even be in a position to ensure that their rights are enforced.** SMEs tend to be more likely to face barriers to access courts, particularly in a cross-border setting. This holds true in situations where litigation needs to be sustained over longer periods of time due to

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<sup>96</sup> IMF, Regional Economic Outlook, November 2017, *Europe: Europe Hitting its Stride*, pp. xviii, pp. 40, 70: <https://www.imf.org/~media/Files/Publications/REO/EUR/2017/November/eur-booked-print.ashx?la=en>

<sup>97</sup> ECB, 'Structural policies in the euro area', June 2018, ECB Occasional Paper Series No 210: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op210.en.pdf?3db9355b1d1599799aa0e475e5624651>

<sup>98</sup> See e.g. 'What makes civil justice effective?', OECD Economics Department Policy Notes, No. 18 June 2013 and 'The Economics of Civil Justice: New Cross-Country Data and Empirics', OECD Economics Department Working Papers, No. 1060.

<sup>99</sup> World Economic Forum, 'The Global Competitiveness Report 2018', October 2018: <https://www.weforum.org/reports/the-global-competitiveness-report-2018>

<sup>100</sup> World Bank, 'World Development Report 2017: Governance and the Law, Chapter 3: The role of law', pp. 83, 140: <http://www.worldbank.org/en/publication/wdr2017>

the financial burden caused. An additional difficulty is that court proceedings usually take place in the official language of the Member State, making it more difficult for non-nationals to settle disputes, even when benefitting from a national counsel. An efficient justice system manages its caseload and backlog of cases, and delivers its decisions without undue delay.

**Dispute resolution in different jurisdictions and questions regarding application of different legal rules is considered an issue.** Debt collection from abroad through judicial system is flagged as extremely time consuming and costly, and “punishes the good companies and allows the dishonest, misbehaving companies to exist in the market.” This was raised by some surveyed respondent as one of the biggest barriers to growing business. Moreover, in some cases, investors raise concerns about the quality of judicial proceedings in terms of appropriate consideration of their rights and remedies awarded in cross-border administrative disputes.

**SMEs also face particular barriers as regards access to justice, for instance when it comes to Intellectual Property Rights (IPR).** According to the CEPS<sup>101</sup> study, evidence shows that the cost of filing court proceedings, which may include either court fees or the cost of a specialist legal advice, to enforce IPRs, and in particular patents, present significant disparities between the Member States, and can remain beyond the reach of many SMEs. Moreover, in the case of controversies with large companies, it may become prohibitively costly for SMEs to sustain litigation for a long time. This is a clear barrier also in the experience of some business organisations, which noted that patenting in EU is too cumbersome and expensive for small companies, and seriously impeding trade. Legal costs for defending IPR were deemed too high and time consuming. Some surveyed respondents called for clarification of the rules and legal effect of arbitration awards within EU.

## Available quantification

**“Concerns about resolving commercial or administrative disputes, also because of deficits in legal protection before national or European authorities and courts” are considered a barrier by 60.5% of respondents to the Eurochambres 2019 survey,** as well as by respondents to the survey conducted by business organisations. The surveys reported that up to almost half of SMEs in the five largest EU Member States also find that the costliness of dispute resolution is a barrier, according to the Centre for European Policy Studies. This is for example supported by the findings and practical experiences of both the French and the Austrian business organisations. The Austrian Chamber of Commerce refers especially to small companies, which are afraid of supplying products to other EU Member States because different national laws are applicable. Overall, 5 out of 11 business organisations that replied to a Commission survey reported issues related to this barrier.

**The 2019 EU Justice Scoreboard provides relevant data on both the availability of legal aid and the length of the proceedings.** Over the years, legal aid has become less accessible in some Member States. The level of court fees has remained largely stable since 2016 although in several Member States, the court fees have risen as a proportion of the claim, especially for low value claims, imputable to the increase of the minimum court fee applicable.

**Since 2010, in nearly all of the Member States which have been identified in the context of the European Semester as facing specific challenges, the length of first instance court proceedings in the broad ‘all cases’ category and the litigious civil and commercial cases has decreased or remained stable.** Progress is continuing in almost all Member States facing

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<sup>101</sup> Hidden Treasures, Mapping Europe’s sources of competitive advantage in doing business, Donald Kalf and Andrea Renda, CEPS (Centre for European Policy Studies), Brussels, 2019

the most substantial challenges with their backlog of cases, regardless of the category of cases. Despite these improvements, significant differences remain between Member States with comparatively few pending cases and those with a high number of pending cases.

**Attention can also be drawn to the length of proceedings in two specific areas of EU law: competition law and EU trademark law.** Firstly, enforcement of competition law, for which the overall caseload faced by courts across Member States decreased significantly in 2017, while it remained stable or increased in seven Member States. In 2017, only three Member States reported an average length exceeding 1000 days, compared to eight Member States one year earlier. Secondly, in the area of the EU trademark, in 2017 the average length of EU trademark infringement cases has increased significantly in some Member States, with 13 Member States reporting an average length exceeding 400 days in the years considered.

**According to the latest data available<sup>102</sup>, more than 30% of retailers selling online consider that there are ‘potentially higher costs of resolving disputes and complaints cross-border’.** For all obstacles, the data show that the situation as seen by retailers has improved compared to 2014 and 2016. In addition, the share of retailers actually selling cross-border that consider the above to be obstacles to cross-border sales is smaller than the share of retailers that currently do not sell cross-border and consider the above as obstacles to cross-border sales.

### **Analysis of the reported practical obstacles and barriers**

Rules and procedures for contract enforcement are partly laid down at national level, with **limited role of EU legislation**. This generates different rules between the Member States. Moreover, when disputes are brought to courts, businesses are confronted with potentially lengthy legal proceedings caused by **insufficient administrative capacity and practices**. Lastly, in relation to business to consumer disputes, the vast majority of issues are resolved in an amicable manner directly between traders and consumers. Traders do not **implement adequately** Alternative Dispute Resolution themselves. The European Consumer Centres also encourage traders to reply positively to cross-border disputes with consumers.

#### *i) Enforcement of contracts and rights and public administrative decisions*

**The overall fragmentation of contract law in the EU is due to different national rules in Member States.** The regulation of dispute resolution and the provision of a functioning legal system to litigants is almost exclusively a matter dealt under national law. The fragmentation of contract law in the EU is due to different national rules in Member States. On civil law, businesses may face significant difficulties when they need to pursue cross-border litigation in civil and commercial matters in the EU, considering the complexity of the interaction between the different sets of rules. EU legislation on judicial cooperation in civil matters aims to provide legal certainty and solutions in relation to key aspects in cross-border litigation (which courts are competent and which law is applicable) and to facilitate cross-border enforcement.

**Businesses also face difficulties when challenge administrative decisions, such as for instance in public procurement or recognition of electronic identification.** As reported in barrier 6 on public procurement, available data shows many divergences in the design and functioning of national remedies systems. As reported in barrier 14, businesses face problems with electronic identification.

**Other problems faced by businesses wishing to expand to other Member States may arise from the lack of adaptation of national and EU law to the digital economy.** This may be the

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<sup>102</sup> 2018 retailers survey for the 2019 edition of the Consumer Conditions Scoreboard (not yet published)

case, for example, for businesses wanting to adopt new technologies such as blockchain and smart contracts.

*ii) Challenge to unlawful public measures*

EU law enables the protection of the rights of businesses and consumers notably in cross-border situations in the EU through multiple ways and at different levels. Whereas EU law offers a number of mechanisms aiming at the prevention of violations of their rights under internal market law, EU law also provides for the judicial enforcement of those rights. Where judicial enforcement is considered to be the most appropriate avenue or where other possibilities have been exhausted, an individual can rely on a fully-fledged and complete system of judicial remedies under EU law (see Communication on Protection of intra-EU investment of 19 July 2018).

A number of judicial remedies are available to individuals before national courts, which consist in particular of:

- provisional measures (interim relief),
- the obligation to interpret national law in a way that is consistent with EU law,
- the obligation for the judge to set aside of its own motion any act (even of constitutional nature) which is in conflict with EU law,
- the elimination of the consequences of a violation of EU law,
- the award of damages for violations of EU law (including for judicial wrong-doing).

In July 2018, the Commission adopted the Communication on Protection of intra-EU investment to clarify and recall the most relevant EU rules protecting investment in the EU. Yet, some investors and stakeholders express concerns about the enforcement of investors' rights and the Commission is exploring ways to strengthen intra-EU investment protection and make cross-border investments easier.

*iii) Limited access to justice is mostly the responsibility of Member States*

It is also important to underline that pursuant to Article 19 (1) TEU Member States are obliged to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. In these fields, under Article 47 of the Charter, which is directly applicable, everyone has the right to an effective remedy and to a fair trial.<sup>110</sup> Right to effective judicial protection: judicial redress must not only be possible (C-50/00 P, UPA) but also rendered by an independence of judiciary (C-64/16, PT judges; C-506/04, Wilson) within a reasonable time (C-612/15, Kolev; C-138/17 P Gascogne).<sup>103</sup>

**Since 2016, a new EU directive provides a framework for the establishment of quality alternative dispute resolution in consumer disputes in all Member States, covering all sectors and for many of them able to act in cross-border business to consumer cases.** In 2019 there were around 460 alternative dispute resolution (ADR) entities in the 28 Member States (including the United Kingdom). However, there is still a too low engagement of traders in ADR schemes, partly because of lack of information and partly because of costs. In addition, the Online Dispute Resolution platform is functional since February 2016 and helps consumers and traders agree on the best ADR bodies to solve business to consumer disputes related to online trade. This platform provides translation facilities. Since then, the platform has attracted more than 8.5 million visitors and 120 000 consumers sought for a solution to their issues. There are anecdotal reports of ADR bodies refusing to treat complaints coming from a foreign consumer, as they have difficulties understanding the complaint, assessing the evidence in the foreign language or applying foreign law.

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<sup>103</sup> See Commission Communication on “Protection of Intra-EU Investment”, pages 19 and on.

**Businesses face lengthy judicial procedures in some Member States, which may create situations in which companies desist from pursuing their rights.** This is particularly true for SMEs, which have limited financial resources for sustaining litigation and limited resources for overcoming language barriers in court cases. The issue stems from difficulties at Member State level. Simplified “European procedures” in cross-border civil litigation, such as the European Payment Order to obtain a decision quickly for cases in which it is presumed that no legal defence will be advanced, aim to provide solutions to these problems, but there is still lack of awareness of their existence.

**The Mediation Directive has provided an EU legislative framework to encourage the use of mediation to solve cross-border commercial disputes.** Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters aims at facilitating access to alternative dispute resolution and promoting the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

According to the 2018 EU Justice Scoreboard, among the reasons for good perception of independence of courts and judges, nearly four-fifth of companies and of citizens (equivalent to 38% or 44% of all respondents, respectively) named the guarantees provided by the status and position of judges. The Commission is pursuing some infringement procedures to ensure that all Member States comply with the requirement of independence of judges as laid down in EU law.

## **20. Costs and delays of collecting payments and recovering debt**

### **Practical obstacles and barriers reported by businesses**

**Businesses face costs and delays when collecting payments and/or recovering debts in another Member State.** The cost and delay of collecting payments and/or recovering debts is considered a barrier according to a variety of surveys and sources.

**Several consulted surveys mention difficulties related to payment recovery.** 57.4% of respondents to the Eurochambres 2019 survey marked “issues related to payment recovery” as an obstacle. In addition, 38% of respondents to the survey of the Confederation of Finnish Industries and 19% of respondents to the Dutch Doing Business in Europe survey mention different rules for debt collection as a barrier. If payments between businesses were carried out according to the contractual deadline agreed, the additional cash liberated and reinvested in the economy would pay for 6 million jobs in the EU<sup>104</sup>.

**According to World Bank Doing Business 2019 report,** the lowest scoring Member States are Luxembourg, Lithuania, Hungary and Greece, ranking from 30 down to 34/189. When comparing with the year 2015, there is an improvement, with rank 62/189 for Luxembourg and 67/189 for Lithuania. The indicator used is a composite indicator based on scores for recovery rate and strength of insolvency, with 50% weight for each.

**SMEs in particular face issues in transnational debt collection** and particularly in the implementation of such European legal proceedings as the European payment order or small claim proceedings. The payment policies of larger companies applied in some Member States (e.g. “90 days + end of month, in practice more than 100 days in average”) can be a significant

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<sup>104</sup> ECE

barrier to doing business. Business report differences between Northern and Southern European practices, which may cause cashflow difficulties for companies used to evolve in a business with short payment practice. The most affected sectors include: construction, retail, consulting and professional services. In general, any sector where there is a prevalence of SMEs in the relevant value chain is potentially affected by this hurdle.

## Available quantification

**In Europe half of all businesses do not survive the first 5 years of their existence. In recent years, an average of 200,000 firms went bankrupt each year in the EU, resulting in direct job losses totalling 5.1 million over three years<sup>105</sup>.** About one-quarter of these bankruptcies involved creditors and debtors in more than one EU Member State<sup>106</sup>. However, the single market dimension of the problems is larger than these figures suggest, since many companies avoid expanding or investing cross-border in the first place, due to the non-convergence of insolvency frameworks and uncertainty about the effectiveness of the applicable national insolvency rules.

**At the same time, the share of zombie firms has been increasing in several EU countries over the last decade.**

Member States with less efficient insolvency and claim enforcement frameworks are faced with the weight of existing company debt, which deters investors, holds back consumption, and creates a situation of debt overhang. Conversely, efficient insolvency frameworks can contribute in a tangible way to create jobs and sustainable growth by helping companies in difficulties, but still viable, to get back on their feet and quickly taking companies beyond rescue off the market.

According to the Small Business Act performance review, the EU average time to resolve insolvency in 2019 is 2.01 years (1.7 in OECD high-income, 1 in USA), while the cost of resolving insolvency (cost of recovering debt as % of the debtor's estate) is 10.43 (9.3 in OECD high-income, 10 in USA).

**The risk of late payment or non-payment is also the first major obstacle to the participation in public procurement of European SMEs.** It was considered an obstacle by 56% of SMEs in the EU in 2015, and considered a major obstacle by 43% of SMEs<sup>107</sup>. But late payment is also a practice deeply embedded in B2B (business to business) transactions. Only 40% of businesses are paid on time in the EU. 50% of the delays are severe, exceeding 60 days. Late payments account for 1 out of 4 bankruptcies in the EU<sup>108</sup>.

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<sup>105</sup> Impact Assessment accompanying the Commission Recommendation on a New Approach to Business Failure and Insolvency, SWD(2014) 61 final, 12 March 2014, p. 2. , <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:357:FIN#footnote27>

<sup>106</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:357:FIN#footnote28>

<sup>107</sup>

<http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2089>

<sup>108</sup> Source: ECE (European Commission for Europe)

## Analysis of the reported practical obstacles and barriers

This barrier is mostly explained by **limited role of EU legislation**<sup>109</sup> and insufficient awareness of the existing European procedures for cross-border situations. In addition, the **general business environment** (unfair payment practices of bigger companies towards smaller ones, and long verification and payment procedures, especially in the public sector) and **administrative capacity and practices** also explain this hurdle.

**Outside insolvency, the enforcement of unpaid claims is a matter of judicial procedures, the regulation of which is indeed primarily a prerogative of the Member States.**

The barrier also results from constraints faced by the **justice system in Member States**. These constraints are partly explained by a lack of sufficient funding of courts in a number of Member States, an absence of proper training of judges or an absence of digitalisation of court procedures. The Directive on restructuring and insolvency sets an obligation of Member States to provide training to insolvency judges and ensure digitalisation of insolvency proceedings (within an extended transposition period of 5 – 7 years).

**Besides the core areas of Member State competence for civil judicial procedures and insolvency procedures, there are a number of EU legislative instruments** which are either in force, in a transposition period or in the legislative process which try to regulate at the EU level at least the surrounding environment of judicial enforcement and insolvency procedures. These include the European Payment Order Regulation 1896/2006/EC (in force), the Insolvency Regulation 2015/848/EU (in force), and the Late Payment Directive 2011/7/EU (in force),

### *i) Payment procedures not sufficiently harmonised*

The EU legal framework for cross border claims (Late Payment Directive 2011/7/EU) is well-established, but its **implementation suffers from lack of a mutual assistance/quick resolution system** and from a **different level of implementation throughout the single market**.

- In commercial transactions between private operators, businesses are afraid of making claims out of fear of damaging business relations, especially when their customer is a larger enterprise and there is an asymmetry in the bargaining position (“fear factor”). In this case, businesses prefer to accept unfair payment conditions (and expose themselves to the risk of delayed payment).
- In commercial transactions with the public administration, businesses do not have any effective means of ensuring that the counterpart respects the periods of payment harmonised in the directive; this threatens the existence of the economic operator itself, particularly for SMEs, since it aggravates liquidity constraints and increases costs;
- The different EU regulations facilitating cross-border debt recovery are still not sufficiently well-known by business, in particular SMEs, and more needs to be done to raise awareness.<sup>110</sup>

### *ii) New insolvency proceedings not implemented yet*

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<sup>109</sup> The rules on international jurisdiction of courts, the law applicable in cross-border cases and on the recognition and enforcement of decisions is fully harmonised through the EU rules on civil judicial cooperation.

<sup>110</sup> Regulations 44/2001 on jurisdiction and recognition and enforcement of judgements in civil and commercial laws, Regulation 805/2004 on a European Enforcement Order, Regulation 1896/2006 on European order of Payment, Regulation 861/2007 on European Small Claim procedure. All these regulations do not apply to Denmark.



The **new Directive** on restructuring and insolvency 2019/1023/EU (in a transposition period) introduces an early warning mechanism and second chance provisions – up to 3 years maximum discharge period. It aims at reducing differences in MS's restructuring and insolvency frameworks in order to enhance a free flow of capital across the EU. The transposition period will take place between July 2019 and July 2021.

**This directive also establishes an obligation for Member States to collect such data on insolvency proceedings.** Studies are being performed by the European Commission and the European Banking Authority (EBA) to obtain data on non-insolvency claim enforcement.

## 21. Barriers to data availability and unclear data privacy rules

### Practical obstacles and barriers reported by businesses

Business face barriers to cross-sector and cross-border data availability, fragmentation of standards, and unclear privacy rules.

**Data availability remains a problem across sectors and borders in the EU.** Some data are difficult to gather for businesses because they are generated or stored in a different country or in closed environments (such as machines, cars or factories). Public sector data interoperability also is an issue, especially its use across different borders and sectors. The continuous lack of interoperable non-embedded software systems and application programming interfaces (APIs) also creates problems further down on data porting, data access, data sharing and re-use of data.

**Data localisation restrictions take different forms in different sectors** (e.g. financial, public, health sector). For example, a Member State supervisory authority may advise the financial service providers to store their data locally. As a result, the financial service providers cannot freely choose to store their data in Europe where it is the most cost-efficient.

**According to various sources, data-storing costs vary across the EU.** For example, the annual cost of a server for health data in Germany is EUR 3,000, but in France EUR 13,000.<sup>111</sup> Similarly, the price of storage per gigabyte with a Hungarian cloud service provider is more than 25 times that of a large provider in Germany.<sup>112</sup>

There is also increasing risk of *fragmentation of standards*. Several Member States are taking initiatives, including legislation, in order to facilitate access to privately held data in different constellations (business-to-business, business-to government). However, these national measures may lead to fragmentation on the European market. As a result, businesses face a situation in the EU where data access and re-use happens at different speeds in different countries. Consequently, opportunities to develop cross-border applications are limited.

Finally, businesses report *uncertainty about privacy rules*. The DIHK 2019 survey reports that GDPR is not implemented uniformly throughout the EU because of low harmonisation, but also inconsistent interpretation. For example, “there are sometimes different views, e.g. regarding who is the controller and who is the processor (e.g. in personnel management) [which] leads to a need for clarification in international business relations.” Similarly, the Dutch Doing Business in Europe survey states that “both SME's and Self-employed experience expensive transport costs

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<sup>111</sup> Data based on public consultation with stakeholders (2017).

<sup>112</sup> Data based on the impact assessment (SWD(2017)304).

and privacy legislation as the greatest obstacles relating to the e-commerce of services and products.”

### **Available quantification**

With regard to the online sale of goods and services, both self-employed (26%) and SMEs (29%) experience compliance with privacy legislation as one of the biggest obstacles, according to the Dutch Doing Business in Europe survey. The fact that data has to be saved locally is also considered a barrier to e-commerce by 13% of self-employed and 14% of SMEs.

Studies undertaken by the Commission (DG CONNECT) and results of public online consultations conducted in 2017 and 2018 showed that more business-to-business data sharing would be beneficial to businesses, and that trust, legal certainty and information were key components in any data-sharing situation. Almost half of responding companies using data have experienced some problems in accessing data held by others. Another survey showed that around 40% of responding SMEs experienced problems with accessing relevant data from another company.

### **Analysis of the reported practical obstacles and barriers**

The root causes originate from **inadequate implementation of EU legislation, EU legislation leaving flexibility in the level of harmonisation**, and from **requirements justified by public policy reasons**.

The EU has put in place key regulatory principles for cloud services providers (the GDPR, Regulation on Free Flow of non-personal Data, NIS Directive, EU Cybersecurity Act) and has been working to develop European compliance tools to raise the level of security and trust. The GDPR prohibits restriction the free movement of personal data within the Union for reasons connected to data protection (Article 1.1 GDPR). The Free Flow of Non-Personal Data Regulation stipulates that data localisation restrictions are prohibited except if justified by reasons of public security. By 30 May 2021, Member States must repeal such restrictions.

However, **enforcement is insufficient**. Awareness of the principle of free movement of data is low among public authorities (in particular at regional and local level) and businesses. Some Member States still impose national data localisation requirements. Additionally, **harmonisation in some areas is flexible**. While the GDPR has done away to a large extent with the fragmented landscape that existed under the previous directive, it leaves some margins for national legislation to specify certain of its provisions (but not on the free flow of personal data). There also a lack of EU-level data governance mechanisms addressing the challenge of data interoperability within and between sectors.

Apart from ensuring the free movement of personal data, the GDPR also **pursues the protection of natural persons** with regard to the processing of their personal data. The right to data protection is a fundamental right enshrined in Article 8 of the EU Charter on Fundamental Rights and Article 16 of the Treaty on the Functioning of the EU (TFEU) provides the legal basis for the laying down of rules relating to the protection of individuals with regard to the processing of personal data.

In terms of current work, as part of the next Multiannual Financial Framework, the Commission has already proposed using funds from the Connecting Europe Facility 2 (EUR 420 million) and the Digital Europe Programme (EUR 220 million) to finance the interconnection of new and existing EU cloud infrastructures and to deploy pan-European cloud services. Additional on-

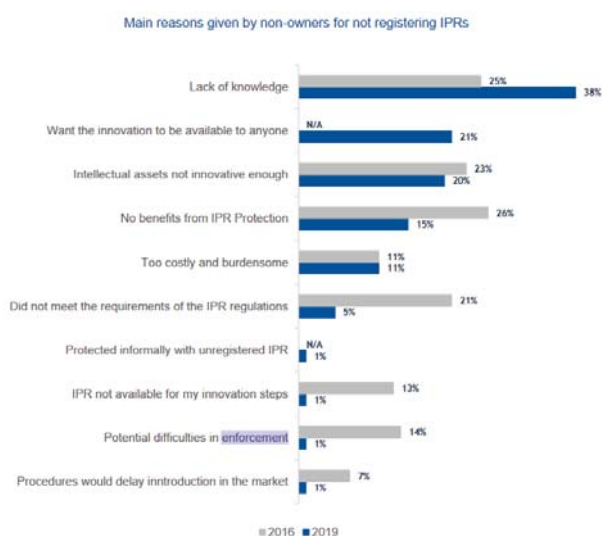
going work includes industry-led codes of conduct in the area of data protection and data and preparatory work for a European security certification scheme for cloud service providers.

## 22. Obstacles to effective intellectual property rights protection

### Practical obstacles and barriers reported by businesses

According to the Dutch Doing Business in Europe survey, the “use of intellectual property is difficult” according to 22% of self-employed in e-commerce in a cross-border context. According to the European Union Intellectual Property Office, the main reason for not registering intellectual property rights is a lack of knowledge about what intellectual property is and what its benefits are. The percentage giving this reason reaches 38% in 2019 (see graph). Indeed, 61% of non-owners would consider registration if they had a better understanding of IPRs. Moreover, 11% consider that the cost has a deterrent effect.

According to the 2019 SME Scoreboard of the European Union Intellectual Property Office (EUIPO), some 55% of intellectual property right owners say that copying by competitors is the biggest threat to their IPRs in the coming year and 24% of SME IPR owners report they suffered infringement of their intellectual property rights.



### Available quantification

IP-intensive industries currently account for 42% of EU GDP, for 93% of EU exports and for 28% of jobs in Europe<sup>113</sup>.

Only 9% of SMEs have registered IP rights<sup>114</sup>.

Today obtaining patent protection in the whole EU can cost up to EUR 36000 compared to USD 2000 in the United States<sup>115</sup>.

<sup>113</sup> 2019 Status Report on IPR infringement, European Observatory on Infringements of IPR, 2019 (p. 9).

<sup>114</sup> EUIPO, 2015, also quoted in High-growth firms and intellectual property rights, EUIPO-EPO, 2019

According to the European Union Intellectual Property Office SME Scoreboard 2019, 24% of SMEs have suffered from an intellectual property right infringement in the previous 3 years. Trademarks were the most infringed right (48%), followed by patents (24%). The most common impacts of IPR infringement were identified as loss of turnover (33%) and damage to reputation (27%).

## Analysis of the reported practical obstacles and barriers

Today, the EU has already a strong intellectual property framework with harmonised national laws for copyright, trademarks, designs, trade secrets, biotechnological inventions and supplementary protection certificates (SPCs); unitary titles for trademarks, designs and plant variety rights; a common regime for agricultural and food geographical indications; and a harmonised regime for civil law enforcement of IP rights. However, many single market barriers related to IP protection still remain, preventing businesses from grasping the full benefits of IP as a tool for innovation, creativity and growth. These barriers can be mostly explained by a **regulatory choices** in some areas and **insufficient administrative capacity and practices**.

### *i) Fragmentation of intellectual property rights*

Today, EU law has already a strong IP framework, with harmonised national laws for copyright, trademarks, designs, trade secrets, biotechnological inventions and supplementary protection certificates (SPCs); unitary titles for trademarks, designs and plant variety rights; a common regime for agricultural and food geographical indications as well as a harmonised regime for civil law enforcement of IP rights. Businesses consider these rights important (see table below), according to the European Union Intellectual Property Office SME Scoreboard 2019. However, many single market barriers related to IP protection still remain, preventing businesses from grasping the full benefits of IP as a tool for innovation, creativity and growth. In some areas, IPR protection remains fragmented, creating information gaps for SMEs and making some registration procedures complex and costly.

Comparison of the importance given by IPR owners to protective measures (2016-2019)

INTELLECTUAL PROPERTY RIGHTS	2019	2016
Trade mark	58 %	38 %
Patent	32 %	16 %
Copyright	21 %	16 %
Design	24 %	22 %
Geographical indication	12 %	14 %
Breeders' right/Plant variety right	7 %	2 %
Topography of semiconductor	6 %	1 %
Utility model	11 %	7 %

<sup>115</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_470](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_470) Data gathered during preparatory works for Impact Assessment for the unitary patent package

The current European patent system is complex, fragmented and costly. Currently, in the EU patents can be obtained either by applying directly to national patent offices for patents that are only valid in the country concerned, or by applying to the European Patent Office (EPO) for a “European patent” which is a bundle of national patents with validation in each country where the applicant wishes to have protection. After granting, the enforcement of European patents is essentially a matter of national law. The introduction of the Unitary Patent System (in ratification) will bring down costs for registration, translation and litigation significantly, but is still not a reality. On Supplementary Patent Certificates (SPCs) we are confronted with each country having its own procedure creating different levels of protection and an absence of transparency. This creates a serious single market barrier for the pharmaceutical sector.

The first results of the ongoing evaluation of EU legislation on designs protections suggest that the current legal framework is not up to date with the digital age, lacks clarity and transparency, involves unnecessary administrative burdens for obtaining simple and fast protection, and contains significant gaps in protection hindering the effective fight against counterfeiting. There is also a great lack of consistency between national laws and between national laws and EU legislation. In particular, the current EU legislation did not harmonise rules on visible spare parts protection, allowing Member States to use designs protection to close off repairs markets, and causing divergences between Member States, leading to single market barriers. This is notably the case of visible spare parts in the automotive sector, where the prices on the after-market tend to be lower in Member States that no longer have the design protection rules resulting in increased competition. According to a French Competition Authority opinion from 2012, *“these intellectual property rights, applied to spare parts, hamper the manufacturing and marketing in France of parts not produced by the original equipment manufacturer. They thus confer to the original equipment manufacturer a legal monopoly that concerns 70% of the visible parts market”*.

Although there are EU uniform regimes for the protection of geographical indications, for wines, spirits, foodstuffs and agricultural products, protection of non-agricultural products with special qualities or reputations based on their origin such as “Solinger knives” or “Murano glass” is fragmented in the Union. Certain Member States have either created national sui generis systems (e.g. FR, PL, PT, IT) or trademarks (e.g. DK) to protect such geographical indications.

Intellectual property theft is a serious concern in all the Member States with counterfeit products found in a large and growing number of industries such as common consumer goods (e.g. health products, food and drink, cosmetic toy, textiles), machines, chemicals, phones and batteries which may not only damage brand reputations but also create health risks within the single market. In this context, the IP Enforcement Directive<sup>116</sup> has harmonised the measures, procedures and remedies used in civil law proceedings. The application of the Directive by national courts is however not uniform throughout the EU with considerable differences e.g. on the conditions for injunctions, the seizure of evidence, damages and legal costs.

#### *ii) Administrative practices of enforcement authorities*

There is also insufficient coordination and cooperation between national enforcement authorities, and a lack of/fragmented commitment of intermediaries which makes the enforcement of intellectual property rights within the single market even more difficult.

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<sup>116</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. *OJ L 157,30.4.2004.*

## **23. Hurdles to starting a business**

### **Practical obstacles and barriers reported by businesses**

#### *Registration of business activity*

**Businesses face difficulties when registering their business activity in other Member States**, as information about procedures and requirements is not always easy to find. Many respondents to the survey carried out by some chambers of commerce and other business organisations commented that there is a lot of red tape and unnecessary administration, which affects both local and non-local companies, discouraging market integration. The type of information made available, as well as the way it is made available, i.e. whether online and in what language, differs greatly between Member States. According to some business organisations for example, although national requirements may all be justified, the range and complexity are a challenge for companies.

**Businesses report that it is difficult to obtain a total overview of what to comply with**, which procedures to follow, and which authorities to engage with in any given Member State. Existing information contact points/points of single contact do not cover the entire range of requirements and it is often impossible to get an over-all view of all contact points. It adds to the complexity, that Member States often revise the national legislation relevant for companies. This makes it difficult to find both industry specific information and general information which applies to all enterprises and causes delays to the point of becoming a total barrier to market entry. Similar experiences are reported by the DIHK 2019 survey.<sup>117</sup>

**Different requirements**, including different time limits and legal fees are a significant barrier as well, as reported by several business organisations, including the French and the Czech. They have reported, for instance, difficulties for laboratories in the pharmaceutical sector, to carry out requested tests. To be able to carry out the requested tests, a request for prior authorisation has to be made to the authorities of the home country; but for each test order, the laboratory must repeat the authorisation procedure - even for very small quantities.

#### *Market access controls in services*

Service providers often need to obtain a sector-specific licence, authorisation or certification in order to establish in another Member State and provide services there on a long term basis. On the one hand, obtaining such an authorisation requires service providers to comply with a number of underlying regulatory conditions. The conditions can be restrictive and difficult to meet for them. In addition, these procedures often entail a large amount of administrative complexity, involving for example heavy paperwork and long decision periods by competent authorities. These issues are consistently highlighted by stakeholders as important obstacles, for example recently in surveys by the Czech Ministry of Industry and Trade, the Finish Confederation of Industries and Eurochambres.

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<sup>117</sup> See also barrier 1 on “Insufficient information about business opportunities and partners”.

## Available quantification

### *Registration of business activity*

**6 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.** 27% of SMEs operating in services mention “different rules for bookkeeping and administration” as a barrier, according to the Dutch Doing Business in Europe survey.

**According to the results of a 2016 public consultation<sup>118</sup>, the registration of business activity including online registration of a company was seen as the most important procedure** for businesses. This view is shared by 27% of respondents to the Doing Business report as well as by the contributions of 5 of the 9 chambers of commerce consulted as part of this study. Finally, the World Bank Group Doing Business report ranks EU Member States between the 11<sup>th</sup> and the 134<sup>th</sup> place out of 190 countries as regards the ease of doing business (which covers a number of procedures including company registration, minimum capital requirements, tax and social security relevant registrations and licensing).

Specifically as regards registration of limited liability companies, understood as creation of a company as a legal entity, the 2017 public consultation<sup>119</sup>, preparing the proposals for the 2018 Company Law Package, showed strong support from business organisations (70%) and Member States (64%) for the introduction of new rules on fully online registration of limited liability companies and on fully online filing of company information in business registers. Currently, in more than half of Member States, there exists a fully online registration of companies but in other countries, it is still necessary to go in person to the authority/body responsible. The situation is similar as regards registration of branches. Applications for company registration made in person and on paper are generally more expensive and take longer to process than electronic ones, resulting in higher costs for companies<sup>120</sup>.

### *Market access controls in services*

**Sector-specific market controls in services** are highlighted by businesses as a major obstacle. For example, “different national service rules” are highlighted as a significant or very significant obstacle to the single market by 81% of respondents to the Eurochambres 2019 survey who are active in the area of services. A survey by the Finnish Confederation of Industries showed that businesses consider among the top five barriers differences in technical and regulatory requirements, and setting up a legal entity including obtaining the necessary authorisations. A survey by the Czech Ministry of Industry and Trade highlighted the slow process of obtaining authorisations or registrations to provide services as one of the major obstacles. A recent assessment shows that the administrative costs created by national regimes for sector-specific market access in the areas of regulated business services and construction services can amount to EUR 10,000 and more.<sup>121</sup>

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<sup>118</sup> Commission staff working document - Synopsis report on the stakeholder consultation on the Single Digital Gateway, SWD(2017) 212 final, p.4.

<sup>119</sup> [https://ec.europa.eu/info/consultations/eu-company-law-upgraded-rules-digital-solutions-and-efficient-cross-border-operations-0\\_en](https://ec.europa.eu/info/consultations/eu-company-law-upgraded-rules-digital-solutions-and-efficient-cross-border-operations-0_en)

<sup>120</sup> Impact Assessment accompanying the proposal on the use of digital tools, SWD/2018/141 final, p. 16.

<sup>121</sup> Ecorys, “Administrative formalities and costs involved in accessing markets cross-border for provisions of accountancy, engineering and architecture services”, 2017; Ecorys, “Study on costs involved in accessing markets cross-border for provision of construction services”, 2018

## Analysis of the reported practical obstacles and barriers

The root causes originate in **restrictive national rules, limited role of EU legislation, inadequate implementation and transposition of EU legislation, administrative capacity and practices, general business environments, and requirements justified by public policy reasons.**

### *Registration of business activity*

The root causes originate in limited EU legislation, administrative implementation issues, including the lack of administrative capacity or the use of divergent administrative procedures, and other legitimate policy objectives (e.g. security, anti-money laundering, etc.). Recent initiatives should contribute to addressing this obstacle.

As regards formation of limited liability companies, it is mostly a matter of national competence, with **limited EU legislation.**

However, the fundamental freedoms enshrined in the Treaty apply in this sector too. Moreover, the Services Directive sets out a number of substantive and procedural rules regarding the setting up of a business. The recently adopted Directive (EU) 2019/1151 on the use of digital tools and processes, which followed the 2017 public consultation mentioned above, will enable entrepreneurs to set up new companies or branches fully online while providing for strong security standards (allowing authorities to require physical presence in exceptional cases). These new rules are expected to bring important cost savings and efficiency gains for companies, in particular for SMEs as online procedures will be available in all Member States and companies will be able to use them not only at national level but also cross-border. This Directive will also require Member States to provide information online and free of charge on the most important company law requirements, and will extend the company information available for free through a business register interconnection system (BRIS). Both will lead to easier EU-wide access to information about other companies, which is particularly important for SMEs.

**The single digital gateway (Regulation (EU) 2018/1724) aims at improving the access for citizens and companies to information on national and EU rules, rights and procedures.** As of December 2020, it will become the online access point for EU citizens and business in need of information to get active in any EU Member State. It will provide links to procedures and assistance services, by signposting to the right national or local websites. All information will be available in English. The areas of information relevant for business are the following: starting, running and closing a business; employees; taxes; goods; services; funding a business; public contracts; and health and safety at work.

### *Market access controls in services*

As regards market access controls in services, the main root causes seem to be related to **lack of implementation of EU legislation, restrictive national rules and a lack of cooperation between Member States.**

As explained in the Handbook on implementation of the Services Directive, the Services Directive does not limit itself to clarifying and systematizing the case law of the Court of Justice of the European Union about freedom of establishment and freedom to provide services, which as such would already have had added value. It also provides for a sweeping modernisation reform of legislation and administration which the Member States are obliged to implement. This in particular facilitates the life of service providers, notably SMEs, who want to set up new or expand existing businesses or provide their services in other Member States on a temporary basis. Some important aspects of the Directive are as follows:

- Administrative and legislative simplification and modernisation, including improving transparency and "slimming down" authorisation procedures;



- Set up one-stop shops for service providers (so called "Points of Single Contact") offering the possibility to complete formalities and procedures online at a distance;
- Review and adaptation of the existing legal requirements applicable to services;
- Elimination of national legal requirements that are discriminatory, unnecessary or disproportionate;
- Ensuring that undertakings may provide their services cross-border on a temporary basis;
- Requiring national authorities to take into account equivalent controls imposed by other Member States for establishing service providers ('mutual recognition');
- Prohibition of total bans on commercial communications by regulated professions;
- Limits to restrictions to the exercise of multidisciplinary activities.
- In addition, the Services Directive also aims to strengthen cooperation by setting up a system of administrative cooperation among national authorities. This allows increasing the exchange of information between Member States, enabling also to supervise more effectively service providers across borders.

Finally, the Services Directive improves the rights of service recipients, by providing *inter alia* for:

- Non-discrimination against service recipients on the basis of their nationality or place of residence. This obligation of non-discrimination must be complied with by public administrations and by service providers.
- Comprehensive information rights for service recipients.

The extent of implementation of the above provisions has been very different across Member States, resulting in a regulatory landscape that remains highly restrictive in many services sectors.

For example as highlighted above, national competent authorities, when they apply their national requirements on establishing service providers, should take into account equivalent controls to which the service provider was already subject in the same or another Member State. To facilitate the application of this **mutual recognition** principle, the Services Directive obliges Member States to assist each other and to exchange information. To this end, the Internal Market Information system (IMI) offers a multilingual platform for electronic exchange of information between Member States.

In practice, Member States do not consistently or fully implement and apply the provisions of the Services Directive as regards mutual recognition. In addition, there is also very limited exchange of information between Member States in the IMI system on questions linked to the Services Directive. As a result, national procedures often disregard requirements that the service provider already met in its home Member State. This leads to an unnecessary duplication of controls and complexities for service providers coming from other Member States, who are disadvantaged compared to domestic operators.

As another example, the Services Directive also addresses the issue of administrative burden faced by companies to comply with national requirements (as also highlighted above). It requires Member States to simplify administrative procedures and formalities for those services and areas of regulation in scope. Information on requirements should be easily accessible and service providers should be able to complete procedures at a distance and by electronic means (through the national "points of single contact"). There is still great scope for improving the implementation also of these provisions by Member States. Administrative capacity and the dedication of national resources plays an important role in this regard.

Finally, in the context of the European Semester country specific recommendations addressed to Member States often encourage them to improve their business environment by carrying out structural reforms in services sectors. In general, the implementation progress of the recommendations remains fairly limited.

The sectoral sections on regulated professions (architects, engineers, patent/trademark agents, legal services, etc.) provide concrete examples of the problems faced by those service providers when they want to establish their business in another Member State.

### Step 3b Additional steps for establishment: staffing

## 24. Lack of skilled workers and limited worker mobility

### Practical obstacles and barriers reported by businesses

Skills shortages affect the performance of the single market and its ability to generate quality jobs, especially as technological change, digitalisation, and the growth of the service sector in recent years have led to an increased demand for highly skilled workers. The lack of skilled workers, compounded by skills mismatches, has been a persistent problem over many years in the EU, as pointed out by many reports. The European Centre for the Development of Vocational Training (CEDEFOP) has found that recruitment difficulties for some professions may be temporary, such as ICT developers and some occupations, primarily in the health sector.<sup>122</sup>

Skills shortages<sup>123</sup> hinder the integration of the single market as they may impede business models successful in some Member State from expanding across the single market. They may also favour incumbents which were able to secure scarce talent before competitors. If companies end up hiring under-qualified people, they will have to spend money and time to train them, which also slows the adoption of new technologies. SMEs face particular problems due to fewer resources and means to train staff and often cannot match salaries paid by larger companies/public sector.

This is supported by various reports. For example, the DIHK 2019 survey mentions “a shortage of qualified and unqualified workers” as an obstacle to business expansion. Similarly, the Czech Chamber of Commerce reports the “lack of skilled labour in some Member States” as a barrier.

### Available quantification

The need for skilled workers is increasing everywhere, but shortages vary substantially between Member States. In 2018, businesses reporting that labour shortages are a factor limiting their

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<sup>122</sup> CEDEFOP (2014) Skill mismatch: more than meets the eye

<sup>123</sup> The European Centre for the Development of Vocational Training (CEDEFOP) defines a skill shortage as a situation where the demand for skills exceeds supply at prevailing rate of pay and working conditions. This situation, is according to CEDEFOP, different from skills gaps or under-skilling, where individuals lack the skills and abilities necessary to perform the current job (as perceived by employees) or perform the job proficiently (as perceived by employers). See CEDEFOP (2018) Insights into skills shortages and skills mismatches.

production have increased in all Member States compared to 2013, with peaks in Hungary (almost half) and Malta (close to 40%), three countries above 30% (Portugal, Sweden, Estonia) and ten countries between 20 and 30%. According to CEDEFOP, about “10% of firms find that their newly recruited university graduates lack the necessary skills”.

According to the Hidden Treasures report, 38% of SMEs without exporting experience and 11% of SMEs with exporting experience mention the lack of specialised staff as a barrier to exporting to other EU Member States.

Currently, over one third of the labour force does not have basic digital skills (whereas most jobs already require a basic level of digital skills). 53% of companies have difficulties in recruiting digital experts and there are 1 million vacancies for ICT specialists in the EU.

According to a 2019 European Investment Bank Report on Investment Barriers, a lack of “availability of skilled staff” is perceived as a long-term barrier to investment by more than 70 % of respondents.

Finally, 4 out of 11 business organisations that replied to a Commission survey reported issues related to this barrier.

## **Analysis of the reported practical obstacles and barriers**

The shortages reflect a demand for skilled workers – whose root cause **is not linked to public policy** – exceeding the supply for skilled workers. The responsibility to deal with skills shortages lays primarily with Member States. This is an area where there is **limited role of EU legislation**<sup>124</sup>.

### *Root cause not linked to public policy*

Many EU Member States today are experiencing high labour shortages, especially of skilled labour—though with significant differences between countries.

The first root cause that comes to mind is the transformation of the economy, including in particular globalisation and digitalisation, which have increased the need for highly skilled workers.

According to CEDEFOP, in many cases the root causes of recruitment difficulties reflect labour market friction such as low labour mobility, seasonal shifts in demand, for example in tourism, lack of information and wage rigidities.<sup>125</sup>

Higher workforce mobility might reduce skills gaps to some extent. But factors limiting mobility are often not related to regulatory barriers. Rather, they are related to low motivation and limited benefit, in particular for highly skilled workers who are more likely to find good positions closer to home.

### *No EU legislation on education and training systems, as it is a mostly national competence*

The other root cause for labour shortages is that there are not enough workers with the high-level skills required. A skilled workforce is the result of good education and training systems and appropriate participation of adult workers in continuing professional development. Education and training systems are mostly regulated at national level, as are the provision of continuing training opportunities and services for career guidance and validation of skills.

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<sup>124</sup> In the context of the European Semester, the Union has made recommendations on national education and training policies

<sup>125</sup> CEDEFOP (2014) Skill mismatch: more than meets the eye

However, the EU has set up initiatives that may to a certain extent support Member States in designing and implementing appropriate policies (for example, the EU directives on professional qualifications, which lay down inter alia education and training requirements, the strategic framework for European cooperation in Education and Training). The new reinforced Skills Agenda will give a new impetus to re- and upskilling of the workforce in the context of the green, digital transitions and demographic changes, together with the accompanying Commission Proposal for a Council Recommendation on vocational education and training (VET). The European Social Fund is a source of financial support for national and regional action to provide people with opportunities for training, guidance and validation. EU instruments such as Europass and the European Qualifications Framework make skills and qualifications more transparent throughout Europe, facilitating the matching of skills supply and demand. The EURES network also helps employers and jobseekers find each other in the European labour market.

## **25. Difficulties in accessing a regulated profession**

### **Practical obstacles reported by businesses**

According to business associations, professionals moving from one Member State to another face obstacles relating to the recognition/exercise of their professional qualifications and/or meeting other requirements to access a regulated profession. These are considered a barrier by 42.2% of respondents to the Eurochambres 2019 survey. Likewise, the Czech Chamber of Commerce reports that “difficulties in the recognition of professional qualifications and meeting other requirements to access a regulated profession” create a barrier. In addition, the DIHK 2019 survey states that businesses report “inconsistent recognition of professional qualifications in the single market” despite EU-wide rules on the matter.

Firstly, sometimes professionals face problems with obtaining recognition of their professional qualifications. For instance, in one SOLVIT case an electrician with 30 years of professional experience, of which more than 10 years in a self-employed status, was told his academic qualifications were not equivalent to those required to practise as a registered electrician in the host Member State and he therefore had to take an additional test or go through an adaptation period. However, on the basis of his professional experience in his home country, the host Member State should have automatically recognised his professional qualifications and given him full access to the profession of registered electrician.

Secondly, the process of getting a permission to exercise a professional service appears in some instances as slow and cumbersome. According to the Dutch Doing Business in Europe survey, 20% of self-employed entrepreneurs working in services consider the process of getting a permission for the execution of a service complex or slow. Three SOLVIT cases can illustrate this obstacle in the area of professional services. In the first case, a physiotherapist from one Member State applied for professional recognition in another Member State but had still not received a response from the host country’s authorities one year after applying. In the second case, a number of nurses from one Member State applied to have their professional qualifications recognised in a neighbouring Member State. However, the authorities of the host country did not respect the deadline of 3 months for replying to the application. Finally, in a third SOLVIT case, a boat charter business from one Member State sought to establish itself in another Member State and therefore needed to have a licence from that host Member State recognising the professional qualifications of one of the company’s boat skippers. However, for reasons of administrative backlog, the local competent authority indefinitely delayed issuing such a licence.

Thirdly, sometimes businesses or individuals are confronted with unnecessary administrative burdens, such as excessive documentation and/or certification requirements, when they want to perform a professional activity abroad. For instance, tour guides from one Member State wishing to guide tourists in a neighbouring Member State have notified SOLVIT that the latter has been requesting certified translations of their professional qualifications.

Fourthly, language requirements remain an obstacle to the execution of a profession in another country. While EU law allows countries to require that professionals have the necessary language skills to practice the profession in the host Member State, in some cases authorities go beyond what is allowed. For instance, in a SOLVIT case concerning a carpenter working in another country, the worker was told that to be entitled to full pay as a skilled carpenter, he needed a local language proficiency certificate, in spite of having already worked for over 10,000 hours in that country. Businesses report this as obstacles for them or individuals to work in different Member states.

### **Available quantification**

The number of regulated professions in the EU is considerably high. According to a 2017 Commission study, 22% of the European labour force is directly affected by professional regulation. **Higher restrictions also impact cross-border mobility by imposing significant costs on non-national workers.** Depending on the profession and under certain assumptions on labour demand structure, there could be between 3% and 9% more people working in a given profession in the EU if access requirements were less stringent<sup>126</sup>.

Different national approaches to regulation result in a significant divergence in the level and types of regulation. Indeed, the professions that are subject to regulation differ substantially across Member States. Based on what Member States notified in the regulated professions database, there were over 5800 regulated professions across the EU in 2019. The number of regulated professions differ greatly across Member States, ranging from Lithuania, which reported 77, to Hungary with 533.

As regards mobility of professionals, based on the information provided by the Member States, in the period between 1997 and end of 2019, medical doctors and nurses were the top two most mobile regulated professions in the EU, with 154,863/149,307 decisions taken respectively on the recognition of professional qualifications for the purpose of permanent establishment within the EU, EEA and Switzerland<sup>127</sup>.

In the Eurochambres 2019 survey, “difficulties in the recognition of professional qualifications and/or meeting other requirements to access a regulated profession” was marked as a barrier by 42.2% of respondents. Additionally, 4 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

### **Analysis of the reported practical obstacles and barriers**

This barrier originates in **restrictive national rules** as part of the **general business environment** in Member States. While there might be valid public interest reasons to regulate certain

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<sup>126</sup> Koumenta, M. and M. Pagliero (2016), "Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU". See: <http://ec.europa.eu/DocsRoom/documents/20362>

<sup>127</sup> See information under “Ranking – the most mobile professions” in the Regulated professions database, available at: <https://ec.europa.eu/growth/tools-databases/regprof/index.cfm>.

professions, these national rules restricting access to and exercise of professions across Member States inevitably creates barriers for the mobility of professionals in the single market. Substantial divergence as regards regulatory approaches (including whether to regulate a professional activity at all) and the extent and content of regulation in the Member States have a significant impact on cross-border establishment or provision of services.

Two recent EU initiatives may address some of these issues.

- In 2017 the Commission issued a detailed guidance to Member States on reform needs in regulation of professional services for seven professions (architects, engineers, lawyers, patent agents, accountants/tax advisors, real estate agents and tourist guides) covering qualifications as well as other access and exercise requirements.<sup>128</sup> Stronger take-up of these recommendations would reduce some of the problems experienced by businesses.
- Furthermore, a Directive on a proportionality test before adoption of new regulation of professions or amending the existing rules was adopted in July 2018 and needs to be implemented by 31 July 2020.<sup>129</sup> It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in the Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. This covers rules concerning professional qualifications but also other access and exercise requirements. Such a better *ex ante* assessment of national legislation should help to prevent new barriers from arising.

In addition, reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

**Inadequate application of EU legislation and general business environment in Member States.** Additionally, Member States sometimes fail to correctly or timely deal with requests for recognition of qualifications. This might in some cases be related to a lack of staff or expertise at the national level. In addition, the document requirements, as well as requests for authentications, certified copies and certified translations of such documents, imposed by Member States often go beyond what is absolutely necessary and create additional red tape.

The Services Directive has laid down a number of rules regarding market access, including for non-regulated professions (see above). Furthermore, the EU has put in place measures concerning the recognition of professional qualifications, notably through the Directive on the recognition of professional qualifications (2005/36/EC) which was reviewed in 2013, and through sectoral legislation.

Directive 2005/36/EC lays out the principles of **cross-border mutual recognition of professional qualifications** in the EU and harmonises minimum training requirements for **seven** sectoral professions (**doctors, general care nurses, midwives, dentists, pharmacists, veterinarians and architects**). In addition, it contains specific rules dealing with professionals who want to provide services in another country on a temporary or occasional basis. For professionals wanting to establish abroad, Directive 2005/36/EC provides three routes of recognition of professional qualifications, namely automatic recognition for the seven professions with harmonised minimum training, automatic recognition based on professional experience, and a general system for all other professions. For certain specific professional services, further information is provided in the sector-specific fiches.

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<sup>128</sup> Communication on reform recommendations for regulation in professional services, COM(2016) 820 final

<sup>129</sup> Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, OJ L 173, 9.7.2018, p. 25

Certain professions such as **lawyers, sailors, air traffic controllers, train drivers, insurance intermediaries, and professionals dealing with toxic products** are governed by specific legislation and the recognition procedures, under Directive [2005/36/EC](#) will not always apply to them.

Under the **general recognition regime**, access to regulated professions is granted to any individual who can demonstrate that he/she is fully qualified in his home country. Only in cases where an individual's qualifications differ substantially (i.e. where his training covered substantially different matters) from those of the host country or, in case the profession is not regulated in the home country, where the individual has not worked full-time for one year in that profession, compensatory measures may be imposed to make up for the disparity. In such a case the Directive allows citizens to choose between a period of supervised practice ("adaptation period") and an aptitude test. Successful completion of either ought to grant an individual full access to his/her field. The need to fulfil such compensation measures can of course create a significant obstacle to the free movement of professionals who want to establish abroad.

There are additional instruments in place to simplify the process of having one's professional qualifications recognized. The **European Professional Card** is an electronic certificate, currently available for **general care nurses, pharmacists, physiotherapists, mountain guides and real estate agents**. The card simplifies the recognition process and introduces efficiencies that benefits both professionals and competent authorities, without replacing the traditional recognition procedures. It is available since 2016.

Information about European rules on the recognition of professional qualifications is available on the Commission online portal *Your Europe*. National information will be available through the Single Digital gateway, also in languages understood by cross-border users (e.g., English), at the end of 2020. Points of Single Contact are foreseen in the Services Directive and the Professional Qualifications Directive (see above).

As far as language requirements are concerned, the revised Professional Qualifications Directive codifies and develops the already existing case law whereby language requirements must be justified and proportionate and the checking of the language knowledge of a professional should take place only after the host Member State has recognised the qualification but it might intervene before the professional accesses the profession. In the case of professions with implications for patient safety, competent authorities may carry out systematic language controls, in compliance with EU law and the principle of proportionality. In other cases, language control can intervene only if the competent authority has a serious and concrete doubt regarding the language knowledge of the professional. In any case, language control should be limited to the knowledge of one official or administrative language of the host Member State.

## **26. Complex, burdensome and/or uneven labour and social regulations**

### **Practical obstacles and barriers reported by businesses**

Companies often quote complex and different labour and social regulations across the single market, and the lack of information about these regulations, as practical obstacles to doing business across the single market. The practical obstacles fall into three categories: i) the lack of clarity or information on requirements related to labour and social regulations; ii) the associated (administrative) burden; iii) differences in labour and social regulations, creating an uneven playing field.

*i) Testimonies about the lack of clarity or information on requirements*

According to the Confederation of Swedish Enterprise, companies perceive the procedures to provide cross-border services to be unclear and burdensome. This is especially the case for SMEs in the construction sector. In this sector in particular, it may be challenging to “examine specific national/local labour market regulations [...] and collective bargaining agreements”. These include working hours, minimum wages, or documentation to be held ready for inspection on site.

Similarly, the Confederation of Finnish Industries states that businesses report that information on social security in other Member States is difficult to understand.

### *ii) Testimonies about complexity and associated administrative burden*

Businesses report complexity and the associated burden of complying with various labour organisations across the single market. The most affected are those businesses trying to do business across the single market, which is typically the case for businesses that are either expanding or are less familiar with domestic labour regulation. The additional resources needed to find basic information may discourage businesses from expanding across the single market.

The Confederation of Swedish Enterprise states that “the past five years have seen many new and different country-specific rules that require increased administration and thus raise costs for European bus companies operating throughout Europe.” These include new minimum wage regulations and the necessity to carry Member State-specific documents. It adds that “bus drivers providing winter holiday travels to another country are forced to adapt to “extremely complex rules and documentation requirements that in many cases [were] not possible to submit in such a short time”.

The Dutch Doing Business in Europe survey quotes multiple and complex requirements, which differ from country to country and can concern: employment contract rules, applicable collective bargaining agreements, employees registration with the relevant organisations for social benefits (in some countries, by the employer), duty for the employer to check employees registration with the tax authorities, mandatory employee health checks, regulation of the insurance of employees and implications for the employment contracts or tax returns, etc.

The Maltese Chamber of Commerce reports that, according to some companies, there are “too many regulations related to employing people”. For example, they state that “registration of employees in Malta should be more efficient, and clearer guidelines to the implications of labour laws and employment tax”.

These regulatory complexities and their associated administrative burden may indeed affect both national and foreign businesses. However, foreign businesses trying to enter the markets are more affected than established incumbents.

### *3) Testimonies about differences in labour and social regulations, including their implementation*

The Confederation of Finnish Industries reports that regulations against social dumping [...] are not sufficiently harmonised. It also reports that failure to enforce regulations distorts the level playing field.

Similarly, the Confederation of Danish Industry states that “[depending] on the nature of the service [...], service providers must register with various authorities and provide documentation of for example authorisations, the company’s eligibility, workers qualifications, remuneration, social security etc.” They add that “[although] these requirements may all be justified, the range and complexity are a challenge for companies”.

The French Chamber of Commerce and Industry states that “a lack of (social) tax harmonisation leads to labour costs competition and social dumping between EU members particularly with Central and Eastern European Countries.”



The Austrian Chamber of Commerce reports that “restrictions on employment flexibility create a barrier, affecting particularly the temporary employment of students, apprentices and skilled workers”. It adds as example that projects under Erasmus+ and Mobilise SMEs are “hindered by rigid national employment laws, i.e. the administrative burden and legal uncertainties are too big so that many SMEs are reluctant to participate”.

Finally, the Maltese Chamber of Commerce reports that businesses consider there to be too many “variances in tax and social security contributions”.

### **Available quantification**

According to a 2019 European Investment Bank Report on Investment Barriers, “Labour market regulations” are perceived as a long-term barrier to investment by 60% of respondents<sup>130</sup>.

4 out of 11 business organisations that replied to a Commission survey reported issues related to this barrier.

### **Analysis of the reported practical obstacles and barriers**

All three problems identified by businesses stem from **requirements justified for public policy reasons, limited role of EU legislation, and inadequate implementation** by national authorities.

#### *Different legitimate policy objectives*

Labour and social regulations pursue legitimate policy objectives, essentially protecting rights of workers, even if in some cases at the cost of some burden, complexity and obligations for businesses. Indeed, EU labour law and rules on health and safety at work are one of the foundations of the single market. The free flow of goods, services, capital and workers needs to be accompanied by labour law social rules, to make sure that countries and businesses compete fairly on the strength of their products – not by lowering social standards.

With over 240 million workers in the European Union, EU labour law directly benefits large numbers of people, EU labour law and rules on health and safety at work also benefit employers and society as a whole by:

- providing a clear framework of rights and obligations in the workplace;
- setting a general framework for information and consultation of workers, hence allowing for effective anticipation of change and smooth industrial relations in companies;
- protecting the health of the workforce, thus allowing for longer and more productive working lives, also alleviating social security costs;
- promoting sustainable economic growth and a level playing field across the EU.

At the same time, the rules laid down in EU law (e.g. the posting of workers Directive and the Enforcement Directive) must be complied with. Equally, the rules laid down in the Treaty (such as the free movement of services) and the general principles of EU law (such as non-discrimination and proportionality) must be upheld.

#### *Primarily a competence of the Member States*

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<sup>130</sup> The reports builds particularly on the results from the annual EIB Investment Survey (EIBIS), which covers some 12 000 businesses across the EU.

Labour and social regulations are primarily laid down in Member States' rules. EU legislation sets minimum standards in many areas. Member States however can go beyond these minimum standards and, furthermore, regulate those areas where the EU has no competence to act. This may result in different social and labour market rights, obligations, systems, procedures, etc.

Even where restrictive rules are justified and proportionate, diversity may cause complexity and burden for businesses operating across the single market. Applying different wages and social protection rules to different categories of workers may also tilt the playing field for businesses competing across the single market. Moreover, it can also create incentives for businesses seeking to gain a competitive advantage from such differences, for instance by temporarily offering their services in foreign countries – and/or relocating production there. This practice, which is often described as ‘social dumping’ and is partly related to the debate on posting of workers, reflects the fact that labour and more in general living standards are different within the EU. If not accompanied by proper measures at EU and national level, this may create the risk of downward pressure on social conditions. Moreover, it is essential to ensure the comprehensive and effective enforcement of justified and proportionate labour rules in the EU. By setting minimum standards, the EU promotes more homogeneous rules and standards across the single market. The European social market economy allows the economy to grow and reduces poverty and inequality. The European Pillar of Social Rights, fostering equal opportunities and access to the labour market, fair working conditions and social protection and inclusion, actively promotes upward convergence between Member States, social fairness and prosperity. The implementation of the Pillar is supported by a social scoreboard, also integrated into the European Semester.

#### *Suboptimal administrative implementation*

Finally, the administrative implementation of labour and social regulations sometimes does not successfully minimise the burden on businesses. This may create uneven access to information and a high burden to comply with social and labour regulations. Information about European rules on terms of employment, social security rights and obligations is available on the Commission portal *Your Europe*. National information will be available through the Single Digital Gateway, also in languages understood by cross-border users (e.g., English), by the end of 2020.

### **Step 3c Additional steps for establishment: sourcing and supplies**

*Our sources did not report major barriers in this business journey step.*

### **Step 3d Additional steps for establishment: investing and financing**

## **27. Obtaining finance for operations in another country of the single market**

### **Practical obstacles and barriers reported by businesses**

A number of businesses experience difficulties in finding funding for their operations or subsidiaries in another Member State. While access to finance has improved on average in recent years, it remains problematic in some Member States (see below). Access to finance is typically more challenging for SMEs.

This is even more true for risk capital, which continues to be scarce for high-growth SMEs. Venture capital raised in Europe is about one fifth of the amount raised in the US<sup>131</sup> and the EU venture capital funds are more shallow in volume. Indeed, in 2018 venture capital funds in the EU had an average size of around EUR 56 million whereas in the US they were on average three times bigger<sup>132</sup>. There are significant differences between Member States in their access to venture capital.

This is echoed by business organisations. For instance, the French Chamber of Commerce and Industry mentioned that innovative start-ups have difficulties in finding private financing.

The difficulty in accessing funding affects both domestic and non-domestic businesses alike. However, it would affect disproportionately those businesses that are trying to expand in the markets with limited access to capital, compared to already established businesses.

Businesses also reported that ‘mother companies in their home country cannot always transfer financial resources to their subsidiaries located in another country. In addition and as a result, financial products such as guarantees and loans of the parent company cannot be transferred and must be re-engineered’.

### **Available quantification**

3 out of 11 business organisations that replied to a Commission survey reported issues related to this barrier. The European Central Bank’s 2019 Survey on the access to finance of enterprises<sup>133</sup> found that 7% of surveyed businesses<sup>134</sup> report access to finance as their most important concern. While this has improved on average over time (from 14% in 2014), access to finance is more acute in some Member States.

### **Analysis of the reported practical obstacles and barriers**

The root cause of the difficult access to finance in some countries is a combination of macroeconomic and financial causes **not linked to public policy**, and of the **limited role of EU legislation**, in particular relating to the Economic and Monetary Union.

*Root causes not originating in public policy: Macroeconomic and financial causes*

The recent financial crises triggered diverging access to finance across Member States, in particular within the Euro Area. While this improved in recent years, differences remain. The root causes relate to the historical macro-economic context (the emergence of the global financial crisis) and the interdependency of sovereign debt and national banking systems.

*EU legislation: Incomplete Economic and Monetary Union*

The architecture of the Economic and Monetary Union, including the fragmentation of capital markets and banking supervision and resolution authorities, lacked crucial elements to face a major financial, economic and sovereign debt crisis.

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<sup>131</sup> European Commission (2018).

<sup>132</sup> European Commission 2018 [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_2764](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_2764)

<sup>133</sup> European Central Bank, Survey on the access to finance of enterprises, 2019. Accessible on [https://www.ecb.europa.eu/stats/ecb\\_surveys/safe/html/index.en.html](https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/index.en.html)

<sup>134</sup> The total euro area sample size was 11,204 enterprises, of which 10,241 (91%) had fewer than 250 employees.

To address these challenges, the European Commission launched the agenda to complete the Economic and Monetary Union, including the Banking Union and the Capital Markets Union. The results achieved over recent years are noteworthy, both from an institutional and economic perspective.

Nevertheless, important elements are still missing in the overall construction of Europe's Economic and Monetary Union. The Commission Communication 'Deepening Europe's Economic Monetary Union: Taking stock four years after the Five Presidents' Report' sets out the challenges still to be addressed.

The root causes of the business difficulties in effectively executing cross-border transfers of loans and guarantees from parent companies to their subsidiaries relate to the way banks perceive the credit risk and structure their exposure across the legal entities of their business clients. This in turn relates to a wide scope of factors not originating in public policy and others relating to EU legislation.

#### *Root causes not originating in public policy*

The root causes not originating in public policy include the location of the collateral, which may not be the same as the location of the loan. In this respect, real estate is a typical example of collateral, for which local knowledge is essential to understand its value over time.

Among root causes can also be mentioned the lack of a letter of comfort from the parent company to the subsidiary, the insufficient level of available credit information for the subsidiary in the host Member State (see obstacle 'Insufficient credit information'), the fragmentation of EU capital markets along the national lines and the lack of data interconnectivity in the banking sector.

#### *EU legislation: no harmonisation of some accounting rules*

Different national rules with respect to accounting rules leads to diverging assessment of risk and legal structuring of exposure across jurisdictions.

## **28. Restrictions on corporate ownership**

### **Practical obstacles and barriers reported by businesses**

**Businesses suffer from significant restrictions as regards their shareholder structures and the allocation of their voting rights.** Member States impose such restrictions on service providers across a range of sectors. For instance, a company can only be established if the shareholder belongs to a particular profession or if the voting rights are allocated among the shareholders in a constraining way. It is also sometimes required that the shareholders must be resident in the country in question or have a certain diploma.

**These restrictions potentially entail serious obstacles for service providers that want to become active cross-border,** given that such restrictions are likely to oblige them to change their shareholding structure or even their overall business model. This can lead to a *de facto* prohibition of entry as companies would be forced to change their corporate structure or even to replace shareholders by others in order to establish in another Member State.

## Available quantification

According to the **Dutch Doing Business in Europe survey**, 22% of respondents in service sectors report that establishment is difficult due to local ownership and local management rules. The prevalence of national requirements on shareholding has also been flagged by the Commission on several occasions, including for example as part of the recent indicator on the restrictiveness of professional services regulation.<sup>135</sup>

## Analysis of the reported practical obstacles and barriers

The root cause relates to the **restrictive national rules (and limited role of EU legislation) and inadequate implementation of EU legislation by Member States**.

**Corporate law is partly a national competence.** However, given that some corporate requirements can affect freedom of establishment, the freedom to provide services or the free movement of capital, the Treaty provisions apply. Moreover, to the extent that the matter falls into its ambit of application, the Services Directive (2006/123/EC) obliges Member States to eliminate national requirements that are discriminatory, not justified by an overriding reason of public interest or disproportionate. The Directive clearly bans a number of specific national rules, such as the obligation to establish or the economic needs test, and also discriminatory requirements based directly or indirectly on nationality, including nationality requirements of shareholders. For other requirements, Member States have the responsibility to evaluate their necessity and proportionality, and to notify them to the Commission, which may adopt decisions pursuant to Art. 15(7) Services Directive. In any event, a judicial control of national measures is provided for. Requirements which must be notified and assessed include, for example, non-discriminatory requirements on the shareholding structure of the company. The implementation of the Services Directive by Member States still leaves large unexploited potential. Currently, there is still a significant regulatory divergence, with some Member States imposing heavy requirements on corporate ownership while others imposing few or no similar conditions.

In addition, a Directive on a proportionality test before adoption of new regulation of professions or amending the existing rules was adopted in July 2018<sup>136</sup>. The Directive also lay down a common framework that Member States must use to assess proportionality before introducing new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. This also covers rules restrictions on corporate ownership in regulated professions. Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

## 29. Insufficient credit information

### Practical obstacles and barriers reported by businesses

Insufficient credit information is an issue for many SMEs when applying for loans, even in their home Member States. They sometimes lack track record, or producing credit information can

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<sup>135</sup> See SWD(2016) 436 final

<sup>136</sup> Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, *OJ L 173, 9.7.2018, p. 25*

entail high cost (for instance receiving a rating from a credit rating agency). To make things more difficult, a large number of companies state that they “do not feel confident negotiating” with banks and even fewer with equity investors and venture capital firms. The problem becomes exacerbated when a company tries to obtain credit in another Member States.

This challenge extends to businesses that would like to assess the credit risk of potential business partners across the single market. The Confederation of Finnish Industries flagged creditworthiness assessments as an issue. According to a respondent to their survey, “the current commercial credit assessment and insurance companies do not cover the full EU, especially in the Eastern Europe.”

### **Available quantification**

In the Eurochambres 2019 survey, “insufficient legal/financial information about potential business partners in other countries” was reported by 58.9% of respondents. This makes it the eight most important obstacle.

### **Analysis of the reported practical obstacles and barriers**

The root causes **are not linked to public policy**. Credit assessments are an essential and necessary step to providing credit, either by banks or by businesses for their potential trade partners. These credit assessments require the availability of information and entail costs on the side of the borrower and lender (or external credit rating agency).

When asked to provide credit to a (small) business in another Member States, banks might find it even more difficult to assess the creditworthiness. Indeed credit information varies widely in different Member States in terms of what information is shared, by whom, how it is shared and who has access to it.

Nevertheless, as part of the Capital Markets Union action plan, the Commission has taken forward a comprehensive strategy to overcome information barriers that prevent SMEs and prospective investors from identifying funding or investment opportunities. The Commission has particularly worked with European banking federations and business organisations on structuring the feedback given by banks to declined SME credit applications. This European initiative consists of a set of principles put forward in June 2017 and agreed by the banking industry to help SMEs understand the reasons for the credit application being refused. The Commission has also mapped existing local or national support and advisory capacities across the EU in order to promote best practices on assisting SMEs, which could benefit from alternative funding options.

## 30. National tax exemptions for direct taxes, subsidies, and financial contribution requirements

### Practical obstacles and barriers reported by businesses

Conditions for tax exemptions and R&D subsidies can be specific to a region or a Member State. Similarly, requirements for financial contributions for media service providers are also often specific to a Member State. This may tie a business to a specific location and create a barrier for those businesses who wish to expand to another Member State.

Additionally, in many Member States, there are barriers to cross-border flows of R&D subsidies (and sometimes even preferential access to subsidies for local providers of R&D services). While some EU-funded projects can be transferred to another country, many nationally funded projects cannot. Direct and indirect public support for R&D also differs significantly, and the use of non-transferable R&D tax incentives is increasing. This distorts the R&D landscape in the single market.

Finally, cross-border media service providers may be subject to different national financial contribution obligations for the production of European works. These obligations depend on the Member States where the services are provided or on the markets which are being targeted. These differences in conditions can cause fragmentation of the single market for linear and on-demand services.

### Available quantification

As mentioned in the barrier on burdensome procedures, due to differences in tax systems and administrations, according to Annual Report on European SMEs 2017/2018, “dealing with foreign taxation issues is too complicated” for 63% of SMEs. This discourages them from trading cross-border and prevents growth (evidence suggests that only about 15% of SMEs trade cross-border).<sup>137</sup>

More than one fifth of all TV channels (917, or 21%) and over a third (306, or 36%) of paid on-demand services based in the 28 Member States (including the United Kingdom) were targeting other EU-28 markets.<sup>138</sup> In one impact assessment, the cost of moving to a targeted Member State in terms of the financial contributions related to the promotion of European works was between EUR 5.8 and 8.2 million. These were estimated for Netflix and iTunes based on their turnover in five Member States (Spain, United Kingdom, France, Italy and Germany).<sup>139</sup>

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<sup>137</sup> Data based on an Directive 2006/112/EC Amendment Impact Assessment ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/18012018\\_impactassessment\\_vat\\_smes\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/18012018_impactassessment_vat_smes_en.pdf)) and

Special scheme for small enterprises under the VAT Directive 2006/112/EC ([https://ec.europa.eu/taxation\\_customs/business/vat/vat-reports-published\\_en](https://ec.europa.eu/taxation_customs/business/vat/vat-reports-published_en)).

<sup>138</sup> <https://rm.coe.int/audiovisual-media-services-in-europe-market-insights/16809816d1>

<sup>139</sup> In the impact assessment accompanying the Audiovisual Media Services Directive proposal.

The paid video-on-demand market is growing fast (44% on average since 2012)<sup>140</sup>. Several Member States have adopted or are considering adopting financial obligations for the cross-border production of European works. Their number is likely to increase due to the provision recently introduced in Audiovisual Media Services Directive which allows Member States to impose these obligations under certain conditions.

### **Analysis of the reported practical obstacles and barriers**

This perceived barrier is linked to **limited role of EU legislation**, and **requirements justified by public policy reasons**.

Due to minimum harmonisation, taxpayers (e.g. businesses, investors, workers etc.) with cross-border activity have to comply with up to 27 divergent tax systems. This first leads to difficulties in finding information about the VAT rates applicable in different Member States.<sup>141</sup> Similarly, barriers in R&I direct and indirect subsidies are caused by policy discrepancies between Member States and a lack of EU policy that would decrease unfair incentives.

The recently adopted Audiovisual Media Services Directive clarifies the possibility for Member States to impose financial contributions (direct investments or levies payable to a fund) upon media service providers. This includes providers established in a different Member State that are targeting the Member State's audiences. These measures would be voluntary, and Member States would need to comply with the principle of non-discrimination and proportionality. The Audiovisual Media Services Directive also clarifies that the measures can only be imposed on the revenues generated in the targeted Member States and that there can be no double imposition.

The objective of cultural diversity (including linguistic diversity and favouring of independent productions) can constitute an objective of general public interest that justifies barriers to free movement. This includes financial contributions to the production of European works applicable to providers established in another Member State (provided that the measures are non-discriminatory and proportionate).

Finally, as regards subsidies more generally, it should be recalled that in the EU, national State aid may be awarded only if it is authorised in advance by the Commission or it is compatible with a State aid exemption Regulation.

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<sup>140</sup> European Audiovisual Observatory, Yearbook 2018/2019 Key Trends, Strasbourg 2019

<sup>141</sup> <https://op.europa.eu/en/publication-detail/-/publication/0ed32649-fe8e-11e8-a96d-01aa75ed71a1/language-en>



### 31. Language

#### Practical obstacles and barriers reported by businesses

Language can be an obstacle throughout a business journey, adding an extra burden to many of the barriers listed earlier in this report. To relate this obstacle to the single market, it is helpful to differentiate i) the effects of language on the competitive playing field, ii) the availability of information on regulatory requirements in several languages, and iii) rules requiring the use of a particular language (or prohibiting the use of other languages) for private service or good markets.

First, the lack of language skills can put a company into a competitive disadvantage ((i) above). For example the DIHK 2019 survey states that “companies that do not have personnel with the corresponding foreign language skills are often faced with a great challenge”. Similarly, the Confederation of Finnish Industries lists “staffing: lack of language skills” as a barrier.

Secondly, information on regulatory requirements may not be available in foreign languages ((ii) above). This barrier is reported extensively by many chambers of commerce and other business organisations. For instance, the Dutch Doing Business in Europe survey states that “information about obligations in other Member States is difficult or impossible to find, [which] makes it considerably more difficult for entrepreneurs to comply with the rules,” listing language as one of the major barriers. The report also states that “tendering across the border remains difficult. The procedures are complex and the language barrier remains an obstacle.”

According to the DIHK 2019 survey, obtaining information in a foreign language and translation of documents are “a major effort for companies, especially for SMEs [because information], regulations, collective agreements [...] are often only available in national language”. The Confederation of Finnish Industries states that the importance of language barriers is “9 [on] the scale of 1 to 10.”

The Austrian Chamber of Commerce mentions that official websites are “often not available in English”, while the Czech Chamber of Commerce states that “72 % of companies are calling for an operational single digital gateway—online portal, where companies could find accurate and clear information in different languages on all necessary procedures and formalities to operate domestically or in another EU country.” Similarly, Confederation of Danish Industry states that in some Member States “[a company] has to consult several websites— at times only available in the local language—to obtain an overview of the relevant requirements.”

The French Chamber of Commerce and Industry states that it is difficult “to find information on relevant regulation and procedures in languages other than the national language(s)”, while Confederation of Swedish Enterprise adds that “there are now a dozen of countries requiring VAT registration and VAT for international bus passenger transport. All countries have different regulations and requirements while detailed information is often only available at the country's local language.”

Thirdly, Member States sometimes impose burdensome language requirements on companies ((iii) above). For example, the French Chamber of Commerce and Industry reports difficulties with procedures which “can only be carried out in one language (for example, when a company has to reply to a call for tenders only in the national language).” Also, the Confederation of Finnish Industries considers “local language / translation requirements for packaging”

burdensome, adding that “different rules on many languages are hard to manage”. According to the organisation, food marketing has local rules. It is difficult to get information about those rules, including specific language requirements when selling to public government customers.

Several SOLVIT cases showcase this barrier. In one case, a foreign company engaged in a procurement and discovered in a Q&A session that references (reports attached along a company’s tender) could not be in any other language than that of the Member State. This means that reference lists of companies from other Member States are drastically reduced, and so is their chance to win the procurement.

In a second case, a foreign company received a fine because they used an English slogan. The authorities fined the foreign company as they were of the opinion that the English slogan discriminated against citizens who did not know English.

In a third case, a foreign business had been required to provide proof of knowledge of the language of the Member State in which they did their business. In the opinion of SOLVIT, the authorities in the Member State misapplied the principles set out in the amended Directive on Professional Qualifications as regards language requirements. Consequently, the business was denied the possibility of applying to a public tender.

### **Available quantification**

“Language barriers” are indicated as significant or very significant by 36% of respondents to the Eurochambres 2019 survey. “Better and clearer information on a single EU online portal in different languages concerning all necessary procedures and formalities to operate in another EU country” was supported by 86% of respondents, making it the second most prominent solution to obstacles on the single market. Additionally, 77.5% respondents supported “a standardised EU-wide VAT declaration in your native language” as a solution

According to the Confederation of Finnish Industries’ survey, 35% and 29% of respondents consider “local language marketing” and “local language packaging” as barriers, respectively. Additionally, 21% of respondents have issues with language skills when staffing.

Similarly, “lack of language skills” is a barrier for 32% of SMEs surveyed by the Centre for European Policy Studies study Hidden Treasures.

4 out of 11 business organisations (that replied to a Commission survey) reported issues related to this barrier.

### **Analysis of the reported practical obstacles and barriers**

First and foremost, the existence of many different languages across the single market is a ‘fact of life’ which is **not linked to public policy**.

To analyse the root causes further, we need to differentiate i) the effects of language on the competitive playing field, ii) the availability of information on regulatory requirements in several languages, and iii) rules requiring the use of a particular language (or prohibiting the use of other languages) for private service or good markets.

Regarding the effects of language on the competitive playing field ((i) above), as this concerns commercial and private communication and / or information, the root cause is only the existence of many different languages across the single market, which **does not originate in public policy**.

The unavailability of information on regulatory requirements in foreign languages ((ii) above) originates also in a **lack of harmonisation**.

Under the Services Directive, Points of Single Contact must be set up in each Member State. The co-legislators adopted the Single Digital Gateway in 2018. By 2020, the Gateway will facilitate online access to information, forms and assistance for citizens and businesses either staying at home or getting active in another Member State. This information is made available in a language for cross-border users (e.g., English). The Your Europe portal will be the European single entry point and will be available in all languages. It will enable users to both comply with their single market obligations and to exercise their rights.

The rules requiring the use of a particular language ((iii) above) originate also in the fact that **EU legislation did not impose full harmonisation** and considers that the use of a particular language can in some cases be justified and proportional. In the area of products subject to harmonisation legislation, the language(s) to be used when providing certain information is defined by the applicable harmonisation legislation. In the absence of EU harmonisation legislation, Member States may require that certain information must be given by a market operator in a language that is easily understood by the consumer. However, the obligation to use a given language in business-to-business relations prior to sale to the final consumer cannot as a rule be justified on consumer protection grounds.

Nevertheless, the revised Professional Qualifications Directive codifies and develops the already existing case law on the rights and obligations of Member States regarding language qualifications requirements which must be justified and proportionate. In particular: the checking of the language knowledge of a professional should take place only after the host Member State has recognised the qualification. The host Member State might however intervene before the professional accesses the profession. In the case of professions with implications for patient safety, competent authorities may carry out systematic language controls. In other cases, language control can intervene only if the competent authority has a serious and concrete doubt regarding the language knowledge of the professional. In any case, language control should be limited to the knowledge of one official or administrative language of the host Member State.

As regards the field of public procurement, the common procurement vocabulary establishes a single classification system for public procurement across Member States, aimed at standardising the references used by contracting authorities and entities to describe procurement contracts.

## OBSTACLES IDENTIFIED PER SECTOR

This section lists the barriers identified for some important sectors reviewed in the light of the business journey. This sectoral approach results not only from the business reports themselves as done above, but has been complemented through a review of prominent Commission policies. This sectoral approach aims at providing a more specific light on the same barriers as the ones reported by the businesses above.

The selection of the sectors analysed here does not imply a prioritisation. Instead, the sample was composed in order to ensure representation of sectors with different characteristics in terms of size, trade openness, strategic importance for European priorities (as the green and digital transitions), and a balance between manufacturing and services.

### Summary table: obstacles and barriers identified per sector

Sector	Obstacle / barrier
<i>Accounting and Tax advice</i>	32 National entry and exercise requirements for the profession of accountant/tax advisor
	33 Lack of comparability in national accounting/tax standards and practices
<i>Architecture and engineering</i>	34 National entry and exercise requirements for architects and engineers
<i>Audit</i>	35 National adaptation of audit regulatory requirements under audit directives and regulations
<i>Automotive</i>	36 Different national rules on spare parts
	37 Market for used vehicles: different national rules for the import and registration of vehicles
<i>Chemicals</i>	<i>Few identified legislative barriers remain</i>
<i>Construction</i>	38 Market access and exercise requirements for construction services
	39 Burdensome and complex building permit procedures
	40 Posting of workers and cross-border service provision by self-employed persons
	41 Late payments
	42 Additional national requirements for construction products
<i>Electronic communications networks and services</i>	43 Economic and legal barriers to deployment of electronic communications networks
	44 Legal and economic barriers to accessing networks and services at reasonable prices and under non-discriminatory conditions
<i>Energy</i>	45 Inefficient unbundling may create market distortions
	46 Access to markets for demand response aggregators
	47 Retail price regulation hinders free competition; uncertainty concerning future regulatory developments
	48 Data critical for operations is difficult to access or of low quality
	49 Flat taxes and charges reduce importance of price signals for end-users
<i>Food and beverages</i>	50 Additional national requirements on food labelling
<i>Hotels and accommodation</i>	51 Authorisation and registration requirements for hotels or other accommodation providers and related detailed requirements
<i>Industrial machinery</i>	52 Undue additional national markings, standards and requirements
	53 Uneven market surveillance and enforcement creating uneven playing field for industrial machines
	54 Different regulatory requirements among Member States for modifying or refurbishing construction and agricultural machinery in use
<i>Intellectual Property Agents</i>	55 National entry and exercise requirements for patents and trademark agents
<i>Legal</i>	56 National entry and exercise requirements for legal services

<i>Pharma</i>	57	Restrictions to e-commerce of medicines based on health grounds
	58	Restrictions regarding the establishment, ownership and advertising of pharmacies and health care service providers
	59	Labelling language requirements
<i>Retail</i>	60	Restrictions on retail establishment
	61	Restrictions on retail operations
	62	E-commerce: complexity and uncertainty of applicable rules for cross-border sales and purchases
<i>Transport</i>	63	Information on market opportunities: difficulty for small road transport operators to have access to market information (market opportunities)
	64	Information on market opportunities/network: lack of information on service facilities and services offered to railway undertakings
	65	Lack of information on posting rules, enforcement and road traffic restrictions
	66	Excessive complexity of rules on inland waterways
	67	Inconsistent and unclear rules in public procurement in transport, and access to these rules is too restrictive
	68	Lack of flexibility linked to driving time restrictions
	69	Restrictions on work time in inland waterways
	70	Different enforcement practices in road transport among Member States
	71	Staffing: Skills shortages and mismatches in the rail sector
	72	Territorial supply constraints and/or sourcing restrictions: availability of adapted rail rolling stock
	73	Restrictions on cabotage in road transport
	74	Lack of interoperability in railways
	75	Lack of harmonised processes for authorisation of railway products and for safety certification of railway operators
	76	Lack of rail network coordination
	77	Fragmented EU airspace with 28 separate air traffic management systems
	78	Fragmentation of the aviation radio band spectrum
<i>Waste management</i>	79	Lack of information on the availability of materials
	80	Non-harmonized end-of-waste criteria
	81	Absence of standardised system to demonstrate the performance of recycled materials
	82	Insufficient enforcement of European environmental legislation
	83	Heterogeneity of extended producer responsibility schemes in Member States

## Obstacles identified per sector

### Accounting and Tax advice

Accounting services play an important role in the single market, not only as a standalone service but also as an input to other important economic activities. Around 80% of this sector's outputs are used as intermediate inputs for other sectors in the EU both domestically and cross-border.

Accounting and tax advice service providers may face obstacles at different stages of their cross-border operations, including many of the horizontal barriers listed above. Obstacles specific to the sector arise mainly from the national entry and exercise requirements for the profession of accountant/tax advisor (described below), lack of information on relevant administrative formalities, as well as differences in the national accounting standards and practices both when providing services on a temporary basis and when setting up a business abroad.

## 32. National entry and exercise requirements for the profession of accountant/tax advisor

### Description

Professional services can be regulated at EU, national, regional and sometimes local levels. Professions in the field of accountancy and/or tax advice are regulated in the majority of Member States. In this context, Member States require a certain level of qualification and usually impose a range of other requirements. However, some of these requirements and their accumulation can become disproportionate and costly for workers, self-employed and companies operating cross-border.

For temporary and occasional provision of services, the principle of free movement of professionals applies and in most cases only allows for a prior declaration requirement by the host Member State. However, when establishing as a self-employed or as a company in another Member State where the accounting profession is regulated, qualification requirements and a range of other restrictions (such as registration with a professional association) might apply. In addition, the so-called exercise requirements linked to qualifications can come into play for accounting service providers (e.g. multidisciplinary practices, corporate form and ownership restrictions). Apart from the obstacles related to professional regulation, complexity created by the differences in national accounting/tax standards and practices may also hamper provision of accounting services abroad.

National entry and exercise requirements for the profession of accountant/tax advisor, as well as differences in the national accounting/tax standards and practices, may thus create important obstacles for accounting firms and individuals in the single market. More details on these are provided below.

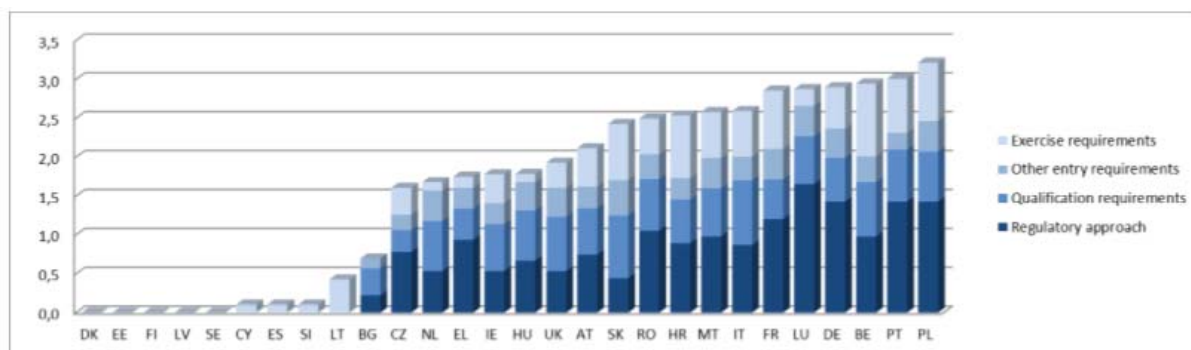
The entry to the profession of accountant of tax advisor is protected either by a title or a reserve of activities, or both of the above, in 18 Member States: Austria, Belgium, Bulgaria, Croatia, Czechia, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Malta, Netherlands, Poland, Portugal, Romania and Slovakia. Some Member States reserve both tax advice and accounting activities, some reserve only accountancy i.e. bookkeeping/drafting of consolidated financial statements, while some reserves only tax advice/representation before the tax authorities.

Requirements additional to qualification requirements often imposed by Member States include:

- Mandatory registration with a professional body (required in 14 MS);
- Professional indemnity insurance (required in 13 MS);
- Corporate structure restrictions (e.g. on legal form, shareholding/voting rights, multidisciplinary practices; exist in 10 MS).

This group of restrictions is primarily relevant for **establishment** situations. For **temporary provision** of services Directive 2005/36/EC only allows for a prior declaration requirement (but some other requirements can still be imposed, notably those relating to access to reserved activities and conduct rules which have a direct link to the qualification required).

The following graph illustrates the divergence in intensity and type of requirements imposed in different Member States:



Source: European Commission, November 2016.

Note: European Commission (COM(2016) 820 and SWD (2016) 436). Restrictiveness indicator measures the overall intensity of restrictions in national regulation as regards access to and exercise of certain regulated professions, quantified on a scale from 0 to 6.

The categories of restrictions above include:

- **Regulatory approach:** exclusive or shared reserved activities; protection of title.
- **Qualification requirements:** years of education and training; number of pathways to obtain qualifications; existence of mandatory traineeship; obligation to have professional experience to get full capacity; existence of mandatory state exam; continuous professional development obligations.
- **Other entry requirements:** compulsory membership or registration in a professional body; limitation to the number of licences granted; territorial validity of the professional qualification and/or licence; age restriction; other authorisation requirements.
- **Exercise requirements:** restriction on corporate form/type of entity; shareholding requirements; voting rights control; prohibitions on joint exercise of professions; incompatibilities of activities for a professional; professional indemnity insurance; tariff restrictions; restrictions on advertising.

## Available quantification

Based on the Member States' notifications in the EU Regulated Professions Database, there are 45 regulated professions registered under the generic title 'Accountant/tax advisor' across the EU.

These obstacles reduce competition, lead to excessive rents and lower the allocative efficiency of the sector. In fact, an analysis by the Commission shows that e.g. reducing the level of regulatory restrictiveness in the sector of accounting services has the potential to increase market entry rates of new service providers by up to 15%.<sup>142</sup>

A recent assessment shows that the administrative costs created by these requirements<sup>143</sup> faced by accounting companies that want to establish in another Member State can amount to EUR 10,000 and more.<sup>144</sup>

<sup>142</sup> European Commission, "Business services – Assessment of Barriers and their Economic Impact", 2015

<sup>143</sup> Often national procedures are characterised by the submission multiple documents, some in certified copy or original format (certified translations often being required), long decision periods and no mechanism of tacit approval. Online information on applicable formalities is often scarce, hard-to-find and predominantly in the local language. E-procedures are only available to a limited extent.

<sup>144</sup> Ecorys, "Administrative formalities and costs involved in accessing markets cross-border for provisions of accountancy, engineering and architecture services", 2017

## Analysis

**Restrictive national rules (with limited role of EU legislation):** As explained in the analysis of the barrier ‘Difficulties with accessing a regulated profession’, restrictive regulation across Member States inevitably creates barriers for the mobility of professionals in the single market. The different regulatory approaches taken by Member States have a significant impact on cross-border establishment or provision of services.

For temporary and occasional provision of services, Directive 2005/36/EC guarantees the principle of free movement of professionals and in most cases only allows for a prior declaration requirement by the host Member State. However, when establishing as a self-employed or as a company in another Member State where the accounting profession is regulated, qualification requirements – mitigated by the mutual recognition rules of Directive 2005/36/EC – and a range of other restrictions (such as registration with a professional association) might apply. In addition, the so-called exercise requirements linked to qualifications can come into play for accounting service providers (e.g. multidisciplinary practices, corporate form and ownership restrictions). Apart from the obstacles related to professional regulation, complexity created by the differences in national accounting/tax standards and practices may also hamper provision of accounting services abroad.

The Services Directive (2006/123/EC) also addresses a range of obstacles to free movement of services not covered by other pieces of EU law such as Directive 2005/36/EC on the recognition of professional qualifications. The Services Directive requires Member States to reduce or remove regulatory and administrative barriers dissuading service providers to operate cross-border.

At the same time, the administrative burden on applicants when going through these procedures remains heavy in many cases. Hence, in addition to regulatory complexity (e.g. concerning authorisation procedures and conditions, qualification requirements or requirements related to insurance), the sector encounters administrative complexity including lack of relevant information and of procedures available online.

In January 2017, the Commission issued detailed guidance to Member States on reform needs in regulation of professional services, including accounting services.

A directive on a proportionality test before adoption of new regulation of professions or when amending the existing one was adopted in July 2018 and will have to be implemented by Member States by July 2020. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.

Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

Moreover, Directive 2005/36/EC together with the Services Directive (2006/123/EU) require Member States to establish electronic National Points of Single Contact which have to provide access to information on all requirements that providers must comply with when establishing or providing services, including as regards regulated professions, as well as to online procedures for such requirements, such as e.g. authorisation schemes or the recognition of professional qualifications. Information about European rules on the recognition of professional qualifications is also available on the Your Europe website.

National information and access by electronic means to a range of procedures will be available also through the single digital gateway, including in languages understood by cross-border users like English, at the end of 2020.



### 33. Lack of comparability in national accounting/tax standards and practices

As regards **accounting rules**, a suboptimal cross-border comparability of information in published financial statements is observed. This situation is impinging mainly on SMEs, and results from the national transposition of the Accounting Directive, which is for a large part principles-based and contains many options for Member States to choose. The High Level Forum on the Capital Markets Union set up by the Commission is currently examining whether and how this situation would prevent SMEs from obtaining funding and prospective investors from identifying investment opportunities.

However, this lack of comparability is also critical for larger companies (that account for 2% of the limited liability companies in the EU), as they usually have more cross-border operations than smaller companies.

The Regulation on the application of international accounting (IAS Regulation) adopted in 2002 has significantly enhanced comparability and transparency, as demonstrated by the Commission's evaluation of the IAS Regulation (2015). The IAS Regulation obliges entities listed on EU regulated markets to apply International Financial Reporting Standard (IFRS). Furthermore, all Member States have expanded the scope of application of IFRS to other companies for the preparation of their consolidated financial statements.

### Architecture and engineering

Architectural and engineering services play an important role in the single market, not only as standalone services but also providing inputs to other important economic activities. Around 80% of this sector's outputs are used as intermediate inputs for other sectors in the EU both domestically and cross-border.

### 34. National entry and exercise requirements for architects and engineers

#### Description

Architectural and engineering companies may face obstacles at different stages of their cross-border operations, both when providing services on a temporary basis and when setting up a business abroad. This includes many of the cross-cutting horizontal issues described above. More specifically, for **temporary and occasional provision of services**, the principle of free movement of professionals applies and in most cases only allows for a prior declaration requirement by the host Member State. However, when **establishing** as self-employed or as a company in another Member State where the architectural or engineering profession is regulated, qualification requirements and a range of other restrictions (such as registration with a professional association) might apply. In addition, the so-called **exercise requirements** linked to qualifications can come into play for architectural or engineering service providers (e.g. multidisciplinary practices, corporate form and ownership restrictions).

Furthermore, even where countries do not heavily regulate access to the profession and conduct, but rather rely on a system of **liability** or **ex-post controls** by responsible bodies, such measures

might act as obstacles to the exercise of the profession<sup>145</sup>. In addition, **stringent regulations in the construction sector** or requirements imposed on companies active in cross-border service provision, **access to public procurement** and **insurance requirements** abroad may act as important hurdles when providing architectural and engineering services abroad.

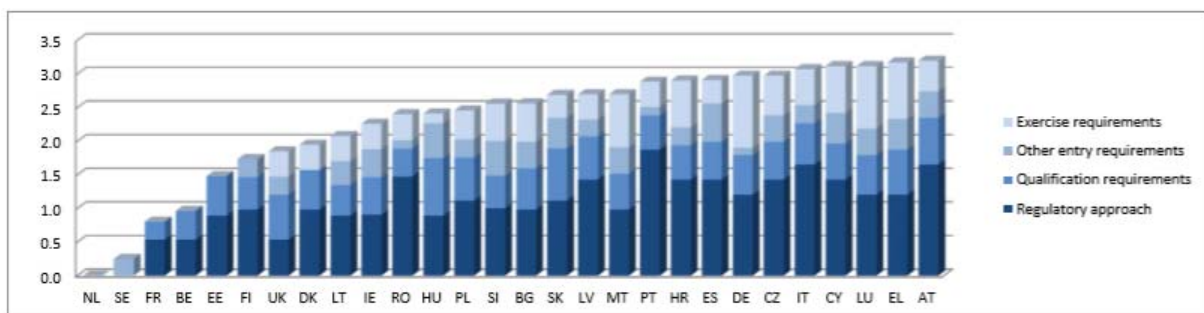
In a survey by the Architects' Council of Europe in 2018, 9% of the respondents who had not worked abroad cited issues with professional liability insurance coverage in other EU countries as a major obstacle to doing so<sup>146</sup>.

### Architects

Entry to the profession is protected either by a title or a reserve of activities, or both of the above, in 25 Member States (except Denmark and Sweden). The education of architects has largely been harmonised so that qualifications can benefit from automatic recognition under Directive 2005/36/EC. The greatest variance between Member States is in the reserves of activities. As is also the case for civil engineers, reservations may be scattered across different rules and regulations, which might cover rules on construction, restoration, cultural protection, energy efficiency and others.

Requirements additional to qualification requirements often imposed by Member States include:

- Professional indemnity insurance (required in 16 MS);
- Membership of a professional organisation, often through an authorisation procedure (required in 20 MS);
- Corporate structure restrictions (e.g. on legal form, shareholding/voting rights, multidisciplinary practices; exist in 16 MS);
- Continuous professional development (required in 15 MS).



Source: European Commission, November 2016.

Note: European Commission (COM(2016) 820 and SWD (2016) 436). Restrictiveness indicator measures the overall intensity of restrictions in national regulation as regards access to and exercise of certain regulated professions, quantified on a scale from 0 to 6.

### Engineers

Entry to the profession is protected either by a title or a reserve of activities, or both of the above, in 25 Member States (except Netherlands and Sweden). Divergences in the organisation of the profession are reflected in the reserved activities which vary significantly across countries.

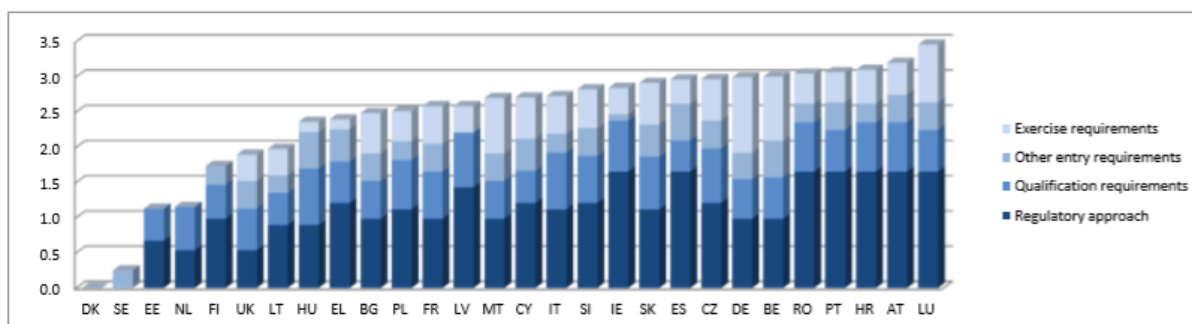
Requirements additional to qualification requirements often imposed by Member States include:

- Professional indemnity insurance (required in 15 MS);

<sup>145</sup> Etude du Centre européen des professions libérales (EuZFB) de l'Université de Cologne, «Le secteur européen de l'architecture. Une perspective scientifique sur le débat de l'impact économique des différentes approches réglementaires dans les Etats membres de l'Union européenne», Janvier 2017

<sup>146</sup> 2018 ACE sector study.

- Membership of a professional organisation, often through an authorisation procedure (required in 13 MS).



Source: European Commission, November 2016.

Note: European Commission (COM(2016) 820 and SWD (2016) 436). Restrictiveness indicator measures the overall intensity of restrictions in national regulation as regards access to and exercise of certain regulated professions, quantified on a scale from 0 to 6.

The categories of restrictions above include:

- **Regulatory approach:** exclusive or shared reserved activities; protection of title.
- **Qualification requirements:** years of education and training; number of pathways to obtain qualifications; existence of mandatory traineeship; obligation to have professional experience to get full capacity; existence of mandatory state exam; continuous professional development obligations.
- **Other entry requirements:** compulsory membership or registration in a professional body; limitation to the number of licences granted; territorial validity of the professional qualification and/or licence; age restriction; other authorisation requirements.
- **Exercise requirements:** restriction on corporate form/type of entity; shareholding requirements; voting rights control; prohibitions on joint exercise of professions; incompatibilities of activities for a professional; professional indemnity insurance; tariff restrictions; restrictions on advertising.

In contrast to some Member States, which require that only qualified professionals with appropriate licences, certifications or registrations with a relevant body may legally practice architecture, other Member States (Denmark, Estonia, Finland and Sweden) do not regulate the profession as such but rather rely upon other checks of competence within the construction environment. Such ‘non-regulating’ countries use certification of competences of architects or ad hoc evaluation of competences or experience on a case-by-case basis as a condition for allowing architects to provide specific services (e.g. submission of plans or building permits).

## Available quantification

Based on the Member States’ notifications in the EU Regulated Professions Database, there are 51 regulated professions registered under the generic title ‘Architect’ and 29 regulated professions registered under the generic title ‘Civil engineer’ across the EU.

Commission analysis indicates that reducing the level of regulatory restrictiveness in the sectors of engineering and architectural services has the potential to increase market entry rates of new service providers by up to 10% and 18% respectively.<sup>147</sup>

A recent assessment shows that the administrative costs created by these requirements faced by architectural and engineering companies that want to establish in another Member State can amount to EUR 10,000 and more.<sup>148</sup>

<sup>147</sup> European Commission, “Business services – Assessment of Barriers and their Economic Impact”, 2015

## Analysis

**Restrictive national rules (with limited role of EU legislation):** Architect and engineer are ‘regulated professions’ in most Member States. As explained in the analysis of the barrier ‘Difficulties with accessing a profession’, the restrictive regulation across Member States inevitably creates barriers for the mobility of professionals in the single market. The different regulatory approaches taken by Member States have a significant impact on cross-border establishment or provision of services. Directive 2005/36/EC guarantees the principle of free movement of professionals for **temporary and occasional provision of services** and in most cases only allows for a prior declaration requirement by the host Member State. However, when **establishing** as self-employed or as a company in another Member State where the architectural or engineering profession is regulated, qualification requirements and a range of other restrictions (such as registration with a professional association) might apply. Under Directive 2005/36/EC, the education of architects has been largely harmonised so that qualifications can benefit from automatic recognition. However, access to the profession of engineer depends on the principle of mutual recognition as there is no automatic recognition of qualifications. The profession of engineer is regulated in varied ways depending on the limits of authorisations, permits, titles, or levels of responsibilities. Moreover, for both architects and engineers, there is a wide variety of regulation in terms of scope of reserved activities, and other entry and exercise requirements (such as insurance, corporate form and/or shareholding, restrictions on multidisciplinary activities, continuous professional development requirements).

Regulation is instrumental in certain professional services to protect consumers and other important public interests.

However, some of the regulatory requirements and their accumulation can become disproportionate and costly for workers, the self-employed and companies operating cross-border. Often national procedures are characterised by multiple documents to be submitted, some in certified copy or original format (certified translations often being required), long decision periods and no mechanism of tacit approval. Online information on applicable formalities is often scarce, hard to find and predominantly in the local language. E-procedures are only available to a limited extent.

In January 2017, the Commission issued detailed guidance to Member States on reform needs in regulation of professional services, including architectural and engineering services.

A directive on a proportionality test before adoption of new regulation of professions or when amending the existing one was adopted in July 2018 and will have to be implemented by Member States by July 2020. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.

The Services Directive (2006/123/EC) also plays an important role, as regards the requirements in scope of that Directive that are not covered by other pieces of EU law such as Directive 2005/36/EC on the recognition of professional qualifications. It addresses a range of obstacles to free movement of services by requiring Member States to adopt reforms aimed at removing or reducing them. These include regulatory barriers but also obstacles of an administrative nature dissuading in practice service providers to operate cross-border.

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<sup>148</sup> Ecorys, “Administrative formalities and costs involved in accessing markets cross-border for provisions of accountancy, engineering and architecture services”, 2017

Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

Moreover, Directive 2005/36/EC together with the Services Directive (2006/123/EU) require Member States to establish National Points of Single Contact. These have to provide access to information on all requirements that providers must comply with when establishing or providing services including as regards regulated professions, as well as to online procedures for such requirements, as e.g. authorisation schemes or the recognition of professional qualifications. Information about European rules on the recognition of professional qualifications is also available on Your Europe. National information and access by electronic means to a range of procedures will be available also through the single digital gateway, including in languages understood by cross-border users like English, at the end of 2020.

## Audit

The audit of companies' financial statements is a service provided in the public interest. The role of the auditor is to contribute to the credibility as well as reliability of these financial statements. The audit profession is therefore fundamental for normal market functioning. The auditors' output is also used for market stability by regulators/supervisors and for tax collection by tax and other government authorities. The work of auditors impacts not only auditors, but also audited companies, shareholders and potential investors. In addition, a wider range of other stakeholders benefit from audits. These include lenders, trade partners, employees, credit rating agencies or equity analysts.

Following the requirement from the Audit Regulation, national competent authorities must, every 3 years, prepare a national report on the developments in the market of statutory audit of public-interest entities (PIEs). Based on this information, the Commission publishes a joint report about the EU market. The first Commission report was published in 2017. The Commission will publish its second joint report on the developments in this market in 2020.

Data from the 2016 Commission Report on monitoring developments on the market for providing statutory audits of public-interest entities<sup>149</sup> showed there were 250047<sup>150</sup> individuals registered as statutory auditors in the EU. In 26 Member States<sup>151</sup> 26% of registered statutory auditors are employed by or associated with an audit firm. These numbers vary widely across Member States<sup>152</sup>. About 5%<sup>153</sup> of the total number of registered audit firms in the EU carry out statutory audits of PIEs.

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<sup>149</sup> Report from the Commission to the Council, the European Central Bank, the European Systemic Risk Board and the European Parliament on monitoring developments in the EU market for providing statutory audit services to public-interest entities pursuant to Article 27 of Regulation (EU) 537/2014.

<sup>150</sup> Reference period year 2015, except for: Bulgaria and Estonia (2014/2015); Germany and Denmark (2016); and Greece (2014). Data is from 28 Member States.

<sup>151</sup> Data from Austria and France is missing.

<sup>152</sup> The number for Italy includes a large number of accountants who historically were registered as auditors as well. In addition, Ireland has a unique situation, as members of UK-regulated accountancy bodies are also registered in Ireland. Therefore, numbers for Ireland might be inflated due to this possible double counting. Similarly, some Irish regulated accountants may also be registered in the UK.

<sup>153</sup> Based on data from 28 Member States.

The total turnover of audit firms auditing PIEs in 25 EU Member States (data from Bulgaria, France and Spain is not available) is approximately EUR 31 billion. However, the numbers per Member State show a disparity across the EU.

The market for statutory audits of PIEs is relatively concentrated in most Member States. According to the above-mentioned report, the Big Four audit firms<sup>154</sup> have an average market share of almost 70% in the number of statutory audits of PIEs. For turnover, their EU market concentration is around 80% on average<sup>155</sup>. The Big Four hold a concentrated oligopoly in 11 Member States for the number of statutory audits, and in 15 Member States for turnover.

Recently, several developments have been shaping the EU audit market. These developments include the impacts from the legal framework introduced by the audit reform, the changing political context and impacts of Brexit, IT developments, and scandals in some EU Member States involving audit firms. Audit firms are starting to adjust to digitalisation. The European Parliament has also carried out some assessments in relation with the audit reform with the aim to strengthen the confidence and transparency in the financial markets and address scandals in the market.

### **35. National adaptation of audit regulatory requirements under audit directives and regulations**

#### **Description (in the regulated market: Audit Directive and Regulation)**

Auditor is a ‘regulated profession’ in all Member States, which means that in order to practice this profession Member States require a certain level of qualification and usually impose a range of requirements. It is regulated through the Audit Directive and the Audit Regulation. Some of these requirements are adapted at national level. The EU audit market is very diverse in terms of size and structure. Different national approaches in the regulatory requirements result in a significant divergence across Member States. The nature of the divergence in the national markets has an impact on cross-border mobility by imposing costs on workers, self-employed and companies operating cross-border.

In addition, these barriers also create administrative burdens, in particular for SMEs. Often national procedures are characterised by multiple documents to be submitted, some in certified copy or original format (certified translations often being required), long decision periods and no mechanism of tacit approval. Online information on applicable formalities is often scarce, hard to find and predominantly in the local language. E-procedures are only available to a limited extent.

National requirements also imply a burden of legal compliance for SME audit firms, who may refrain from going cross-border to avoid extra compliance and administrative costs.

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<sup>154</sup> PwC, Deloitte, KPMG, and EY.

<sup>155</sup> Report from the Commission to the Council, the European Central Bank, the European Systemic Risk Board and the European Parliament on monitoring developments in the EU market for providing statutory audit services to public-interest entities pursuant to Article 27 of Regulation (EU) 537/2014.

## Available quantification

Audit services play an important role in the single market, not only as a standalone service but also as an input to other important economic activities. Currently, we do not have a quantification of the impact of the barrier in the market. However, indicators received from the National Audit Oversight Bodies on number of statutory auditors approved in another Member States show that there is presently no cross border EU audit market<sup>156</sup>. Data from 2016 showed that in the 28 Member States (including the United Kingdom) there were only 97 statutory auditors approved from another Member State<sup>157</sup>.

## Analysis

The EU audit legislation is composed of Directive 2014/56 (applying to all audits) and Regulation 537/2014 (applying to Public-Interest Entities- PIEs audits only). Both pieces of legislation entered into force on 16 June 2014 and became applicable on 17 June 2016.

The audit reform was initiated following the economic and financial crisis starting in 2008 and it was meant to address several shortcomings observed at the time on the audit market. The purpose of these rules is to improve audit quality in order to boost investor confidence in the financial statements of companies and to foster competition in a highly concentrated market for Public Interest Entities (PIEs).

Some of the requirements imposed by Member States include:

- Educational qualifications (Article 6 of the Audit Directive)
- Examination of professional competence (Article 7)
- Test of theoretical knowledge (Article 8)
- Practical training (Article 10)
- Qualification through long-term practical experience (Article 11)
- Combination of practical and theoretical instructions (Article 12)
- Continuing Education (Article 13)
- Registration of statutory auditors (Article 16)
- Registration of audit firms (Article 17)

During the legislative process, the co-legislators inserted various discretions into the Audit Regulation that Member States can choose to adopt. Some of these relate to key-measures applicable to PIE audits (e.g. (i) the list of non-audit services that an auditor cannot carry out for his audit clients (Article 5 of the Regulation), (ii) the cap for non-audit services provided to audit clients (Article 4 of AR), and (iii) the rotation for audit firms as they have the possibility to choose an extension by allowing public tender or joint audit (Article 17 of AR)).

In various instances, such as in the replies to the call for evidence and stakeholder workshops organised by the unit in charge of audit, stakeholders raised strong concerns that the implementation of the Audit Regulation could result in a patchwork of diverging 'national

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<sup>156</sup> National Market Monitoring reports

<sup>157</sup> There were 250047 registered statutory auditors in the EU-28 data from 2016 – Report from the Commission to the Council, the European Central Bank, the European Systemic Risk Board and the European Parliament on monitoring developments in the EU market for providing statutory audit services to public-interest entities pursuant to Article 27 of Regulation (EU) 537/2014.

options' on pivotal aspects of the new rules, leading to inconsistencies across the EU and generating extra administrative costs and complexity. The Regulation contains a clause according to which a report, to the European Parliament and to the Council, has to be prepared on its application by 17 June 2028.

On the one hand, the options can create cross-border obstacles for groups with audited components in different Member States, generating additional complexity and costs. On the other hand, companies and audit firms that operate exclusively on a national basis appear to have called on national legislators to favour a specific national approach, facilitating continuity with the regime currently in place.

There is little evidence to substantiate the claims up to now, as the concerns raised by stakeholders are only based on policy claims and were never quantified. The preliminary picture of the outcome of the implementation process suggests that the key national options are applied differently from one Member State to the other leading to fragmentation in the EU audit market.

The particular way in which Member States choose to regulate a profession can be explained by a number of factors, such as the social importance of a profession, efficiency of alternative instruments of consumer protection, business culture etc. Divergences in the national regulatory framework may indicate potential for further streamlining and improving the regulatory framework for EU audit services.

The Commission continues to monitor the developments in the market for providing statutory audit services to PIEs in the EU and will publish a second report on this market in the course of 2020.

## Automotive

The automotive industry is crucial for Europe's prosperity. The automotive sector provides direct and indirect jobs to 13.8 million Europeans, representing 6.1% of total EU employment. 2.6 million people work in direct manufacturing of motor vehicles, representing 8.5 % of EU employment in manufacturing. The EU is among the world's biggest producers of motor vehicles and the sector represents the largest private investor in research and development (R&D). To strengthen the competitiveness of the EU automotive industry and preserve its global technological leadership, the European Commission supports global technological harmonisation and provides funding for R&D.

The market for new vehicles is currently subject to harmonised rules in the EU in the context of the EU Type-Approval Framework (Directive 2007/46/EC and soon Regulation (EU) No 2018/858 and all related regulations and directives on emissions and safety). Thanks to these rules, all new vehicles sold in the EU are in principle subject to the same technical requirements for emissions and safety. This also means that all vehicles complying with these rules can be registered and circulate in all Member States.

Some barriers are emerging: not yet widely reported by businesses, but possibly becoming important in the future. In the automotive industry, emerging barriers include the *lack of access to in-vehicle data for third parties*. This is particularly relevant in the case of integrated mobility services, which may rely on different types of vehicles to be integrated in a complex system. Technical barriers can be implemented on the vehicle software or on the data provided. This might create market entry barriers. Analysis and quantification of this barrier is beyond the scope of this report.



## 36. Different national rules on spare parts

### Description

Aftermarket spare parts in the automotive sector are, with few exceptions, not subject to harmonised type approval rules. With different rules across the Member States, this leads to single market fragmentation. Some of these parts can also have an impact on safety.

### Available Quantification

It is difficult to give a precise quantification. The multiplication of national legislation on parts can contribute to increase costs both for manufacturers and consumers.

### Analysis

**EU legislation leaves flexibility in the level of harmonisation:** The absence of rules for certain aftermarket parts creates distortion between manufacturers that produce parts for both new vehicles and aftermarket and those who focus only on aftermarket.

The Commission is currently examining the need for issuing secondary harmonised legislation in the context of the EU type-approval framework to ensure safety in relation to automotive spare parts. This could eventually reduce the costs linked with divergent national requirements.

## 37. Market for used vehicles: different national rules for the import and registration of vehicles

### Description

The market for used vehicles is still somewhat fragmented. This is due to a variety of reasons. For instance, the market is not fully harmonised. As a result there are still diverging national rules for the import and registration of used vehicles. Other issues include lack of mutual recognition of national individual approvals for multi-stage built vehicles, different rules for periodical technical inspections, asymmetry of information between the seller and the buyer favouring fraud (e.g. odometer fraud) etc.

### Available quantification

According to a 2014 Commission study<sup>158</sup>, 57% of respondents experienced problems when buying from abroad. The total annual detriment for problems that occurred within one year of purchasing a second hand car was estimated at between EUR 1.9 and EUR 4.1 billion in the EU28 (including the United Kingdom). These problems are true barrier for a real EU market for

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<sup>158</sup> [https://ec.europa.eu/info/publications/study-second-hand-cars-market\\_en](https://ec.europa.eu/info/publications/study-second-hand-cars-market_en)

used cars. This is a problem for business, but this is also a problem for ordinary people (e.g. moving their car from one Member State to another).

## Analysis

**Limited role of EU legislation:** Rules regarding the registration of used vehicles are subject to harmonisation in terms of mutual recognition of registration and roadworthiness certificates. Pursuant to Article 4 of Directive 1999/37/EC on the registration documents for vehicles, the harmonised registration certificate issued by a Member State must be recognised by the other Member State for the vehicle's re-registration in its territory. Furthermore, according to Article 8 of Directive 2014/45/EU on periodic roadworthiness tests for motor vehicles and their trailers, in the case of re-registration of a vehicle already registered in another Member State, each Member State shall recognise the roadworthiness certificate issued by that other Member State.

In the absence of EU harmonised rules, transferring the registration of one vehicle from one Member State to another one is not straightforward. For businesses, this is for instance the case of the majority of trucks and buses, which are built in multi stages. If the chassis is covered by EU harmonised rules, the bodywork that is added at a subsequent stage is covered by a national individual approval. This approval is not necessarily recognised for the registration in another Member State. If in principle, the mutual recognition principles should apply, this leads in practice to another national individual approval. This is particularly burdensome for SMEs which are usually making this bodywork. This matter could be resolved by further harmonised EU rules on individual approvals instead of referring to the mutual recognition principles which are not easy to enforce on the ground for businesses. The same could apply for periodical inspections or the asymmetry of information between the buyer and the seller (Database on odometer records).

The problem of transferring the registration of one vehicle from one Member State to another was already identified by the Commission previously and led to a legislative proposal in 2012. The proposal was mainly based on the mutual recognition principles (registered once accepted everywhere). The proposal was supported by the European parliament but was rejected by the Council, mostly due to possible negative effects on the national car taxation schemes.

## Chemicals

The EU is the second largest chemicals producer in the world, after China, with sales of EUR 542 billion or 15.6% of world chemical sales in 2017. The chemical manufacturing sector is the fourth largest within EU total manufacturing by turnover, with EUR 553 billion in 2015 or 7.5% of the total, with sales of EUR 542 billion, with over 28000 firms (out of which 96% are SMEs).

The chemical industry is among the largest investors in EU manufacturing, with about EUR 21.6 billion of capital spending in 2017, or a capital intensity of 16.8% of value added, above the average of EU manufacturing. The sector counts 1.2 million direct jobs – one third of which in SMEs-, generates around 3.6 million indirect jobs and supports an estimated 19 million jobs across all value chains.

The EU is the largest chemicals exporting region and the third largest importing region in the world. The single market drives the EU chemical sales. By 2017, intra-EU sales accounted for EUR 305 billion or 56% of total EU chemical sales, up from 46% in 2007, an increase on average by 2.5% per annum. In 2017, sales in the EU country home markets represented 15% of sales, down from 34% in 2007. EU is net exporter and EU exports to third countries increased from 20% of chemical sales revenue in 2007 to 29% in 2017.

The EU Chemical industry is called to play an enabling role in the industry transformation and in the shift towards a sustainable, circular and carbon neutral economy. The chemical industry supplies most of manufacturing sectors, is part of multiple value chains and chemicals are used in a wide range of products. The chemical sector can be a solution provider to reduce the environmental footprint of many other sectors, in particular in energy efficiency and renewable energy applications.

The EU chemical legislation deals with the complexity of chemical hazards and risks, and has been instrumental in ensuring free circulation of substances, mixture and articles within the internal market throughout harmonisation of standards and requirements that reduced barriers for intra-EU trade. The EU chemicals legislation incorporates international standards in several areas, a fact that contributes to reduce potential trade frictions and to address transboundary chemical related issues. Adopted in June 2019, the fitness check of the most relevant chemicals legislation excluding REACH concluded that overall there are no significant issue with chemicals free circulation on the internal market<sup>159</sup>.

Some barriers are emerging and may affect the overall functioning of the single market for chemicals and become also important for the transition to a more circular production and use of safer chemicals in Europe:

- *Resource constraints at national level affect the capacity to carry out enforcement activities, such as inspections and other controls, including market surveillance activities or reporting. These constraints together with differences across Member States in the level of implementation and enforcement of some pieces of EU chemicals legislation lead to an inconsistent application of the EU law, and ultimately to negative consequences on the free movement of goods within the EU.*<sup>160</sup>
- *Lack of access to finance and other incentives. For example frontrunner industries producing and using safer alternatives, e.g. use of less hazardous chemicals.*

These barriers are common to other economic sectors and have been covered in the section on general barriers.

## Construction

The European construction sector is a prime driver of economic growth and employment. It accounts for 9% of GDP<sup>161</sup> and 18 million jobs in 2018, in 3.5 million businesses, mostly in micro and small firms that provide local employment. Indeed, SMEs play a particularly important role in the sector, as it accounted for 88% of EU employment in that sector in 2016<sup>162</sup>. The sector also relies on supplies from other sectors of economy, thus creating a multiplier effect.

<sup>159</sup> Recent information on the effect of chemicals legislation on the single market can be found in COM(2018) 116 final (the Commission General Report on the operation of REACH and review of certain elements - Conclusions and Actions), COM(2019) 264 final (Findings of the Fitness Check of the most relevant chemicals legislation (excluding REACH) and identified challenges, gaps and weaknesses), and the accompanying Staff Working Documents.

<sup>160</sup> COM(2019) 264 final (Findings of the Fitness Check of the most relevant chemicals legislation (excluding REACH) and identified challenges, gaps and weaknesses

<sup>161</sup> FIEC, *Annual Report 2019*. <http://www.fiec.eu/en/library-619/annual-report-english.aspx>.

<sup>162</sup> Eva Rytter Sunesen, Copenhagen Economics, 'Making EU trade in services work for all', November 2018 (p. 39)

The construction sector value chain consists of construction services (NACE F), real estate activities (NACE L), architectural and engineering activities and related technical consultancy (NACE M) and certain manufacturing sub-sectors (NACE C), related to the construction sector<sup>163</sup>. For the purposes of this exercise, market barriers in architectural and engineering sectors are covered in a separate fiche and will not be discussed here.

The sector has the key enabling role in the transition to a low-carbon economy, as buildings account for nearly 40% of total energy consumption<sup>164</sup>, a third of CO<sub>2</sub> emissions. Construction is also a major consumer of natural resources with 50% of extracted materials going to the sector. It has also a significant environmental impact, as it produces 35% of all waste in the EU<sup>165</sup>. Thus, there is a big potential for creating jobs in a green economy<sup>166</sup>.

The construction sector is among the least digitised, there is therefore a huge potential to raise the efficiency of construction processes and in the operation of buildings.

The integration of digital technologies in construction has to be carefully monitored as it could facilitate the appearance of new market barriers, for instance if a major market actors would impose their proprietary technology for building data collection and processing.

## 38. Market access and exercise requirements for construction services

### Description

Controls imposed on construction service providers for accessing the market (both for temporary cross-border provision and for secondary establishment) vary significantly in terms of restrictiveness among the Member States. There is a wide variety of such controls, controlling not only market access of general construction services (NACE F.41), but also market access of more specialised construction services (NACE F.43). They have been extensively studied by the Commission.<sup>167</sup>

These market access control schemes lead to both **regulatory** and **administrative** burdens for service providers active in the single market:

- **Regulatory burden:** in general, national legislation governing horizontal control schemes for construction services takes very limited consideration of cross-border situations, be they secondary establishments or temporary cross-border provisions. This leads to duplications and complexity for service providers going cross border, who need to adapt to very diverging national conditions on market access.

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<sup>163</sup> NACE (from the French term "Nomenclature Statistique des Activités économiques dans la Communauté européenne") is the statistical classification of economic activities in the European Community.

<http://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF>

<sup>164</sup> COM(2019) 640 final "The European Green Deal"

<sup>165</sup> Eurostat, available at [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste\\_statistics#Total\\_waste\\_generation](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste_statistics#Total_waste_generation)

<sup>166</sup> COM(2014) 446 final "Green Employment Initiative: Tapping into the job creation potential of the green economy"

<sup>167</sup> See Ecorys, "Simplification and mutual recognition in the construction sector under the Services Directive", 2016 and Ecorys, "Study on costs involved in accessing markets cross-border for provision of construction services", 2018

- **Administrative burden:** national market access procedures are often burdensome, characterised by multiple documents to be submitted, some in certified copy or original format, with certified translations often being required, long decision periods, no tacit approval, limited validity in time and even, in some cases, limited territorial validity. Online information on applicable formalities is often scarce, hard-to-find and predominantly in the local language. E-procedures are only available to a very limited extent.

A number of professions involved in the construction sector are ‘regulated professions’ in several Member States (architects, engineers, as well as various crafts professions), which means that in order to practice these professions most Member States require a certain level of qualification and impose a range of other requirements (for details on architects and engineers see the separate fiche).

Based on the Member States’ notifications in the EU Regulated Professions Database, construction crafts (e.g. carpenter, bricklayer and plumber) are regulated in about one third of the Member States, primarily as ‘reserves of activities’. Additionally, there are 51 regulated professions registered under the generic title ‘Architect’ and 29 regulated professions registered under the generic title ‘Civil engineer’. Apart from the administrative costs imposed on service providers, these obstacles reduce competition and hamper mobility of workforce and balancing of demand/offer for the trades at stake. This barrier is extensively described under ”Difficulties with accessing a regulated profession”.

### Available quantification

The impact of **regulatory and administrative burden** created by market access controls is very difficult to determine. The costs of complying with authorisation schemes imposed on construction service providers strongly depend on the complexity of the scheme. In some cases, administrative costs of complying with these national procedures amount to EUR 10,000 and more<sup>168</sup> for a company.

### Analysis

**Restrictive national rules and limited role of EU legislation:** With very few exceptions (e.g. installation services involving F-gases), construction services do not have a harmonised legal framework at EU level. Most aspects are regulated at national, regional and sometimes local levels.

**Inadequate implementation of EU rules.** At the same time, EU legislation (such as the Services Directive and Directive 2005/36/EC) plays an important role in facilitating free movement of services in the construction sector.

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<sup>168</sup> Ecorys, “Study on costs involved in accessing markets cross-border for provision of construction services”, 2018

The **mutual recognition procedures** for professional qualifications of Directive 2005/36/EC and the principles laid out in the Services Directive<sup>169</sup> aim to facilitate free movement and the export of construction services.

As explained in the fiche on the recognition of professional qualifications on architects and engineers, even if the Directive 2005/36/EC provides for the automatic recognition of architects, it relies on mutual recognition for other construction professions.

Member States may also impose a range of entry and exercise requirements additional to qualification requirements. Construction services are covered by the Services Directive<sup>170</sup>, requiring Member States to recognise requirements met in other Member States ('mutual recognition') and impose national requirements on service providers only when they are non-discriminatory, necessary and in a proportionate way.

The full implementation of these provisions by Member States still leaves significant margin for improvement.

As a result, the administrative burden on applicants when going through these procedures remains heavy in many cases and service providers expanding across the EU need to comply with an accumulation of different national rules. This is very burdensome, in particular for SMEs.

Beginning 2017 the Commission issued a detailed guidance to Member States on reform needs in regulation of professional services, including architectural and engineering activities.

A directive on a proportionality test before adoption of new regulation of professions or when amending the existing one was adopted in July 2018.

The information that businesses need (concerning licences, authorisations, permits, and notifications) in order to provide services in the single market will be accessible through the Single Digital Gateway, also in English, by the end of 2020.

Reforms in services are also part of the country-specific recommendations in the context of the European Semester.

## **39. Burdensome and complex building permit procedures**

### **Description**

A building control scheme is a legal requirement and procedure, which ultimately allows for the construction work of a certain building, its renovation as well as an engineering work to take place in a given location.

These building permit procedures can represent a high level of administrative and regulatory burdens, in particular for construction service providers from other Member States and SMEs. For example:

- Electronic procedures to complete building permit procedures are often not available. While some Member States (or regions) offer procedures that are largely available online, many others still require the handling/submission of large amounts of paper

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<sup>169</sup> Directive 2006/123/EC

<sup>170</sup> Directive 2006/123/EC

forms. Many Member States also ask for translation of these documents, including certified translations;

- Information on applicable building permit rules and procedures is often not available online (and/or only in the local language);
- Fees for building permit applications vary significantly, ranging from very low levels to high fees that go beyond what is proportionate to the cost of administering the application;
- Deadlines for decisions by Member States are sometimes very long, ranging up to several months. And tacit approval is not a widely adopted practice by national authorities;
- Non-site specific issues are often controlled repeatedly for each building project – the once-only principle is often not applied;
- Several administrative procedures need to be completed from building permit to final completion, often involving different authorities.

In a survey by the Architects' Council of Europe in 2018, 32% of the respondents who had not worked abroad cited insufficient knowledge of planning or building regulations as a major obstacle to doing so<sup>171</sup>.

### Available quantification

The restrictiveness and administrative costs of building permit procedures have been mapped by several studies and analyses, done for example by the Commission and the World Bank<sup>172</sup>.

The administrative costs of these building permit procedures differ significantly across Member States (and even regions/municipalities within a Member State) and strongly depend also on the complexity of the building concerned. These costs involve not only fees to be paid to national authorities, but also staff time devoted to finding the relevant information and completing procedures. They can easily represent several thousands of euros, even for relatively small-scale building projects.<sup>173</sup> Costs are typically lower in situations where Member States allow for “lighter procedures” in case of minor works.

### Analysis

**Restrictive national rules and limited role of EU legislation.** With very few exceptions (e.g. removal of asbestos), construction services do not have a harmonised legal framework at EU level. They are regulated at EU, national, regional and particularly local levels, in so far as building permit procedures are concerned. EU law does play an important role to facilitate free movement in the sector.

**Complex EU legislation.** Buildings and other construction works remain within the competence of Member States who are fully responsible for the safety, environmental and energy

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<sup>171</sup> The architectural profession in Europe 2018 – ACE sector study. Available at: [https://www.ace-cae.eu/fileadmin/New\\_Upload/7.\\_Publications/Sector\\_Study/2018/2018\\_\\_ACE\\_Report\\_EN\\_FN.pdf](https://www.ace-cae.eu/fileadmin/New_Upload/7._Publications/Sector_Study/2018/2018__ACE_Report_EN_FN.pdf).

<sup>172</sup> <https://www.doingbusiness.org/en/data/exploretopics/dealing-with-construction-permits>

<sup>173</sup> See Ecorys, “Study on costs involved in accessing markets cross-border for provision of construction services”, 2018

requirements applicable to them. The Construction Products Regulation (CPR)<sup>174</sup> does not set any product requirements for construction products. Instead, it sets harmonised rules on how to assess and express the performance of these products in view of their essential characteristics (e.g., reaction to fire, thermal conductivity or sound insulation) and provides harmonised rules on their CE marking. Further, only certain construction products are harmonized under the CPR are accordingly marketed with the CE marking affixed to them. Construction products that are not CE marked are subject to the mutual recognition principle. The CPR thus only sets the basic framework for requirements on the use of construction products in the context of providing a construction service, which need to be performance-based. Additionally, disproportionate on-site rules on the use of construction products dictate the type of product to be used instead of, as per the CPR, prescribing the required performance of admissible products to be used.

**Inadequate implementation of EU law and insufficient administrative capacity.** Different principles under the Services Directive (e.g. on regulatory and administrative simplification) are also relevant but their implementation by Member States is lacking. For example, the application of the principle of mutual recognition is weakened by the fact that local authorities, often in charge of granting building permits, are unaware of the obligation to consider compliance with equivalent requirements which are not site-specific, such as insurance coverage and requirements on the use of equipment (such as cranes).

The information that businesses need (concerning licences, authorisations, permits, and notifications) in order to provide services in the single market will be accessible through the single digital gateway, also in English, by the end of 2020.

## **40. Posting of workers and cross-border service provision by self-employed persons**

### **Description**

Businesses in the construction sector frequently report that requirements linked to the posting of workers, beyond an increase in administrative burden, constitute a major barrier to offering their services across the single market.<sup>175</sup> This barrier is extensively described in the specific barrier “Burdens and obstacles in the context of posting workers to other Member States”.

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<sup>174</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, OJ L 88, 4.4.2011, p. 5.

<sup>175</sup> (*EEN SME feedback German2Belgium 2019*)



## 41. Late payments

### Description

The risk of late payment or non-payment is the first major obstacle to the participation in public procurement of European SMEs: it was considered an obstacle by 56% of SMEs in the EU in 2015, and considered a major obstacle by 43% of SMEs.<sup>176</sup>

SMEs in the construction sector are particularly affected by late payments.<sup>177</sup> The construction sector stands out as the one where companies are more likely to experience problems with late payment (56% compared to 47% for the EU average<sup>178</sup>).

This barrier is extensively described under “Costs and delays of collecting payments and recovering debt”.

## 42. Additional national requirements for construction products

### Description

In the construction sector, the Confederation of Danish Industry reports that several Member States continue to require national quality marks and documentation. This often goes beyond the CE marking laid out in the Construction Product Regulation (EU) 305/2011. An example is fire safety, three Member States would require several certificates which cover the same characteristics as the CE marking. The demand for additional certificates “constitutes a heavy bureaucratic burden for manufacturers wishing to export their products to the aforementioned markets”. Similarly, the Confederation of Finnish Industries reports that technical standards for constructions and building materials are frequently divergent, so that companies need to adapt their products to local requirements. Among other industries, this affects engineering, machinery and power grid systems.

SOLVIT cases well illustrate hurdles that businesses face with construction products. In one case, a company from one Member State wanted sell vehicle restraint systems in a neighbouring Member State. The company tested their vehicle restraint systems pursuant to harmonised standard EN 1317-5 and CE-marked them under the Construction Products Regulation. However, when the company wanted to place their products on the market of the neighbouring Member State, they were informed the requirements had to be checked again and additional requirements had to be fulfilled in order to be able to sell there. In the end, the company was referred to the applicable national standards to obtain a ‘voluntary’ national certificate issued by a private body. It was argued, such additional requirements under national law, and even voluntary certification procedures, constitute a barrier to companies from other Member States and a violation of the free movement of goods.

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<sup>176</sup><http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/F LASH/surveyKy/2089>

<sup>177</sup> <https://op.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1>

<sup>178</sup> SAFE survey 2019, responses to the question whether companies have experienced problems with late payments (and whether they happen regularly or occasionally)

## Available quantification

The study on the economic impacts of the Construction Products Regulation assessed the total value of construction products manufactured in the EU in 2013 at EUR 418 billion.

## Analysis

The root cause of this barrier relates to **inadequate implementation and enforcement of EU legislation**: Member States, as for instance Germany and the Czechia, infringe the Construction Products Regulation by adding additional national requirements for CE-marked construction products outside the harmonised structure created by the Construction Products Regulation. This has led the Commission to take action and start infringement proceedings. There are indications that similar breaches of Union law may be taking place in virtually every Member State.

The Construction Products Regulation is considered part of the EU New Legislative Framework (NLF) product legislation. Yet, contrary to other NLF directives and regulations, CPR-based harmonised standards are compulsory for manufacturers of harmonised construction products. The use of these harmonised standards is obligatory also for Member States when setting fire safety, environmental, energy and other requirements for construction works and products. In addition, CPR-based harmonised standards are “exhaustive”, meaning that no additional national requirements can be imposed on construction products, even in those cases where standards do not fully cover all relevant aspects of the seven Basic Requirements for Construction Works. All construction products within this harmonised sphere have to be CE-marked.

In this context, the Member States often claim that setting additional requirements for construction products at national level is necessary for safety or environmental purposes, and even more so in the case of outdated and incomplete harmonised standards. However, this may lead to conflicts between harmonised standards and the national rules in place, as for example for products repairing concrete structures (EN 1504 – series). While the Commission wishes to address the concerns of some Member States in protecting safety of their citizens by filling the “gaps” in the incomplete harmonised standards, Member States are also supplementing and replacing the existing content of these standards (harmonised assessment methods and criteria, classifications) with their own rules, thus fragmenting the single market and obstructing the free movement of construction products across the EU. Problematic national rules are in certain cases just ‘recommendations’, directed not to the manufacturers of construction products but to constructors. Nevertheless, by obliging the constructors to obtain additional information, national authorities are in fact indirectly also compelling the manufacturers to provide such information as a prerequisite for getting their products sold.

Information about national product rules and regulations will be available online, also in English, through the Single Digital Gateway at the end of 2020.

## Electronic communications networks and services

A fully operational digital single market can generate additional growth of up to EUR 415 billion (Commission Communication of May 2015 on the digital single market). Electronic communications is a strategic sector which generates directly EUR 169 billion in added value (approximately 1.3% of EU GDP) and over 1 million jobs (approximately 0.47% of total employment), with high productivity thanks to the use of ICT (EUR 144000 p.p.).

The existence of high-speed electronic communications networks is a pre-requisite for the development of the digital single market. Coverage of high-speed broadband networks has

improved significantly over recent years but there is still a gap to close for people and businesses, in particular in rural and remote areas.

Electronic communications services enable a large range of other services and products in virtually all sectors. Electronic communications networks constitute critical infrastructure – indispensable for public services and economic and social life.

Gigabit connectivity powered with secure fibre and 5G infrastructures is a fundamental prerequisite for tapping into Europe’s digital growth potential.

### **43. Economic and legal barriers to deployment of electronic communications networks**

#### **Description**

As a network-based economic sector, the telecoms sector is typically characterised by very high sunk costs (for network deployment, spectrum licences). Despite the existing sectorial rules which encourage investments through a more flexible regulatory environment in the telecoms market, companies are experiencing difficulties in ensuring an efficient deployment of networks due to the administrative red tape associated with it. There are also still some areas (e.g. rural areas which do not offer scaling-up, as opposed to metropolitan areas) which they consider non-profitable and public support can only target part of those due to the level of public resources available.

Inefficiencies in the deployments of electronic communications networks, mainly in terms of administrative burdens, are regularly reported as one key problem for the sector. Building and running electronic communications services, including 5G, means facing a number of difficulties (burdensome permit granting, high fees, problems to access to physical infrastructure, lack of information on existing infrastructure, etc.). These result in a slower, more costly and less efficient deployment of electronic communications networks.

As it was identified in the report on the implementation of the Broadband Cost Reduction Directive<sup>179</sup> and through recent exchanges with stakeholders and national authorities, a number of issues persist in connection with the roll-out of electronic communications networks. These include:

- issues linked to long-lasting and complex permit granting procedures (often exceeding the four-month default deadline);
- divergent costs for civil works (with reported costs of a magnitude ten times higher for certain types of civil works);
- limited use of the cross-sectorial character of the measures which intend to foster the sharing and reuse of existing physical infrastructure and to obtain synergies through the coordination of civil works;
- access to buildings for the installation of in-building infrastructure, lack of availability of relevant information, etc.

In particular, businesses in the mobile or wireless sector also report barriers such as:

- the high reserve prices and costly coverage obligations included in spectrum awards;

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<sup>179</sup> COM(2018) 492 final

- the late and uncoordinated assignment of spectrum frequencies (e.g. non-timely awards of 5G pioneer bands).

## Available quantification

The Commission recently reconfirmed the 2015 Gigabit objectives<sup>180</sup>, which aim to provide all European households, rural or urban, with access to networks offering a download speed of at least 100 Mbps and being capable of symmetric Gigabit speed by 2025. Investment in Gigabit connectivity powered with secure fibre and 5G infrastructures is a fundamental prerequisite for Europe's digital growth, and requires additional investment of at least EUR 155 billion that cannot be fully met by the private sector, even if improved market demand and a more flexible regulatory environment have improved investment incentives.

Previous studies found that e.g. civil engineering works, such as the digging-up of roads to lay down high-speed broadband, account for up to 80% of the cost of deploying high-speed networks. This shows the potential of putting in place measures, which would accelerate the roll-out of high-speed networks.

## Analysis

These barriers are caused by a combination of **inadequate implementation of EU legislation**, **limited EU legislation**, and causes **not linked to public policy** (e.g. microeconomic factors).

The problems linked to the roll-out of electronic communications networks are mainly linked to **insufficient administrative capacity and red tape**, as well as the **inadequate implementation** and exemptions and optional character, or **lack of binding effect** of some of the measures under the Broadband Cost Reduction Directive. Examples include transparency obligations for public sector bodies, rules on apportioning the costs associated with the coordination of civil works, or electronic submission of permits applications.

**At the EU level**, telecoms rules were reformed last year with the entry into force of the European Electronic Communications Code, which aims to create a pro-competitive and investment-friendly regulatory environment. Member States need to transpose the Code into national legislation by 21 December 2020.

Moreover, in 2014, the EU adopted more targeted legislation aiming at facilitating and incentivising the roll-out of high-speed electronic communications networks by lowering deployment costs. However, the **transposition of this legislation has been late** in many Member States and its implementation across the EU has resulted in limited impact. According to a Commission report<sup>181</sup>, there has been some impact as regards access to physical infrastructure but there are several areas for improvement, such as the coordination of civil works and the time-consuming and burdensome procedures for permit granting.

Reinvigorated measures for reducing the costs of deployment of electronic communications networks could face difficulties due to **fragmented and overly complex existing administrative processes** (often dealt by local authorities), and the cross-sectorial character of the measures (stakeholders from other sectors sometimes lack sufficient incentives).

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<sup>180</sup> Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, COM(2016) 587 final

<sup>181</sup> COM(2018) 492 final

## 44. Legal and economic barriers to accessing networks and services at reasonable prices and under non-discriminatory conditions

### Description

In order to provide broadband or mobile call services, telecoms operators need access to a fixed or a mobile network. To build an entire network is very costly, with high and often sunk costs, and there might be legal and administrative barriers (as seen above). Therefore, operators may seek access to another operator's already existing network. However, the price and conditions imposed by incumbent (competing) operators to access their network could constitute another barrier. The EU set up a regulatory framework made of binding and non-binding rules, which are for National Regulatory Authorities (NRAs) to apply. Despite the efforts of NRAs and the Commission to ensure full adherence with the framework, regulation of electronic communications market is not infallible. One illustrative case is that in which a market is not reviewed within the deadlines imposed by the framework and thus the regulation becomes inappropriate to address issues related to the fast evolution of that given market.

Network owners (which are often vertically-integrated) have high incentives to refuse access to their network. They can either refuse access *tout court* or make it very difficult in practice, namely by applying high access prices, imposing discriminatory conditions, or degrading the quality of the service.

Moreover, alternative operators lack economies of scale and scope: a new operator's costs could be considerably higher than for a large incumbent operator offering several products. In addition, it is often difficult for a new entrant to find customers due to long-term contracts that bound consumers or businesses, or switching barriers (this barrier is particularly relevant for the wholesale high-quality access market which serves businesses

### Available quantification

The barrier particularly affects new and small market entrants, but we do not have data to quantify the barrier.

### Analysis

This barrier is caused by **limited role or EU legislation** and by factors which **are not linked to public policy** (e.g. microeconomic causes).

Barriers are often caused by inadequate or inconsistent regulation applied across Member States. Since the liberalisation of the sector, the EU has repeatedly intervened through legislation to address a number of barriers to the single market (e.g., access to infrastructure, roaming like at home, and general authorisation). Those efforts allowed competition to emerge, but are often not sufficient.

As telecoms markets are fast moving, technology evolves rapidly and regulation needs to be often revised to address new bottlenecks. A major revamp of telecoms rules took place in 2018 resulting in the adoption of European Electronic Communications Code. Further challenges now lie in the implementation of the Code. In an effort to increase harmonisation, the Commission is working on several projects, including

- the review of a Recommendation on relevant markets susceptible to ex ante regulation which shall guide national regulators in their assessment of market conditions, and
- a delegated act setting a Eurorate for terminating calls to fixed and mobile networks.

In particular, in mobile voice call markets, barriers derive from discrepancies in national regulatory approaches. For example, as the previously adopted Recommendation on termination rates has proven insufficient to harmonise national approaches to calculating termination rates, the Code has tasked the Commission with the adoption of a delegated act setting harmonised termination rates across in the EU by the end of 2020.

## Energy

Energy is a ‘basic’ economic good that is an input to the production of almost every other good and service in the modern economy. The EU consumed 1,675 million tonnes of oil equivalents of energy in 2017.

Competitive wholesale and retail markets for electricity and gas, and the free exchange of energy across borders play an important role in ensuring that household and industrial consumers benefit from low prices, high standards of service, and a wide selection of offers. Strategically, they are especially important for the emergence of new energy services that will help the energy system become more flexible and thus better adapted to an energy system based on renewables. A competitive and EU-wide interconnected energy market is also an important element of the Green Deal, as it helps to reduce CO<sub>2</sub> emissions at least cost<sup>182</sup>.

Despite this, high levels of market concentration, growing gaps between retail and wholesale prices, and low levels of innovation are leading to persistently low levels of consumer satisfaction in the energy sector. Competition in wholesale and retail markets for electricity and gas remains limited in many Member States, new entrants face a broad range of hurdles in establishing themselves and operating in the EU, and undue barriers to energy exchanges across borders persist.

Moreover, the procedures and processes for operating in the retail market can differ significantly from one Member State to another, impeding cross-border entry for even established energy suppliers and service companies within the single market. The cumulative weight of these and other barriers on energy retail markets can have a significant negative impact on competition and, by extension, consumer welfare and innovation. The Commission plans to publish a major study into these issues, which could pave the way for action to address them. Not using the full potential of the EU electricity and gas markets to drive down prices is one factor that contributes to the high level of electricity and gas prices compared to other regions and harms those parts of the European industry who compete with regions with lower prices.

<sup>182</sup> The Single Market Performance report (COM(2019)650final), included in the Autumn package published on 17 December 2019, stresses the limited competition in the energy retail markets, the need for fully efficient capacity mechanisms and the inefficiencies in energy taxation.

## 45. Inefficient unbundling may create market distortions

### Description

Even in cases when unbundling has been completed, incumbent suppliers may often still have an advantage over new entrants. For instance, if the customers of the incumbent supplier are less willing to change supplier than other customers, the incumbent player has more freedom to increase prices. This is further corroborated by the fact that incumbents can offer lower prices to specific consumers to prevent them from switching. They may then cross-subsidise this price decrease by charging higher prices for those consumers who are less willing to change. Finally, when people move house, the regime surrounding the location change itself may favour the incumbent.

In cases where the unbundling of Distribution System Operators (DSOs) has been inefficient, there are also a number of concerns regarding market functioning. In several Member States, the separation of distribution and supply activities cannot be considered complete, which could result in market inefficiencies. For example, some have argued that if the DSO and the retailer work in close cooperation, the DSO can forewarn the supplier about planned consumer switching, or in an extreme case obstruct the switching process. In addition, the DSO can provide information to the associated supplier about a potential market entry.

### Available quantification

45% of electricity and gas suppliers surveyed in 2019 ranked the strategic advantage of incumbents as a substantial barrier. 41% of electricity and gas suppliers surveyed in 2019 ranked ineffective unbundling as a substantial barrier.

### Analysis

**Limited role of EU legislation** around retail competition may have contributed to the excessive market power of incumbents in the past. The current Gas Directive (2009/73/EC) still provides Member States with greater leeway to decide to what extent they create a level playing field for all market players. This may disproportionately affect market functioning.

The Electricity Directive (2019/944) introduces general provisions to ensure that Member States ensure a level playing field for competition, as well as a host of specific measures to remove market barriers. These rules will need to be transposed before 2021. In addition, the Commission is empowered to adopt implementing legislation for a standardised approach to the provision and exchange of data that makes the market more contestable and efficient.

Nevertheless, one source of concern is the fact that Member States may choose not to unbundle the supply operations of distribution system operators (DSOs) with fewer than 100,000 customers. This has raised fears that bundled supplier-DSOs have privileged access to data that could be used to distort competition. Unbundling is an issue that has not been tackled in the new rules.

Additionally, national incumbents may benefit from the rules which apply in case of payment default from the end consumers. These rules entail that in case of payment default, the supplier has to support the loss for the entirety of the unpaid bill, including cost components which do not relate to the distribution of energy, i.e. also the purchase of energy. As a consequence, only the biggest market players, which have a sufficiently wide customer portfolio, can absorb the risk of

default of the end consumer. These credit default rules are a significant barrier detrimental to the smaller market players. The commission is currently investigating this hurdle<sup>183</sup>.

## 46. Access to markets for demand response aggregators

### Description

It is difficult for innovative and decentralised solutions to **access the electricity market**. This is because the electricity market was designed at a time when large-scale, centralised generation capacity dominated the electricity system. It can, therefore, implicitly and arbitrarily favour such assets, to the detriment of innovative new solutions such as demand response. This is typically the case of companies from other countries trying to do business across the single market.

### Available quantification

The barrier particularly affects enterprises using innovative business models. For instance, 54% of demand response aggregators (a kind of energy service company) surveyed in 2019 ranked unfavourable market access conditions as a substantial barrier.

### Analysis

The root cause of this barrier was the **limited role of EU legislation** and **complex or non-modernized EU legislation**. Underdeveloped EU rules around aggregation may have contributed to the lack of a level playing field for such actors in the past.

In an effort to address this and other problems, the co-legislators adopted in 2019 the Electricity Regulation (2019/943) and Electricity Directive (2019/944)<sup>184</sup>. These legislative acts introduce a range of provisions to ensure that Member States ensure a level playing field for aggregators. The Regulation is directly applicable from 1 January 2021, whereas the Directive will need to be transposed before 2021. In addition, the Commission is empowered to adopt implementing legislation for demand response. Full application of the new 2019 rules, and the new implementing legislation, could help address this. In parallel, the provisions under Article 15 of the Energy Efficiency Directive (2012/27/EU), addressed the need to ensure a level playing field for aggregators.

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<sup>183</sup> Call for tender ENER/B3/2018-313 regarding the Study on ‘Barriers to entry in retail energy markets’

<sup>184</sup> See in detail on the improvements introduced by the “Clean Energy Package”



## **47. Retail price regulation hinders free competition; uncertainty concerning future regulatory developments**

### **Description**

Retailers buy energy from the wholesale market and sell it to customers, usually at fixed prices. Wholesale price regulation, which is still present in some Member States, prevents effective competition between electricity generators or gas producers, to the detriment of competition at retail level. Price regulation can generate a huge uncertainty on the retailers' cost side, with only small manoeuvrability on the revenue side, which can act as a barrier. In many countries, price regulation is applied to non-vulnerable consumers as well. This hinders the creation of consumer-friendly pricing schemes, thus reducing consumer welfare and supplier's profitability as well. Also, regulated retail prices which do not reflect the wholesale market price do not support demand side response development and do not provide an economic incentive to energy efficient behaviour and technologies. Finally, price regulation is often paired with minimum service obligations, which can be an additional burden to the supplier.

### **Available quantification**

39% of market participants surveyed in 2019 ranked price regulation as a substantial barrier. 41.5% of gas suppliers surveyed in 2019 ranked price or volume risk as a substantial barrier. This can be exacerbated by regulated prices.

### **Analysis**

The barrier stems from **EU legislation leaving flexibility** around interventions in price setting for electricity and gas. The current Gas Directive (2009/73/EC) still provides Member States with broad leeway to apply interventions in price setting in a manner that may disproportionately affect market functioning. However, the recently adopted Electricity Directive (2019/944) introduces a number of provisions to ensure that Member States apply interventions in price setting in a proportionate manner. These rules will need to be transposed before 2021.

## **48. Data critical for operations is difficult to access or of low quality**

### **Description**

Information availability is vital for a profitable operation of a retail business. However, several barriers are a result of some sort of information shortage for the service provider.

The first type of information problem occurs when the potential entrant is not able to gain sufficient knowledge about the markets. The lack of information may not be the result of behaviour that hinders competition, but occurs because of a lack of information-aggregating platforms and procedures.

Many sources show that obtaining information prior entering a market is often difficult. It may only be possible through consultants, who are not aware of the whole picture, but specialised in

several subtopics. Additionally, official documents from the regulator may not contain sufficient information.

Information shortage is especially harmful to the innovative business models. In the electricity sector, sharing information about customers and their smart meter data can significantly help new market entrants and the operation of innovative service models, such as companies offering new types of energy-related services. In the natural gas market, some have argued that the information advantage of network operators prevents other market participants from developing and investing in gas storage.

### **Available quantification**

36% of market participants surveyed in 2019 ranked this as a substantial barrier.

### **Analysis**

As a result of a **limited role of EU legislation** in the area, requirements and procedures are not harmonised. The absence of precise EU rules around non-discriminatory access to data may have contributed to the continued existence of this barrier in the past.

The current Gas Directive (2009/73/EC) still provides Member States with greater leeway concerning access to data. This may disproportionately affect market functioning.

The Electricity Directive (2019/944) introduces general provisions to ensure that Member States create a level playing field for access to data. These rules will need to be transposed before 2021. In addition, the Commission is empowered to adopt implementing legislation for a standardised approach to the provision and exchange of data that makes the market more contestable and efficient.

## **49. Flat taxes and charges reduce importance of price signals for end-users**

### **Description**

Fixed network charges and flat-taxes can reduce the price signals to end customers necessary to incentivise them to vary their consumption according to changes in prices on electricity markets. The perceived lack of accurate price signals could undermine the business case for innovative business models such as demand response aggregation.

### **Available quantification**

35.7% of demand response aggregators surveyed in 2019 ranked flat taxes and charges as a substantial barrier. This exacerbates the lack of market price signals at retail level, which 49% of demand response aggregators ranked as a substantial barrier

## Analysis

This barrier is caused by **limited role of EU legislation** in national indirect taxation regimes for energy, which is in turn the product of a lack of willingness on the part of Member States to tackle market distortions and perverse incentives stemming from the way energy is taxed in a coordinated way. The field of taxation is primarily a prerogative of the Member States.

### Food and beverages

The European food and beverages industry employs 4.57 million people. With a turnover of EUR 1.1 trillion and EUR 230 billion in value added, it is the largest manufacturing industry in the EU. In half of the EU's 27 Member States, the food and beverages industry is the biggest employer within manufacturing.

In the last 10 years, EU food and drink exports have doubled, reaching over EUR 90 Billion annually and contributing to a positive trade balance of almost EUR 30 Billion. EU food products are well known for their high quality and food safety standards.

The single market cannot exist without mutual trust. Harmonised rules for food safety contribute to ensuring this trust and support the functioning of the single market, while also providing a high level of protection to consumers.

Responsibility lies with food business operators to ensure the safety of their products. However, there are agreed indicators to measure such safety. If these indicators are not respected, the placing on the market of the product is blocked.

Such safeguards cannot be seen as a barrier to trade since the prohibition of placing on the market and recalls of affected foodstuffs would be justified on grounds of consumer protection, and to push companies to comply with their responsibility as food business operator vis-à-vis the level of food safety expected in the EU.

Member States' food legislation is therefore highly harmonised and the sector benefits significantly from the opportunities offered by the single market.

A fitness check of Regulation 178/2002 on the General Food Law (GFL)<sup>185</sup> was launched in 2014, covering the period 2002-2013. It examined the Regulation and the implementation of its main elements in other secondary EU legislation. The results showed that the structure of the GFL Regulation as framework provided a common and consistent basis at both EU and national level for the entire food chain including feed. Combined with a great degree of harmonisation in other EU secondary food legislation, it contributed to the effective functioning of the single market by creating a level playing field for all food business operators in the EU market while limiting trade impacts. The sector faces however certain challenges in both international and European markets, which are analysed below.

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<sup>185</sup> [https://ec.europa.eu/food/sites/food/files/gfl\\_fitc\\_comm\\_staff\\_work\\_doc\\_2018\\_part1\\_en.pdf](https://ec.europa.eu/food/sites/food/files/gfl_fitc_comm_staff_work_doc_2018_part1_en.pdf)

## 50. Additional national requirements on food labelling

### Description

Different national rules on food labelling may create obstacles to the smooth movement of food, and by extension, lead to a fragmentation of the single market. In some cases, EU food legislation allows Member States to complement existing harmonised rules. In this context, national initiatives have recently been adopted by Member States in the area of food labelling – and in particular with regard to origin labelling indication<sup>186</sup> and alcohol labelling<sup>187</sup> – that may create barriers to trade inside the EU.

Even voluntary labelling measures can constitute barriers. In one case, a Member State notified the Commission about a voluntary indication. Although it was not presented as a quality label it may potentially have restrictive effects on the actual marketing of foods products.

Regarding alcohol labelling, some of the measures that Member States notified raised concerns as to their compatibility with secondary EU legislation on food labelling. Some examples include a national requirement on nutrition declaration and its presentation.

In addition, national recommendations on front-of-pack nutrition labelling<sup>188</sup>, although voluntary, could create a pressure on EU food business operators to label all products present on the national market with the official scheme promoted by the Member State in question.

National labelling schemes can lead to inequalities in consumer access to information across the EU. Finally, additional national requirements on food labelling could have an effect of boosting domestic production to the detriment of products coming from other Member States.

### Available quantification

The impact of national mandatory schemes on origin and alcohol labelling is difficult to assess at this stage, as they were implemented at different points in time and some of them just started to run or are about to be launched. However, a number of stakeholders presented figures and positions showing that the diversification of requirements in the field of food labelling has already had a negative effect on the EU food chain and constitutes an impediment to the single market.

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<sup>186</sup> Eight MS have launched, or are about to launch, national legislations on origin for certain food products, mainly for milk and milk used in dairy products, but also meat used in processed foods.

<sup>187</sup> Some MS maintained or adopted national measures imposing additional labelling requirements on ingredients or certain ingredients for alcoholic beverages or certain alcoholic beverages and Ireland adopted a measure on mandatory nutrition declaration for alcoholic beverages

<sup>188</sup> There are currently five front-of-pack schemes developed or endorsed by MS: the Keyhole logo (used in SE, DK, LT), the Nutri-Score (used in FR and BE and future implementation announced by DE and ES), the FIN Heart Symbol, the SL 'Little Heart' logo and the CZ 'Healthy Living' logo.

## Analysis

The barrier is caused by **EU legislation leaving flexibility in the level of harmonisation**. At EU level, food labelling is governed by the provisions of the Regulation on the provision of food information to consumer<sup>189</sup>. The Regulation establishes procedures that allow the Member States to have additional labelling requirements for specific categories of foods and for which there are no harmonised rules at EU level. The same Regulation allows Member States to recommend front-of-pack nutrition labelling provided that specific requirements are met.

## Hotels and accommodation

The European hospitality sector is a key contributor to growth in Europe.

According to HOTREC<sup>190</sup>, the European umbrella association of hotels, restaurants and cafes, the sector contributes around 3.7% of the total GDP.

Between 2009 and 2016, the European hospitality sector's turnover increased by more than 35%, reaching a total of EUR 605 billion in 2016. 60% of its value added is generated by SMEs.

The hospitality sector is composed of 2 million enterprises, 90% of which are micro enterprises, among which 200000 hotels.

Hospitality businesses alone provide for 11.9 million jobs directly (high share of young and women), representing 80% of the total EU tourism workforce.

Hotels, restaurants, bars and similar establishments registered an annual 2,9% growth of employment during the first decade of the millennium, compared to 0,7% annual employment growth in the overall economy. The hospitality industry created 1.6 million new jobs between 2013 and 2016.

The hotel sector has significant direct and indirect transversal effects on other economic sectors, including construction, agro-food, transport, retail, etc...

The major megatrends affecting the sector are:

- **Sustainability:** the hotel industry, while being among the leading economic sectors implementing practical steps with regards to resource efficiency, is still a sector of high environmental footprint. Targeted initiatives by the industry in improving sustainable management include water and waste management, energy efficiency and the reduction of food waste.
- **Digitalisation:** the rapid evolution of online hotel booking and review sites have had a strong impact on the industry and now represent a vital part of the hotels' distribution channels. In 2016, 49% of all bookings were made online, through the two major Online Travel Agency (OTAs<sup>191</sup>), which capture 60% of the online bookings market share in

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<sup>189</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004

<sup>190</sup> HOTREC, <https://datas.com/hotrec/hotrec-eu-elections-white-paper/files/assets/basic-html/page-5.html>

<sup>191</sup> Expedia and Booking Holdings (formerly Priceline) groups

Europe. One study shows that independent hotels make up 67% of total room supply in the EU and that 71% of their online bookings are made through online platforms<sup>192</sup>.

- New business models: responding to customer demand, the appearance and rapid evolution of the new business models of the collaborative economy in the tourism accommodation sector has brought significant changes to the overall hospitality and accommodation market and the entire tourism value chain.
- Skills and competences of the sector: while the hotel sector offers employment opportunities for people with all education levels, it has difficulty in finding and retaining professionals with the right skills. It calls for stronger strategy and better cooperation between the industry, public authorities and academia in closing the skills gaps, reinforcing vocational education and training and apprenticeships<sup>193</sup>.
- Hotel classification schemes – quality of service: the hotel classification schemes or “stars system” – intended to communicate to customers about the quality of the hotel and its services offered – is defined at national level. While many similarities exist, discrepancies have been detected between the MS systems. The industry has made significant efforts to bring consistency into hotel stars at EU level<sup>194</sup>- with limited results.

## 51. Authorisation and registration requirements for hotels or other accommodation providers and related detailed requirements

### Description

In most EU Member States, there are authorisation or registration requirements applicable to hotels and other types of accommodation providers. This may include either an authorisation by a competent authority (i.e. getting a licence) or a registration in the relevant register, without which the hotel or other accommodation provider is not allowed to start operations.

### Quantification

*No quantification is available*

### Analysis

**Inadequate implementation of EU legislation:** The tourism sector and in particular the hotels and accommodation sector is covered by the Services Directive. The Services Directive lays down specific rules on the characteristics that the authorisation schemes and registration requirements imposed on the services providers have to comply with. In particular according to

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<sup>192</sup> Source: IA of the P2B Regulation [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469_en)

<sup>193</sup> [https://www.hotrec.eu/wp-content/uploads/2019/09/2019-09-12-Final\\_joint\\_statement\\_labour\\_shortages\\_and\\_skills\\_mismatches.pdf](https://www.hotrec.eu/wp-content/uploads/2019/09/2019-09-12-Final_joint_statement_labour_shortages_and_skills_mismatches.pdf)

<sup>194</sup> <https://www.hotrec.eu/industry-projects/hotel-stars/>

Article 9 of the Services Directive, the authorisation schemes have to be non-discriminatory, justified by an overriding reason relating to the public interest, and the objective they pursue cannot be attained by means of a less restrictive measure. The Directive lays down further rules on the authorisation schemes in Articles 10 to 15.

However, restrictiveness of national requirements shows a significant dispersion across Member States. It evolved over time, being justified by consumer safety and public policy considerations. The particular way in which Member States choose to regulate a hotel or an accommodation provider can be explained by a number of factors, such as business culture, efficiency of alternative means of consumer protection etc. Strong divergences in national regulation may indicate potential for further streamlining and improving the regulatory framework for hotels and accommodation providers.

Information about national rules and regulations on providing services (concerning licences, authorisations, permits, and notifications) will be available online, also in English, through the Single Digital Gateway as of end-2020.

## Industrial machinery

Some barriers are emerging: not yet widely reported by businesses, but possibly becoming important in the future. In industrial machinery, emerging barriers include *missing product and services standards in new technologies such as artificial intelligence and internet of things*. This might increase future compliance costs and create information asymmetry. Specifically, in an Industry 4.0 environment, the lack of access to proprietary interfaces and data formats can make interoperability practically impossible, creating a strong vendor lock-in and reducing competition. Analysis and quantification of this barrier is beyond the scope of this report.

The sector of machinery and equipment sector recorded a turnover in 2017 of EUR 663 bn, production of EUR 609 billion and a value added of EUR 191 billion. The machinery sector employed 2.8 million people in 2017 and registered 82,350 enterprises. The share of persons employed in machinery within total manufacturing was on average 9.9% in the EU in 2017. Specialisation was much higher in Denmark (18%), Germany and Finland (about 15%), Austria and Italy (13%), Sweden, Luxembourg and the Netherlands (about 12%). The least specialised countries were Greece, Lithuania and Latvia (about 3%), Malta and Cyprus (2.5% and 1.7%). In addition, it is a strategic input to important sectors such as automotive and aeronautics. It has the potential to leverage or develop state of the art technologies, such as digital, 3D printing and artificial intelligence.

## 52. Undue additional national markings, standards and requirements

### Description

Some stakeholders report the continued existence of national requirements, i.e. the industrial machinery is required to follow some national standards<sup>195</sup>. Respondents in the context of the evaluation of the Machinery Directive have indicated that national standards still take precedence in certain Member States.

<sup>195</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, pp. 20-21

Similar issues were raised in relation to customer requirements. Examples were given for requests from users in Germany to have the 'GS' mark, which takes priority over the CE marking and customers in France demanding that machines fulfil Apave standards, on top of European standards<sup>196</sup>. Although such approaches are market/customer driven and do not contradict the law, they (may) result in a barrier to trade if the adherence to the national standards becomes uneconomical.

### Available quantification

Only 9% of stakeholders consulted in the context of the evaluation of the Directive in 2018 reported that in the past 5 years the approval of their product in one EU country had not been recognised in another country.

### Analysis

**Inadequate enforcement of EU legislation:** The application of harmonised European standards in the EU harmonised area and national standards for the non-harmonised area should remain voluntary. Rendering voluntary standards mandatory hinders the free movement of goods within the single market.

Furthermore, requesting the compliance with national standards (including by customers) is incompatible with the harmonised area on product legislation. For example, Article 7(2) of the Machinery Directive states *that 'Machinery manufactured in conformity with a harmonised standard, the references to which have been published in the Official Journal of the European Union, shall be presumed to comply with the essential health and safety requirements covered by such a harmonised standard.'* When the reference of European harmonised standards are published in the Official Journal of the EU in support of the relevant EU legislation, the equivalent national standards must be withdrawn. The use of such European harmonised standards enables the free movement of products within the single market. Member States must not demand compliance with national standards when European harmonised standards are used. The EU has developed more than 750 standards for industrial machinery that apply throughout the single market and provide a presumption of conformity. While such instances do occur, they are not a systematic problem and only affect the effectiveness of the Machinery Directive to a limited extent<sup>197</sup>.

However, information about applicable European standards, technical specifications, and product certifications is available on Your Europe. National information will be available online, also in English, through the Single Digital Gateway at the end of 2020.

**EU legislation, using the Directive as legal instrument, allowed flexibility of implementation (leading to partial harmonisation, gold plating):** Most stakeholders consulted for the evaluation of the Machinery Directive<sup>198</sup> highlighted differences in the interpretation/ application of the requirements of the Directive between countries.

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<sup>196</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, p. 21

<sup>197</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, p. 21

<sup>198</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, p. 21



## **53. Uneven market surveillance and enforcement creating uneven playing field for industrial machines**

### **Description**

There is significant variation across Member States in the extent to which inspections lead to a determination of non-compliance – for example 6% in Austria compared with 79% in Denmark. Countries differed not only in the number of inspections carried out and products targeted, but also in their approaches to rectifying measures. Some focus mainly on voluntary measures, while others resort to restrictive measures and sanctions in the case of non-compliance<sup>199</sup>.

Market surveillance and enforcement for the Machinery Directive are generally seen as insufficient and ineffective. Nearly three-quarters of stakeholders consulted in the context of the evaluation of the Directive rated these as having limited or no effectiveness. In addition, the vast majority believed that the number and frequency of inspections are currently too low.

### **Available quantification**

As can be seen in the table below, the average annual number of inspections carried out in 2013 per 100 enterprises varies significantly among the 19 Member States that were involved in the consultation.

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<sup>199</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, pp. 26-27

Table 9 Average annual number of inspections (2010-13) relevant to Sector 9 – Machinery, as a proportion of production value, imports and exports, by country<sup>200</sup>

Machinery	Number of Inspections...	...Per 100 enterprises (2013)	...Per EUR 1bn of production value (2013)	...Per EUR 1bn of import value (2013)	...Per EUR 1bn of export value (2013)
Sweden	1,904	60	91	61	56
Bulgaria	951	109	785	200	263
Poland	884	19	101	22	22
France	727	15	19	7	9
Hungary	570	23	81	20	17
Romania	559	44	206	35	41
Czechia	434	8	38	11	9
Finland	248	17	18	20	20
Slovenia	178	24	130	38	29
Denmark	152	9	9	10	8
Italy	103	0	1	2	1
Belgium	93	7	9	2	3
Estonia	76	51	239	19	21
Cyprus	71	120	1661	133	349
Ireland	52	19	27	5	5
Austria	52	4	3	2	1
Portugal	52	3	23	6	7
Greece	42	2	47	8	21
Latvia	22	13	116	8	11
<b>EU (19 countries)</b>	<b>7,168</b>	<b>13</b>	<b>27</b>	<b>16</b>	<b>14</b>

Sources: Inspections (Report on the Member States – Sector 9 Machinery), Number of enterprises and Production values (Eurostat [sbs\_na\_ind\_r2]), Import / export values (COMEXT EU trade data).

## Analysis

**Inadequate operational implementation of EU legislation:** the main problems and barriers to the effective identification and removal of non-compliant machinery put forward by stakeholders included a lack of resources and funding, as well as a lack of cross-border cooperation, poor targeting of efforts, a lack of staff knowledge/competence and an imbalanced focus on consumer products<sup>201</sup>.

However, it is important to note that the Commission has already addressed most of these issues in the context of the revision of the legal framework for market surveillance. As a consequence, the implementation of the new Regulation on Market Surveillance will strengthen the framework for controls on products, including industrial machinery, entering the single market and should improve cooperation between market surveillance and customs authorities.

<sup>200</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, pp. 26

<sup>201</sup> Evaluation of the Machinery Directive, SWD(2018) 161 final, pp. 27-28

## 54. Different regulatory requirements among Member States for modifying or refurbishing construction and agricultural machinery in use

### Description

The Member States apply different regulatory requirements for machinery in use, which are modified or refurbished.

### Available quantification

Quantification of this barrier is unavailable. Although industrial machines are not usually refurbished, this happens frequently with construction and agricultural machines.

### Analysis

**Limited role of EU legislation:** Member States interpret differently the criteria to consider that a ‘substantially modified’ machine is new. In practice, the Machinery Directive sets requirements for design and manufacturing of machines and does not apply after the placement in the market. The Directive on Work Equipment governs industrial machinery in use/in service. The EU legislative framework does not clarify which directive applies in the event of a *substantial* modification.

The Blue Guide on the free movement of goods has provided some guidance, which states that if the product encounters a substantial modification, it becomes a new product and those that modify the product must go through a new conformity assessment according to the relevant piece of legislation. Some Member States have contested this approach. Discussions on the concept of substantial modification are going on in view of a potential future regulatory framework either general or sectorial.

Information about applicable European standards, technical specifications, and product certifications are available on Your Europe. National information will be available online, also in English, through the Single Digital Gateway at the end of 2020.

## Intellectual property agents

## 55. National entry and exercise requirements for patents and trademark agents

### Description

Intellectual property plays an important role in the single market supporting many important economic activities, including digital services.

Intellectual property agents may face obstacles at different stages of their cross-border operations, both when providing services on a temporary basis and when setting up a business

abroad. This includes many of the cross-cutting horizontal issues described above. More specifically, for **temporary and occasional provision of services**, the principle of free movement of professionals applies and in most cases only allows a prior declaration requirement by the host Member State. However, when **establishing** as self-employed or as a company in another Member State where the profession is regulated, qualification requirements and a range of other restrictions (such as registration with a professional association) might apply. In addition, the so-called **exercise requirements** linked to qualifications can come into play for intellectual property agents (e.g. multidisciplinary practices, corporate form and ownership restrictions).

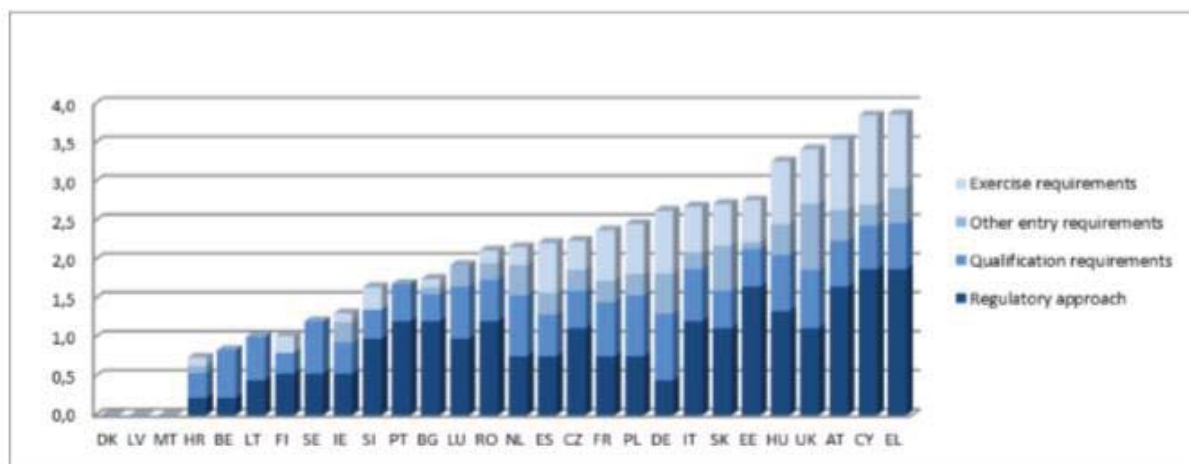
National entry and exercise requirements for the profession of intellectual property agent may thus create important obstacles for firms and individuals in the single market. More details on these are provided below.

Entry to the profession of patent/trademark agent is protected either by a title or a reserve of activities, or both in 24 Member States (all Member States but Denmark, Malta and Latvia). The scope of reserved activities varies across Member States.

Requirements additional to qualification requirements often imposed by Member States include:

- Prior professional experience (required in most MS);
- Professional indemnity insurance (required in 11 MS);
- Corporate structure restrictions (e.g. on legal form, shareholding/voting rights, multidisciplinary practices; exist in 11 MS).

The following graph demonstrates the divergence in intensity and type of requirements imposed in different Member States:



Source: European Commission, November 2016.

Note: European Commission (COM(2016) 820 and SWD (2016) 436). Restrictiveness indicator measures the overall intensity of restrictions in national regulation as regards access to and exercise of certain regulated professions, quantified on a scale from 0 to 6.

More specifically, the categories of restrictions above include:

- **Regulatory approach:** exclusive or shared reserved activities; protection of title.
- **Qualification requirements:** years of education and training; number of pathways to obtain qualifications; existence of mandatory traineeship; obligation to have professional experience to get full capacity; existence of mandatory state exam; continuous professional development obligations.
- **Other entry requirements:** compulsory membership or registration in a professional body; limitation to the number of licences granted; territorial validity of the professional qualification and/or licence; age restriction; other authorisation requirements.
- **Exercise requirements:** restriction on corporate form/type of entity; shareholding requirements; voting rights control; prohibitions on joint exercise of professions;

incompatibilities of activities for a professional; professional indemnity insurance; tariff restrictions; restrictions on advertising.

## **Available quantification**

Based on the Member States' notifications in the EU Regulated Professions Database, there are 22 regulated professions registered under the generic title 'Patent/trademark agent' across the EU.

## **Analysis**

### **Restrictive national regulatory environment (with limited role of EU legislation):**

Professional services can be regulated at EU, national, regional and sometimes local levels. The profession of intellectual property agent is regulated in the majority of Member States. In this context, Member States require a certain level of qualification and usually impose a range of other requirements. However, some of the regulatory requirements and their accumulation can become disproportionate and costly for workers, the self-employed and companies operating cross-border.

As explained in the analysis of the barrier 'Difficulties with accessing a profession', the restrictive regulation across Member States inevitably creates barriers for the mobility of professionals in the single market. The different regulatory approaches taken by Member States have a significant impact on cross-border establishment or provision of services.

Directive 2005/36/EC establishes a system of mutual recognition of professional qualifications and applies to intellectual property agents in order to allow for mobility. The Services Directive (2006/123/EC) also addresses a range of obstacles to free movement of services not covered by other pieces of EU law such as Directive 2005/36/EC on the recognition of professional qualifications. The Services Directive requires Member States to reduce or remove regulatory and administrative barriers dissuading service providers to operate cross-border.

At the same time, the administrative burden on applicants when going through these procedures remains heavy in many cases. Hence, in addition to regulatory complexity (e.g. concerning authorisation procedures and conditions, qualification requirements or requirements related to insurance), the sector encounters administrative complexity including lack of relevant information and of procedures available online.

In 2017, the Commission issued a detailed guidance to Member States on reform needs in regulation of professional services, including patent agent services. Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester.

A directive on a proportionality test before adoption of new regulation of professions or when amending the existing one was adopted in July 2018 and will have to be implemented by Member States by July 2020. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.

Moreover, Directive 2005/36/EC together with the Services Directive (2006/123/EU) require Member States to establish electronic National Points of Single Contact which have to provide access to information on all requirements that providers must comply with when establishing or providing services, including as regards regulated professions, as well as to online procedures for

such requirements, such as e.g. authorisation schemes or the recognition of professional qualifications. Information about European rules on the recognition of professional qualifications is also available on Your Europe. National information and access by electronic means to a range of procedures will be available also through the Single Digital Gateway, including languages understood by cross-border users (like English), at the end of 2020.

## Legal

The provision of legal services is a sector of considerable economic importance. According to Eurostat's Structural Business Statistics, the total turnover in the EU is estimated at roughly EUR 150 billion in 2016. The UK is the biggest national market with a turnover of almost EUR 40 billion in 2016, followed by Germany and France. More than 600,000 enterprises are registered that carry out legal activities in the EU. The sector provides employment to 1.6 million persons. The vast majority of businesses in the sector are thus SMEs (average number of persons employed is 2.6). An important part of the activities of the sector is the provision of services to other businesses (more than EUR 60 billion in 2016 in those countries where data is available). In principle, all other sectors need some form of legal advice. The provision of legal advisory and representation services in judicial procedures concerning business and commercial law is the economically most important activity (more than EUR 20 billion).

## 56. National entry and exercise requirements for legal services

### Description

Legal service providers may face obstacles at different stages of their cross-border operations, both when providing services on a temporary basis and when setting up a business abroad. This includes many of the cross-cutting horizontal issues described above. Both for temporary provision of services and when establishing as a self-employed or as a company in another Member State, the professional title of lawyer is recognized automatically. When **establishing** as a self-employed or as a company in another Member State, the automatic recognition of the professional title of lawyer is regulated. Still, some professional regulation requirements, in particular broad reserves of activities, may create cross-border obstacles. In addition, the so-called **exercise requirements** linked to qualifications can come into play (e.g. multidisciplinary practices, corporate form and ownership restrictions).

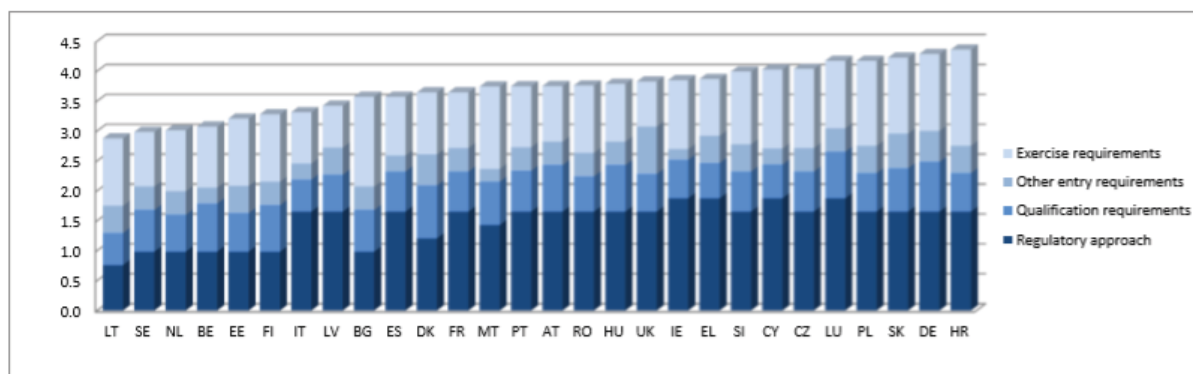
Certain legal professions are regulated in all Member States, which means that in order to practice these professions Member States require a certain level of qualification and usually impose a range of other requirements. Entry to the profession is regulated with a reserve of activities/protected title in all Member States. Member States have adopted different approaches as to the specific activities reserved to lawyers.

Requirements often imposed by Member States include:

- Mandatory registration with a professional body, often through an authorisation procedure (required in all MS);
- Continuous professional development (required in 22 MS)
- Professional indemnity insurance (required in most MS);

- Corporate structure restrictions (e.g. on legal form, shareholding/voting rights, multidisciplinary practices; exist in most MS).

The following graph demonstrates the divergence in intensity and type of requirements imposed in different Member States:



Source: European Commission, November 2016.

Note: European Commission (COM(2016) 820 and SWD (2016) 436). Restrictiveness indicator measures the overall intensity of restrictions in national regulation as regards access to and exercise of certain regulated professions, quantified on a scale from 0 to 6.

The categories of restrictions above include:

- **Regulatory approach:** exclusive or shared reserved activities; protection of title.
- **Qualification requirements:** years of education and training; number of pathways to obtain qualifications; existence of mandatory traineeship; obligation to have professional experience to get full capacity; existence of mandatory state exam; continuous professional development obligations.
- **Other entry requirements:** compulsory membership or registration in a professional body; limitation to the number of licences granted; territorial validity of the professional qualification and/or licence; age restriction; other authorisation requirements.
- **Exercise requirements:** restriction on corporate form/type of entity; shareholding requirements; voting rights control; prohibitions on joint exercise of professions; incompatibilities of activities for a professional; professional indemnity insurance; tariff restrictions; restrictions on advertising

## Available quantification

Based on the Member States' notifications in the EU Regulated Professions Database, there are 42 regulated professions registered under the generic title 'Lawyer/Barrister/Solicitor' across the EU.

Commission analysis indicates that for instance reducing the level of regulatory restrictiveness in the sector of legal services has the potential to increase market entry rates of new service providers by up to 13%.<sup>202</sup>

## Analysis

**Restrictive national rules (with limited role of EU legislation):** Directive 98/5/EC<sup>203</sup> organises the automatic recognition of the professional title of lawyer when **establishing** as self-employed

<sup>202</sup> European Commission, "Business services – Assessment of Barriers and their Economic Impact", 2015

or as a company in another Member State. Additionally, Directive 77/249/EEC<sup>204</sup> ensures the automatic recognition of the professional title of lawyer in another Member State for **temporary and occasional provision of services**. In addition, Directive 2005/36/EC lays out the general principles of cross-border recognition of professional qualifications in case of immediate establishment under the home country professional title.

The Lawyers Directives ensure the automatic recognition of professional title of lawyer across Member States without harmonising the minimum training requirements based on the principle of mutual recognition, leaving certain rules such as restrictions on multidisciplinary practices, corporate form and ownership restrictions, as well as specific activities reserved to lawyers, to be defined at Member State level. Some of the regulatory requirements and their accumulation can become disproportionate and costly for workers, the self-employed and companies operating cross-border. Online information on applicable formalities is often scarce, hard-to-find and predominantly in the local language. E-procedures are only available to a limited extent. Restrictive regulation, notably a broad range of activities reserved to lawyers, may prevent (cross-border) start-ups, especially in innovative services such as 'legal tech'.

In 2017, the Commission issued a detailed guidance to MS on reform needs in regulation of professional services, including legal services. Reforms in professional services are also part of the country-specific recommendations in the context of the European Semester. A directive on a proportionality test before adoption of new regulation of professions or when amending the existing one was adopted in July 2018 and will have to be implemented by Member States by July 2020. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.

The Services Directive (2006/123/EC) also plays an important role, as regards the requirements in scope of that Directive that are not covered by other pieces of EU law such as Directive 2005/36/EC on the recognition of professional qualifications. It addresses a range of obstacles to free movement of services by requiring Member States to adopt reforms aimed at removing or reducing them. These include regulatory barriers but also obstacles of administrative nature dissuading service providers to operate cross-border.

Moreover, Directive 2005/36/EC together with the Services Directive (2006/123/EU) require Member States to establish electronic National Points of Single Contact which have to provide access to information on all requirements that providers must comply with when establishing or providing services including as regards regulated professions as well as to online procedures for such requirements, as e.g. authorisation schemes or the recognition of professional qualifications. Information about European rules on the recognition of professional qualifications is also available on Your Europe.

National information and access by electronic means to a range of procedures will be available also through the Single Digital Gateway, including languages understood by cross-border users (like English), at the end of 2020.

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<sup>203</sup> Directive 98/5/EC organises the automatic recognition of the professional title of lawyer in another Member State in case of establishment. Under that directive, a lawyer qualified in his home Member State and registered there as exercising lawyer can establish in another Member State and practice under his home professional title.

<sup>204</sup> Directive 77/249/EEC organises the automatic recognition of the professional title of lawyer in another Member State in case of temporary provision of services. Under that Directive, a lawyer qualified in his home Member State and registered there as exercising lawyer can provide temporary services under his home professional title in another Member State without any obligation of prior registration.



The pharmaceutical industry alone invests over EUR 35 billion in R&D in Europe, the highest proportion of all industrial sectors. In 2018, the sector registered a EUR 65.3 billion trade surplus and a EUR 172 billion market value, representing more than 650 thousand direct jobs.

### **Challenges on the supply and demand sides**

With an ageing population and a rising burden of disease, medicines are one of the key elements of health policy. Individual patients and health systems overall across the EU expect to benefit from safe, effective, state-of-the-art and affordable innovative pharmaceuticals that address unmet medical needs.

Innovative technologies such as genome editing, digital solutions and artificial intelligence are rapidly transforming the pharmaceutical sector and changing the way medicines are developed and used. Traditional boundaries with other sectors may disappear in the future (e.g. between medicines and medical devices, between products and services). The pharmaceutical industry also shares challenges with other industrial sectors. Examples include the increasing dependency on non-EU countries for supplies (80% of active ingredients come from China and India) and competition with companies operating in jurisdictions with lower environmental or social standards.

The 2016 Council conclusions on strengthening the balance in the pharmaceutical systems in the EU noted “with concerns an increasing number of examples of market failures in a number of Member States, where patients’ access to effective and affordable essential medicines is endangered by very high and unsustainable price levels, market withdrawal of products that are out-of-patent, or when new products are not introduced to national markets for business economic strategies and that individual governments have sometimes limited influence in such circumstances”. The conclusions also highlighted “that the functioning of the pharmaceutical system in the EU and its Member States depends on a delicate balance and a complex set of interactions between marketing authorisation and measures to promote innovation, the pharmaceutical market, and national approaches on pricing, reimbursement and assessment of medicinal products.(...) Several Member States expressed concerns that this system may be imbalanced and that it may not always promote the best possible outcome for patients and society.”

Access to medicines on EU markets is indeed a growing issue that concerns both new and old products. On the one hand, new innovative therapies do not always reach patients due to companies’ marketing strategies, high prices or pricing mechanisms. On the other hand, supply disruptions and shortages of well-established essential medicines have increased in recent years. The reasons for these shortages differ across Member States. Although they affect all EU countries, small markets tend to face these problems more acutely.

### **Specificities of pharmaceutical “goods”**

The pharmaceutical sector is highly regulated. The primary purpose of rules covering the authorisation, distribution and monitoring of medicinal products is to safeguard public health, to improve health outcomes and to ensure the continuous quality, safety and efficacy of medicinal products administered to patients while allowing the free movement and availability of medicinal products. The development of medicines is a lengthy and costly process involving both public and private financing. Obtaining a marketing authorisation is a prerequisite for placing a

pharmaceutical product on the market. The quality, safety and efficacy of pharmaceuticals are continuously monitored over their life cycle and may lead to new evidence that obliges competent authorities and market authorisation holders to react and correct or adjust previous scientific assessments. Production and distribution are subject to thorough quality control and quality assurance requirements. While sometimes decried as barriers, such requirements constitute legitimate and proportionate public health safeguards.

The retail of medicinal products is a national competence, subject to compliance with the Treaty provisions. In many EU countries, only pharmacists are authorised to sell medicines to the public. The Member States choices regarding the organisation of the retail depend on the role of pharmacists in the health system. It is influenced among other things by the availability of medical practitioners or the level of consumption of medicines.

The online sale of medicinal products is limited and regulated in many Member States for the already mentioned public health concerns. When organising the retail of medicines and regulating internet sales of medicinal products, Member States needs to weigh the risk to public health stemming from mis/overconsumption of medicines or the danger of falsified products entering the legal supply chain against the free movement of goods principle.

## **57. Restrictions to e-commerce of medicines based on health grounds**

### **Description**

Currently, most Member States restrict the supply via the internet of medicines. The restrictions concern mostly the supply of prescription medicines, and aim to fight, among other things, the abuse, misuse, and falsification of medicines. Such restrictions need to be justified on public health grounds, and not unduly restrict the functioning of the internal market. The risk of falsified products entering the supply chain is real and well documented. It constituted one of the key reasons for the European Commission to propose the Directive on Falsified Medicines<sup>205</sup>, which introduced a series of measures aiming to safeguard the functioning of the internal market for medicinal products, whilst ensuring a high level of protection of public health against falsified medicinal products.

### **Available quantification**

The risk of falsification affects all medicinal products and is significant. Between April and October 2018, Europol seized 13 million doses worth of around EUR 165 million in the context of the 'MISMED 2' operation targeting the illegal trafficking of medicines throughout Europe.

### **Analysis**

The root causes of this barrier are **complex EU legislation and requirements justified by public policy reasons** (specifically, protection of patients and public health). Medicines are clearly not a

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<sup>205</sup> Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products, OJ L 174, 1.7.2011, p. 74

product like any other. Medicines address necessary vital needs that might involve life and death stakes. The free movement of medicines needs to take into account their particular nature, for instance the requirement of an authorisation for the market of a Member State in question. These products are not freely available, but subject to the prescription of the physiologist treating a particular patient, and available to them via a regulated supply chain. The beneficial effect of medicine will only be achieved if a proper posology is followed, which can be ensured by the advice of pharmacist. This is particularly the case for medicines available over the counter. The Falsified Medicinal Directive minimises the risk of falsified medicines entering into the legal supply chain via the internet by introducing an EU-wide logo to identify legal online pharmacies and setting specific monitoring conditions on pharmacies engaged in such activities. Lack of proper information in Member States on the logo, together with insufficient enforcement, constitutes a risk. Fake online pharmacies may use the logo with a flag of a Member State unlikely to take action against such a pharmacy. If at the same time patients are not properly informed on how the verification mechanisms of the logo works, the logo may provide false reassurance and defeat its original purpose. The purpose is to safeguard the functioning of the internal market for medicinal products, whilst ensuring a high level of protection of public health against falsified medicinal products. Specific conditions regarding the storage or transport of certain medicines may also justify online retail supply restrictions.

The online supply of medicinal products (both prescription and over the counter) is covered by various pieces of secondary Union legislation and, ultimately, by the Treaty provisions on the free movement of goods (Art. 34-36 TFEU). As an information society service, the online supply of medicinal products is subject to Directive 2000/31/EC<sup>206</sup> (e-commerce), which subjects the restriction to providing such services to a certain number of conditions. Directive 2001/83/EC<sup>207</sup> subjects the entitlement to supply medicinal products via the Internet to the legislation of the Member State of establishment. Medicinal products sold online have to comply with the legislation of the Member State of destination. Member States may impose additional conditions for the retail supply of medicines sold by Internet on their territory if justified on public health grounds, in the light of the jurisprudence developed by the Court of Justice under Articles 34-36 TFEU. Directive 2001/83/EC recognises the Member States' competence to limit the internet sales (or distance sales) of medicines to those that do not require a prescription (i.e. 'over the counter') only for reasons of public health protection. In order to minimise the risk to public health due to falsified medicines entering into the legal supply chain via internet the Falsified Medicines Directive introduced a common, EU-wide logo to identify legal online pharmacies.

## **58. Restrictions regarding the establishment, ownership and advertising of pharmacies and health care service providers**

### **Description**

Pharmacies face requirements prescribing a minimum distance between pharmacies and a minimum number of inhabitants of areas where a new pharmacy can be set up (geographical and

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<sup>206</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ L 178, 17.7.2000, p. 1

<sup>207</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, OJ L 311, 28.11.2001, p. 67

demographical restrictions). For example, some Member States set the minimum unit of population required for the opening of a pharmacy, as a general rule, at 2 800 inhabitants per establishment and the minimum distance between pharmacies at 250 metres. In detail, these general provisions are usually more nuanced.

Member States also regulate the ownership of pharmacies (restrictions on who can own and operate a pharmacy and how). According to the case-law, Member States are entitled to require that medicinal products be supplied by pharmacists enjoying genuine professional independence. Some Member States stipulate that only pharmacists may own and operate a pharmacy, sometimes also limiting the number of pharmacies that can be owned by a single pharmacist to four. Other Member States prescribe that pharmacies should be at least controlled by pharmacists (51% of shares). Moreover, in some Member States pharmacies cannot be owned by wholesalers, doctors or producers of medicine to exclude any potential conflict of interest.

Lastly, there are also bans on advertising in the healthcare sector, including pharmacies (cf. Burdensome advertising restrictions). For example, some Member States prohibit advertising of pharmacies and their activities. Pharmacies can communicate only their address and opening hours, which considerably limits their possibilities to inform patients about their services.

Other Member States ban in a similar way professional communication by dentist or doctors. These medical professions are only allowed to make themselves known to their potential clientele, affixing a plaque at the place of practice. In those Member States, doctors or dentist cannot use any other type of media (print, internet) for advertising.

### **Available quantification**

No quantification available.

### **Analysis**

Some national regulations restrict the establishment and ownership of pharmacies or impose limitations in terms of advertising. There are also restrictions as regards healthcare service providers.

The CJEU has accepted that restrictions on a minimum distance between pharmacies and a minimum number of inhabitants of areas where a new pharmacy can be set up can be justified, when they allow for an even distribution of pharmacies and their services across the country and if they pursue this objective in a coherent manner.<sup>208</sup> Whether such a barrier to the single market is justified will thus depend on the geographical structure of the Member State concerned, such as the existence of isolated areas and the distribution of population.

As regards ownership of pharmacies, the Court of Justice has held that such a restriction could be justified in the light of public health. It concluded that there is a risk that legislative rules designed to ensure the professional independence of pharmacists would not be observed in practice, given that the interest of a non-pharmacist in making a profit would not be tempered in a manner equivalent to that of self-employed pharmacists. The fact that pharmacists would work as

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<sup>208</sup> CJEU case C-570/07 and [571/07](#), *Blanco Perez and Chao Gomez*, ECLI:EU:2010:300.

employees under a non-pharmacists operator could make it difficult for them to oppose profit-driven instructions (and protect the interest of the patient).<sup>209</sup>

With regard to advertising restrictions, the Court of Justice has held that Article 8(1) of Directive 2000/31/EC on electronic commerce precludes national legislation, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, in as much as it prohibits any form of electronic commercial communications, including by means of a website. In the same vein, Article 56 TFEU precludes national legislation, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services<sup>210</sup>. The Court has considered such general bans on advertising disproportionate.

Member States can introduce restrictions with regard to health care services provided that they are applied in a non-discriminatory manner, justified by overriding reasons of general interest (for example the protection of public health) and proportionate; which means these restrictions need to be suitable for securing the attainment of the objective which they pursue, cannot go beyond what is necessary to attain it, and are pursued in a consistent and systematic manner. Article 168(7) TFEU grants Member States the responsibility for the definition of their health policy and for the organisation and delivery of health services and medical care. Nevertheless, in doing so, they have to respect the fundamental freedoms of the Single Market. It should be noted that the establishment of pharmacies or advertising by health care professionals are issues not covered by the Services Directive (Article 2f on exclusion of health care services). In recent years, the Court has delivered several judgments related to restrictions on the establishment of healthcare operators. In these decisions, the Court confirmed that EU law does not detract from the power of Member States to organise their health and social security systems and to adopt, in particular, provisions governing the organisation and provision of health services and medical care, as long as they comply with the principles of non-discrimination and proportionality.<sup>211</sup>

In this context, a Directive on a proportionality test<sup>212</sup> before adoption of new regulation of professions or amending the existing rules was adopted in June 2018. It requires Member States to undertake an assessment of proportionality in accordance with the common framework laid down in this Directive before they introduce new, or amend existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions. This would cover not only rules concerning professional qualifications but also requirements related to establishing pharmacies, such as territorial restrictions or ownership requirements, as well as advertising restrictions.

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<sup>209</sup> CJEU cases C-531/06 *Commission/Italy*, and C-171/07 and C-172/07 *Apothekerkammer des Saarlandes ao.*,

<sup>210</sup> CJEU case C-339/15 *Luc Vanderborght*.

<sup>211</sup> CJEU cases C-169/07 *Hartlauer*, C-367/12 *Sokoll-Seebacher*, C-171/07 and C-172/07 *Apothekerkammer des Saarlandes ao*, C-570/07 and 571/07, *Blanco Perez and Chao Gomez*, and C-339/15 *Vanderborght*.

<sup>212</sup> Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, *OJ L 173, 9.7.2018, p. 25*

## 59. Labelling language requirements

### Description

Article 63 of Directive 2001/83/EC requires that the labelling of a medicinal product shall appear in the official languages of the Member State where the product is marketed as specified by that Member State.

### Available quantification

This requirement applies to all marketing authorisations, i.e. all medicines placed on the market. It is worth noting in this context that 80% of EU citizens already search for health-related information on the internet.

### Analysis

Even though this requirement is due to the need for patients and healthcare professionals to have easy access to clear and understandable information on the product, this has been identified as a barrier as the current rules focus on information to patients through printouts and do not reflect technological possibilities to provide the same information in an electronic format. A better integration of such possibilities may reduce the burden on businesses when marketing the product and supporting a more flexible re-allocation of products to meet demand throughout the single market, provided that "non-digital natives" will continue to have access to information in the language they need.

The European Medicines Agency is currently conducting a study on electronic product information, which may provide additional data regarding the burden imposed by the current language requirements.

The barrier relates to the aim of ensuring that patients in a given Member State can easily understand how to use a medicine as well as its benefits and risks. Medicines contain active substances that provide a therapeutic benefit as primary effect but can also generate side effects. Inappropriate use can have disastrous consequences, at the level of the patient or the population as a whole (e.g. development of resistance to antibiotics).

## Retail

The retail sector represents 4.5% of GVA (2015) and 8.6% of employment in the EU.

Its importance is even more visible when combined with the wholesale sector. The two together produce 10% of EU value added and employ 13% of the total workforce. Retail is also very important for youth employment (around 13% of retail employees are in the 15-24 age range). For many, this is the first job. From all young people employed, 21% worked in retail and wholesale, compared to 14% of people between 25 and 49 years old and 12% for people between 50 and 64 years old.

Nearly 5.5 million (23% of all non-financial business economy) companies are active in the EU retail and wholesale sectors (3.6 million in retail and 1.8 million in wholesale, 2015). Most of them are SMEs, which also generate 66% of the sectors' value added and 70% of employment.

For all SMEs active in the non-financial sector, 22% of value added comes from retail and wholesale enterprises (compared to 20% by manufacturing and 11% by construction firms, 2015). Running a shop seems to be the most common type of a family business – the number of SMEs per 100 inhabitants was largest in distributive trades and accounted for 1.2 company on average in the EU.

Retail is important to the single market not only due to its size but also because of its linkages with other sectors of the economy - the wholesale sector, manufacturers of certain products (designed for final consumption), farmers, as well as providers of relevant services (e.g. transportation, logistics, or business services). Because of those links, regulatory restrictions in retail account for as much as 32% of all services market related restrictions that are carried over to other sectors.<sup>213</sup>

**The digital transformation is one of the key trends in the retail sector.** This brings both new opportunities as well as challenges for businesses. E-commerce has become a fact of life for most EU consumers: 7 out of 10 internet users made online purchases in 2018, an increase from 5 out of 10 internet users in 2008. However there are big divergences among the Member States – 86% of internet users in Denmark were shopping online, while in Romania for instance only 26%. In 2017, only 19.5% of all companies (with at least 10 employees) were selling online<sup>214</sup> and e-commerce accounted for 17.4% of the total turnover of companies. The share of those planning to start selling online stagnates at less than 20%.<sup>215</sup> Most EU retailers already selling online plan to continue doing so over the next 12 months (91% in 2018). Less than a fifth (18.4%) of those that only sell in shops show an interest in trading online in the coming 12 months - a proportion that has been declining in recent years - indicating that EU businesses have still to embrace the digital age.

The retail sector has important role in sustainability. Whether brick-and-mortar or e-commerce, or both, a retailer has to respond to consumer needs, which are turning towards environmental and social sustainability. Retailers are proving to be creative and inventive in their sustainable development aspirations, including through reducing single-use packaging, reducing food waste and sourcing in a responsible way.

## 60. Restrictions on retail establishment

### Description

Businesses often have to follow lengthy procedures and meet extensive requirements to establish a new shop. This can be especially burdensome because retail establishment is regulated differently in different Member States. In addition, retail establishment is often regulated at regional and local level which increases the level of complexity and the risk of unlawful requirements.

In some cases, opening a shop means meeting many requirements. These include authorisation and planning permits (depending on shop size), location-specific rules or size limits (bans on

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<sup>213</sup> European Commission DG Internal Market, Industry, Entrepreneurship and SMEs, *Background documents for the European Semester (2018) The EU retail sector.*

<sup>214</sup> E-sales data refer to both business-to-business and to business-to-consumer transactions (source: Eurostat, online data code: isoc\_ec\_eseln2).

<sup>215</sup> Consumer Conditions Scoreboard 2019

opening shops above certain sizes in certain locations), rules on the range of products sold (due to rigid local planning), impact assessments (traffic, employment, retail etc.) to be carried out by the applicant, or requirements for economic data.

Procedures for opening a shop can be lengthy. Theoretically, deadlines to complete the formalities range from 1 to 12 months. However, in practice, retailers face procedures of much longer duration.

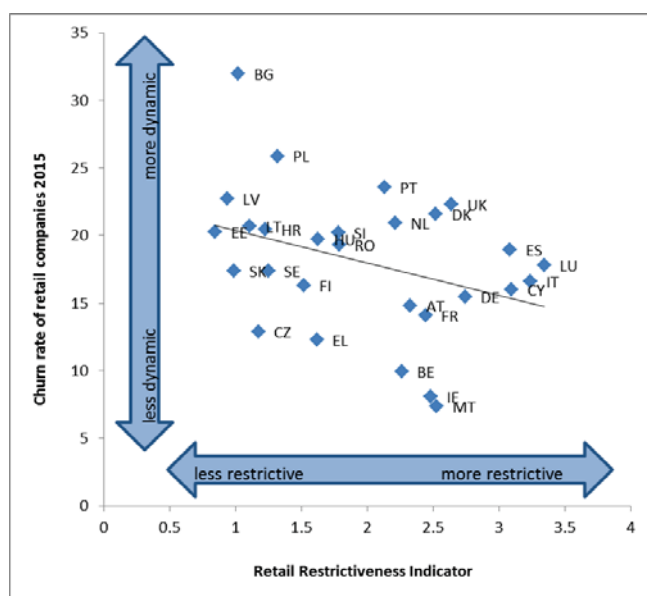
This burden may make it difficult or even impossible for some businesses to open a shop. Restrictive requirements have a negative impact in particular on market structure and dynamics. They may influence a retailer's decision on market entry, the location of the shop, its size, format and assortment.

Even when such regulations do not prevent market entry as such, they may hamper the ability of businesses to adjust to consumers' preferences and to successfully compete on the market. Such regulations may also have a discriminatory effect on foreign companies if they target formats and sizes more common abroad.

### Available quantification

Retail establishment requirements occur in all Member States, but their extents differ. In the most restrictive Member State, the accumulation of particular restrictions can lead to a restrictiveness level four or five times higher than in the least restrictive Member State (according to the Commission's retail restrictiveness indicator).

There is a significant impact of establishment restrictions on the performance of retailers as well as on consumers. This is shown by an analysis of links between the retail restrictiveness indicator and economic outcomes. In Member States with higher establishment restrictions, fewer new retail companies enter and leave the market and market concentration and consumer prices are higher.



Source: Own calculations based on information collected from Member States, from Eurostat and through dedicated studies<sup>216</sup>

<sup>216</sup> Data for the RRI reflect the state of play for 2017. In some cases, when important changes took place after December 2017, the information has been updated and taken into account in the scores. The most recent data from Eurostat available at the time of the analysis is for 2015.



## Analysis

This barrier is mainly caused by a **restrictive national rules and limited role of EU legislation, administrative capacity and practices, and requirements justified by public policy reasons**. Regulatory barriers may result from a lack of proper implementation of EU law and in particular the Services Directive.

Very often, retail establishment is regulated at regional and/or local level. These regulations typically aim at a number of territorial policy objectives (such as town and country planning) that, although legitimate and well grounded, can lead to inefficient fragmentation of the market. There is some evidence that different Member States aim at the same policy objectives using less restrictive measures. This suggests that there might be scope for further policy convergence while fully respecting public policy priorities.

The Commission Communication “A European retail sector fit for the 21<sup>st</sup> century” encourages Member States to assess their existing regulatory frameworks to make sure they are non-discriminatory, duly justified and proportionate and are effective for the public objectives pursued. Additionally, examples from some Member States indicate that there is scope for improvement for Member States with restrictive regulations.

## 61. Restrictions on retail operations

### Description

Operational restrictions affect severely the day-to-day business activities of off-line retailers, putting them often at a disadvantage vis-à-vis online players. There are big differences in operational restrictions across the EU. They typically include regulated opening hours, product-specific sales restrictions (e.g. non-prescription or over-the-counter medicines), restrictions for sales, promotions and discounts, retail-specific taxes and fees. In a few cases, there are also obligations direct or indirect to source a certain share of products nationally, in order to promote national supply chains.

There are also non-regulatory operational restrictions, which stem from (possibly unfair) contractual relations between private operators. These include for instance territorial supply constraints, which force retailers to source products domestically from a specific national subsidiary.

As result, consumers in some Member States might be worse off in terms of choice of products and their prices. This issue is the subject of a Commission study launched in September 2019.

### Available quantification

The relevance of the barriers above varies substantially across Member States, across firm size and across sub-sectors. The retail restrictiveness indicator is a useful tool for monitoring Member States' efforts in reducing retail restrictions.

According to numerous studies, liberalisation of shop opening hours led to an increase in shops' turnover and the sector's employment. It is also likely to influence the employment structure, providing new work possibilities for certain groups of employees such as young people or those engaged in other activities most of the time (students, part-time workers, parents taking care of

young children). Highly restricted shop opening hours also have a negative impact on consumer welfare.<sup>217</sup>

Studies have also shown that prices of non-prescription medicines are higher in countries where their distribution is restricted and they are only sold in pharmacies.

Rules regulating sales promotions and discounts limit retailers' ability to optimise their stock, to correspond to their customers' needs and, more generally, to freely choose their marketing and pricing strategy for maximising profits. This also harms consumers' economic interests.<sup>218</sup>

In countries where a retail-specific tax applies, the tax burden of it is born only by brick-and-mortar retailers as it is usually based on selling space. This does not help offline retailers to compete with the online ones on an equal footing. The existing retail taxes fall more heavily on big companies as they start from a certain threshold. This might deter companies from increasing selling space or turnover, or even from entering the market. Apart from that, a retail-specific tax increases costs of operation of a retail company.

Operational restrictions imply on retail companies direct costs of compliance. Results of a survey<sup>219</sup> suggest that the smallest retailers bear the highest costs: 3.5% of turnover for micro enterprises, 0.36% for small enterprises, and 0.1% for medium enterprises. The total monetary burden linked to the cost of compliance with relevant regulations varies across countries and across companies of different sizes, but to a lesser extent across different types of retailers.<sup>220</sup> The overall monetary value of the compliance cost borne by retail firms is estimated at EUR 26.7 billion, which to a large extent falls on micro companies.<sup>221</sup>

## Analysis

This barrier is caused by **restrictive national rules and limited role of EU legislation, administrative capacity and practices**, and **causes not linked to public policy** (cultural differences, consumer preferences). Regulatory barriers may result from the lack of proper implementation of EU law. Best practice examples from some Member States indicate that there is scope for improvement for countries with restrictive regulations.

The Retail Communication sets out legal guidance and best practices to help public authorities assess their regulatory frameworks and identify possible less restrictive measures. In pursuing their policy objectives, Member States and local administration need to ensure that the measures affecting the retail sector and the products sold are non-discriminatory, duly justified and proportionate. They are also encouraged to ensure that these measures are effective for the public policy objectives pursued, address their concerns in a proportionate way, and are fit for the quickly changing retail environment and the free movement of goods.

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<sup>217</sup> A European retail sector fit for the 21st century {COM(2018) 219 final} - {SWD(2018) 237 final}

<sup>218</sup> OECD Economic surveys, Greece, 2016; OECD Economic surveys, France, 2015; after SWD(2018) 237 final

<sup>219</sup> A survey of 1455 retail companies (of different size categories, selling different types of goods, and active both on-line and/or off-line) was carried out in 28 EU countries; LE Europe, Spark Legal Network and Consultancy, VVA Consulting (2018) Operational restrictions in the retail sector, study carried out for the European Commission.

<sup>220</sup> As a percentage of turnover, it seems to be the highest in Portugal, Poland, Latvia, Romania, France and Austria, and the lowest in Luxemburg, Ireland, Malta, Denmark and Belgium.

<sup>221</sup> A European retail sector fit for the 21st century, {COM(2018) 219 final} - {SWD(2018) 237 final}

## 62. E-commerce: complexity and uncertainty of applicable rules for cross-border sales and purchases

### Description of the barrier:

In practice, business often face difficulty in knowing which national consumer laws apply. Criteria triggering regulatory/consumer protection obligations and jurisdiction in the country of destination of the trade/services are not always clear/consistent (including VAT requirements, consumer protection, goods requirements, extended producer responsibility and waste management, etc...). All these different criteria add complexity to the legal framework applicable to a cross-border provider/retailer.

The E-commerce Directive sets forth a country of origin principle (not applicable to goods, however) subject to possible derogation in individual enforcement cases (including in particular consumer protection). Also, in this case, the identification of possible derogation from the country of origin principle only applies *ex post* and adds to complexity.

### Available quantification

Cross-border trade is still less developed than domestic trade: approx. only a third of on-line consumers and a third of retailers respectively buy and sell abroad<sup>222</sup>. Compliance with different tax regulations and consumer protection rules often feature among the most important obstacles for cross-border sales<sup>223</sup>.

### Analysis

Member States have an incentive to ensure that consumer protection rules/safeguards are fully enforced in the Member State of destination of the goods/services. In this regard, EU legislation follows different criteria subject to different interpretation and/or not always consistent approaches (targeting of consumers vs country of origin/mere establishment).

International private law is based on the concept of “targeting the Member State of the consumer” which triggers the application of consumer protection contractual clauses and jurisdiction in the Member State of the consumer. This concept was interpreted very extensively by CJEU case law (Alpenhof judgement), so that any kind of on-line cross-border trade may even inadvertently trigger the application of country of destination provisions. Other pieces of legislation provide for different criteria (e.g. electric waste management obligations based on “placing in the market” or Extended Producer Responsibility), which also trigger compliance with national schemes/requirements by the trader. Similarly, VAT requirements (including

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<sup>222</sup> In 2018 88% of e-shoppers made on-line purchases from sellers in their own country, while 36% bought online from sellers in other EU countries. A further 26% made purchases from sellers outside the EU. On the seller side, in 2016, 36% of EU retailers were selling through e-commerce and yet only 11.2% sold to consumers located in other EU countries (Consumer Conditions Scoreboard 2017)

<sup>223</sup> E.g. Retailers’ attitudes towards cross-border trade and consumer protection 2016 – Study for DG JUST, where they feature respectively second and third most prominent obstacle (immediately after debt recovery). The share is even higher for trade of goods See also Eurocommerce survey on cross-border obstacles <https://www.ecommerce-europe.eu/wp-content/uploads/2016/07/Research-Report-Cross-Border-E-commerce-Barometer-2016-FINAL.pdf>

registration) in the host MS are automatically triggered when selling cross-border. Other national requirements concerning goods (such as labelling) may also be triggered on the basis of different criteria.

The Services Directive requires Member States to abstain from imposing their own requirements on incoming service providers except where they are justified by a limited number of public policy objectives spelled out in Article 16 of the Directive. Restrictions imposed on e-retailers need also to be assessed in the light of this provision.

In addition, the Commission's competition law enforcement action contributes to tackle cross-border trade restrictions and geo-blocking practices when they are the result of businesses' private behaviour rather than regulation. Recent competition cases in this regard where the Commission has fined the companies for such anti-competitive behaviour concern four consumer electronics manufacturers (Asus, Denon & Marantz, Philips and Pioneer), The US clothing company Guess, and three brand-owners and licensors of rights for merchandising products (Nike, Sanrio and Universal Studios).

## Transport

**Transport is a fundamental sector for and of the economy.** Transport services embrace a complex network of around 1.2 million private and public companies in the EU, employing around 11 million people and providing goods and services to citizens and businesses in the EU and its trading partners. The transport sector represents more than 5% of total employment and almost 5% of GDP. Transport also provides mobility for Europeans, thus contributing significantly to the free movement of persons within the single market.

**Efficient transport services and infrastructure are vital to exploiting the economic strengths of all regions of the European Union, to supporting the single market and growth,** and to enabling economic and social cohesion. They also influence trade competitiveness, as the availability, price, and quality of transport services have strong implications on production processes and the choice of trading partners. With such a central role, transport is by definition also inter-related with various policy areas, such as environmental and social policies.

**In this context, the contribution of transport policy to the competitiveness of EU industry is also crucial.** Not only does a well-functioning infrastructure network and a high level of connectivity contribute directly to the competitiveness of the manufacturing industry through the optimisation of logistical services and supply chains, transport policy also shapes the overall framework in which transport users and service providers can operate. Transport legislation sets technical and operating standards to ensure safety and minimise the environmental burden, and manufacturers must comply with these. Having standards that are harmonised at EU level is crucial for a well-functioning single market. Therefore, the single market for transport equipment goes hand-in-hand with the Single European Transport Area – the single market for transport services.

**The main challenges for the transport sector in the EU include the continuation of the integration of a well-functioning Single European Transport Area, connecting Europe with modern, multi-modal and safe transport infrastructure networks, and shifting towards low-emission mobility,** which also involves reducing other negative externalities of transport, such as greenhouse gas emissions. From a social perspective, affordability, reliability and accessibility of transport are key. Addressing these challenges will help pursue sustainable growth in the EU.

Some additional barriers are emerging: not yet widely reported by businesses, but possibly becoming important in the future. In transport, emerging barriers include:

- *Introduction of a new approach to aviation safety regulation* which would be based on risk and performance.
- *Lack of common interoperable standards and common rules for certified drone operations.* This might increase compliance costs and create legal uncertainty.

Analysis and quantification of these barriers is beyond the scope of this report.

### **63. Information on market opportunities: difficulty for small road transport operators to have access to market information (market opportunities)**

#### **Description**

**Small operators involved in international road transport have more difficulties in getting access to information about demand for transport services** abroad than well-established larger operators. Often they end up working in sub-contracting chains for intermediaries (freight forwarders) who have better access to market information.

#### **Analysis**

This barrier is a national competence. Business actors looking for transport services are not obliged to publicize their demands.

This barrier is unrelated to EU or national legislation.

### **64. Information on market opportunities/network: lack of information on service facilities and services offered to railway undertakings**

#### **Description**

In order to provide transport services, rail undertakings need not only to be able to run through the rail network but also to use some service facilities. Stations for allowing passengers to step in and off the trains, freight terminals to load and unload goods, marshalling yards for train composition and maintenance, refuelling and cleaning facilities for the proper functioning of wagons and locomotives.

For railway undertakings and freight forwarders, information about services facilities and availability of services provided therein is fundamental for an effective planning of their journeys. However, the service facilities' market is quite fragmented. Together with the main infrastructure managers and railway undertakings, these facilities are owned and managed by a significant number of small and medium enterprises. This is true also for the services offered within such facilities. Finding the (correct) information from such a multitude of providers proves to be very challenging.

## Available quantification

There are no comprehensive figures on rail service facilities. The 2016 study “User-friendly access to information about last-mile infrastructure for rail freight”<sup>224</sup>, identified 22 thousand access points to rail freight. The vast majority (more than 70 %) are private sidings, followed by stations with public sidings, intermodal and conventional rail terminals. The European Rail Facilities Portal<sup>225</sup> provides a limited sample of more than 5,200 facilities and sidings (end of January 2020), which demonstrates the complexity of the issue in terms of the numerous types of facilities and services and differences in ownership and level of detail of the available information.

The Portal contains data on passenger stations, intermodal terminals, multifunctional rail terminals, marshalling yards, maintenance facilities, refuelling facilities, mobile service providers, public and private sidings, storage sidings and other facilities (with more facility types available). The entities providing the descriptions to the Portal include service facility operators, infrastructure managers, port authorities, rail freight corridors, transport operators, etc., demonstrating the variety in ownership schemes and information sources.

## Analysis

The existing mapping all rail service facilities and the current provision of key information about them have been deemed inadequate by different sources, therefore constituting a significant barrier to the efficient planning of rail services, in particular across borders.

In addition, existing discriminatory practices in the facility market such as high charges, refusal of access by pretending that the facility is full, intentional low quality of services can constitute additional barriers. The European Rail Freight Association (ERFA) considers that transparent access conditions, pricing and clear procedures for handling requests and solving conflicts could actually optimise the effective use of service facilities<sup>226</sup>. Also Allrail, the association representing new entrants into the rail market, welcomed actions improving transparency and fair access to service facilities in Europe<sup>(227)</sup>.

The Commission implementing Regulation (EU) 2017/2177 aims at eliminating these barriers by repeating the obligation upon service providers to establish and publish a service facility description, by providing a detailed list of information that service facility operators must make publicly available, thus ensuring the completeness of the information provided, and by laying down the details of the procedure and criteria to be followed for access to service facilities and to the services supplied therein as listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU.

Concerning the publication of a service facility description, the Regulation allows service providers to choose their preferred solution among three options:

- by publishing the information on their own website and providing the infrastructure managers with a link to be included in the network statement;
- by providing the infrastructure managers with the relevant ready-to-be-published information to be included in their network statement; or

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<sup>(224)</sup> <https://ec.europa.eu/transport/sites/transport/files/2016-11-last-mile-gis-final-report.pdf>

<sup>(225)</sup> <https://railfacilitiesportal.eu/>

<sup>226</sup> [http://www.erfarail.eu/uploads/ERFAs\\_inputs\\_-\\_Access\\_to\\_service\\_facilities.pdf](http://www.erfarail.eu/uploads/ERFAs_inputs_-_Access_to_service_facilities.pdf)

<sup>227</sup> <http://allrail.eu/wp-content/uploads/2017/10/050717-ALLRAIL-Decisions-of-ECJ-and-ACM-for-a-competitive-rail-market-05.07.2017.pdf>

- by publishing the information on a common web portal and providing the infrastructure managers with a link to be included in their network statement.

Under the third option, the EU Commission developed and, in June 2019, launched the European Rail Facilities Portal, with the aim of offering an easy and user-friendly access to information about rail freight facilities all over Europe. It is a GIS-based portal, mapping and providing information on all types of rail service facilities (e.g., train stations, intermodal terminals, marshalling yards, refuelling facilities) and information on private branch lines and sidings all over Europe. It also provides information on the availability of rail-related services (e.g. locomotive repair and maintenance, refuelling and customs clearance). The Portal allows users to easily search for specific types of rail facilities or services by using exhaustive pre-defined categories that filter the information, such as types of equipment, types of loading units accepted at the facility, types of cargo, etc. It is possible to search in a particular geographical area by using the map zoom-in tool, by typing in a postcode, by filtering facilities located on any of the Rail Freight Corridors.

As the use of the Portal is optional, the challenges now are to convince service facility operators to publish the descriptions on the Portal and to develop its functionalities, in order to ensure also easy and transparent access to information on capacity availability. The Commission is working on the project together with rail stakeholders.

The Rail Freight Corridors Regulation <sup>(228)</sup> addresses the issue of information on rail facilities on the corridors by requiring the publication in one place for each corridor of a list and the characteristics of terminals, in particular information concerning the conditions and methods of accessing the terminals.

## **65. Lack of information on posting rules, enforcement and road traffic restrictions**

### **Description**

Operators involved in international transport and carrying out operations in several MS have difficulties in accessing information on posting of workers rules in road transport, different national enforcement practices (e.g. different penalties for similar infringements) and different traffic restrictions (e.g. in some MS trucks cannot use roads on Sundays and holidays; different holidays in different MS, etc.).

### **Available quantification**

Quantification not available.

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<sup>228</sup> Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight.

## Analysis

Member States have competence to define national holidays. In the absence of common EU rules on traffic restrictions and posting, Member States keep the right to implement different national rules.

In terms of enforcement and penalties, Member States have to apply the principles of proportionality and non-discrimination. However, they keep the right to have different levels of sanctions.

Information on posting rules, traffic restrictions and level of sanctions is often available only in the national language of the Member States, in different internet sites, making it difficult for operators to have a precise overview of the rules applied in several different Member States where they operate.

In Mobility Package I, the Commission proposed specific rules on posting in the area of road transport. It includes, in particular, specific rules for the implementation of posting in the field of road transport to avoid undue administrative burden on road transport undertakings. More generally, one of the objective of Mobility Package I is to improve enforcement, in particular through enhanced exchange of information between Member States. Such exchanges of information should ease and accelerate road side controls, which will benefit road transport undertakings.

As regards traffic restrictions, the Commission has already made a proposal in the past to harmonise them at EU level. However, this was rejected by the MS, who wish to keep their national competence in this area.

## 66. Excessive complexity of rules on inland waterways

### Description

The European Barge Union (EBU) and the European Skippers Organisation (ESO) have raised concerns related to the inland waterway transport sector regarding the implementation of Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in various Member States, particularly Germany, France and Austria.

### Analysis

The concerns regard the compatibility with [EU law of the German law introducing minimum wages<sup>229</sup> that entered into force in August 2014], as well as the national implementation in France and Austria of the above mentioned Directive. According to the Directive all measures introduced by a law implementing above mentioned Directive should be justified and proportionate. The organisations believe that these principles are not met as far as Inland Waterway Transport is concerned. The industry - mainly SMEs - is faced with measures and administrative burdens that would seriously hamper their activities and lead to a *de facto* stagnation of their business. Moreover the measures are considered discriminatory for

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<sup>229</sup> "Mindestlohngesetz" (MiLoG = [www.gesetze-im-internet.de/milog/index.html](http://www.gesetze-im-internet.de/milog/index.html))



carriers/employers from outside the Member State, which is particularly problematic as there is a considerable share of cross border traffic in the countries concerned.

It should be noted that although the procedure for delivering the information to the national authority in Germany has been digitalised, this imposes even more administrative burdens rather than decreasing them, due to the complexity of the online portal, which consists of very complex legal questions, which are difficult to understand for non-residents. A request to physically store the requested information is considered impossible to meet. The industry would e.g. recommend an audit on board rather than imposing the reporting of the information in advance as requested in Germany and Austria. The situation in France is somewhat different as the law requires a legal representative in the country itself. This requirement leads to important additional costs on top of other administrative burdens.

## **67. Inconsistent and unclear rules in public procurement in transport, and access to these rules is too restrictive**

### **Description**

Often complex rules in public procurement are one of the main barriers leading to delays in the development of transport projects. In particular, the heterogeneous transposition of the EU procurement directives creates barriers to the single market by limiting EU-wide competition: divergent national rules and language requirements deter applicants from applying for public tenders in other EU Member states.

Cross-border transport projects face difficulties in conducting public procurement, resulting in particular from the need to apply different national procurement legislations. This adds complexity to the projects and creates costs. While a modernised framework for public procurement has started to apply over the past few years, a gap remains in the area of cross-border procurement, obstructing the implementation of projects developed jointly by two or more Member States. To address barriers to the implementation of large cross-border projects, the Commission in May 2018 submitted a proposal for a regulation on streamlining measures for advancing the realisation of the trans-European transport network. It provides, inter alia, for the application of only one legal framework on public procurement for cross-border projects (Article 8).

### **Available quantification**

Given the transnational nature of the TEN-T, any delay impacting one project has an adverse effect on the whole stretch of a corridor. The TEN-T framework adopted in 2013 moves from a project driven approach (patchwork of individual projects) to a network approach based on a dual layer TEN-T to be realised. This requires a synchronised approach for the development of projects across borders, both in terms of project preparation and permitting. This is even more relevant as regards cross-border public procurement. In the case of cross-border projects developed together by neighbouring Member States, the joint tendering procedures are necessary to better grasp synergies and benefits of scale.

The Brenner Base Tunnel is one example. This cross-border project is one of the emblematic TEN-T projects aiming at linking together different parts of the EU. Since the very beginning it was conceived as a long-term asset worth in total EUR 8 billion. As a result of procurement issues, delays in the start of phase III/works (2011) of about 19 months caused a shift of the

finalisation of the project from 2025 to 2026 and led to additional costs of about EUR 20 million (including additional time till finalisation).

## **Analysis**

The barrier results from **EU legislation leaving flexibility as regards implementation**, which sometimes creates confusion and delays in the implementation of transport projects and limit EU wide competition.

EU law sets out minimum harmonised public procurement rules. These rules govern the way public authorities and certain public utility operators purchase goods, works and services. They are transposed into national legislation and apply to tenders whose monetary value exceeds a certain amount. All Member States have transposed Directive [2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive [2004/17/EC](#). But differences in transposition create obstacles and confusion and lead to delays in the development of transport projects. In the transport sector, public authorities are the principal buyers.

## **68. Lack of flexibility linked to driving time restrictions**

### **Description**

Operators involved in international transport and carrying out operations in several MS often complain about the lack of flexibility of driving and rest time rules. In particular, operators from peripheral Member States sometimes complain that, for example, that they have to stop the truck a few kilometres away from home to take a weekly rest, since they have reached their maximum driving time limit.

### **Analysis**

There are common rules in the EU for maximum driving times and rest periods. These are the same for all MS to avoid discrimination.

In Mobility Package I (currently under negotiation with the EP and Council), the Commission proposed a certain additional flexibility for drivers, in order to avoid situations such as the one described above (e.g. the possibility of taking two consecutive reduced weekly rests, possibility to derogate slightly from maximum driving time limits in specific circumstances).

## **69. Restrictions on work time in inland waterways**

### **Description**

The European Barge Union (EBU) and the European Skippers Organisation (ESO) have indicated that the current national and/or Rhine regulation on rest time for safety reasons is too

rigid and could be modernised and possibly replaced by a new EU regulatory framework, which would ensure harmonised rules at EU level and a reduction of barriers in the single market.

### **Available quantification**

Not available.

### **Analysis**

Unlike e.g. for the road sector, in the area of inland waterways, the rest time for safety reasons is currently not regulated at EU level, but at the level of the Member States.

## **70. Different enforcement practices in road transport among Member States**

### **Description**

Operators are faced with different level of enforcement of the road transport rules in different MS. For example, in some MS there are almost no roadside checks at all, while in others there are frequent checks. The level of fines for the same infringement also differs.

### **Available quantification**

Quantification not available.

### **Analysis**

Member States are largely responsible for enforcement of the road transport rules in their national territories. The level of enforcement (e.g. roadside checks) depends on available resources and prioritisation of enforcement activities, even though there are minimum levels of enforcement laid down in EU legislation, i.e. mainly Directive 2006/22 and Article 12 of Regulation 1071/2009. Also, while there is an EU-level classification of the seriousness of infringements, Member States keep the right to set the level of the sanctions, subject to the principles of proportionality and non-discrimination.

Enforcement requires significant resources from Member States, in terms of training of enforcers, time spent in roadside checks, etc. While the EU cannot directly finance national enforcement resources, it has a role to play in terms of training of enforcers, exchange of best practices, etc. The recently established European Labour Authority (ELA) should help increase and harmonise the level of enforcement between different Member States.

In Mobility Package I (currently under negotiation with EP and Council), the Commission proposed several measures to harmonise enforcement practices and make them more effective and efficient. However, the level of fines will remain a national competence.

## 71. Staffing: Skills shortages and mismatches in the rail sector

### Description

The rail transport industry makes a substantial contribution to the EU economy, directly employing over 1 million people and generating an equivalent number of jobs in connected sectors and ancillary services. It generates an estimated turnover of EUR 74,113 million.

Innovative digital solutions, new business models (e.g. sharing, collaborative), new services, new jobs (e.g. remote operators of vehicles) as well as new challenges (e.g. cybersecurity) are emerging.

Digitalisation and new transport models can provide better, safer, more accessible and more affordable services. Connectivity and automation can compensate for human error, for example in avoiding accidents.

A key challenge rail faces is to remain an attractive sector for workers in the future in the context of globalisation, with new ways of doing business and innovations, and to meet in full the needs of all categories of passengers. The ageing population combined with the lack of the required technical skills is becoming a bottleneck in maintaining the sector's competitiveness.

### Available quantification

New challenges are best tackled with people of different skillset and mind-set. Promoting diversity is essential in a sector which will undergo tremendous changes in the next years and which already faces labour force shortages. Rail is an ageing and male-dominated sector, which suffers from negative stereotypes and often harsh working conditions (e.g. mobile jobs, atypical hours, violence and harassment). As a consequence, the sector is not appealing to young women and men and faces an increasing risk of workforce shortages. Only 22% of the transport workers are women (most of whom work in administrative positions). Women are also underrepresented in the rail sector, making up only about 21% of the total workforce in 2016.

With one third of its workforce about to retire and the profound transformations led by upcoming automation, young men and especially women should step in for the future of rail. Hence, it is essential to find ways to attract young people to the sector, including by improving job quality and working conditions.

Reskilling needs will increase in the future. A study of Shift2Rail Joint Undertaking (S2R) in its Human Capital Report Series shows that all job categories ranging from train drivers to rail operation managers (International Standard Classification of Occupations - ISCO 1 to 7) will shift within next 5 years to higher skills levels<sup>230</sup>.

The EU industry association UNIFE, association gathering over 100 of Europe's leading large and SME rail supply companies, advocates the need of skills and competencies in the rail sector<sup>231</sup>. In its Dublin Declaration of June 2019, UNIFE urged the EU to act, amongst others, to improve skills intelligence and address skills shortages in their industry<sup>232</sup>.

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<sup>(230)</sup> <https://shift2rail.org/publications/human-capital-report-series/> .

<sup>(231)</sup> UNIFE Annual Report 2019 (<http://unife.org/component/attachments/attachments.html?id=1078> ).

<sup>(232)</sup> <http://unife.org/component/attachments/attachments.html?id=1031&task=download> See also .

## Analysis

While some professional competences have not changed much in most cases, new skills and training are necessary to deal with the introduction of new tools and technologies.

In particular, digitalisation and digitisation have a strong impact on production, processes, operations and skill needs. The key digital innovations include driverless operations, automation of planning, predictive maintenance and automation of traffic control. Companies report shortage in particular occupational field such as system engineers and architects, software developers, IT security specialists and big data analysts. An increased offer and adaptation of specialist Vocational Education and Training (VET) and continual re-/upskilling will be necessary to accompany the digital transformation, enhance productivity and mobility as well as to ensure availability of skilled staff for the future rail projects.

The European Parliament Resolution from 2016 on the competitiveness of the Rail Supply Industry (2015/2887(RSP)) points out that the industry lacks skilled labour and calls on the Commission to prepare actions to promote lifelong learning and technical skills. In response to this Resolution, the Commission established an expert group on the competitiveness of the European Rail Supply Industry.

The Industrial Policy Communication (COM(2017) 479) mentions that, in the context of EUs leadership in a low-carbon and circular economy, strong emphasis must be placed on low emission mobility. Rail transport is critical for a more sustainable transport sector; it only accounts for 2% of total EU energy consumption in transport, while in 2016 it carried 11.2% of freight and 6.6% of passengers of all transport modes (land, air and waterways). Skills shortages could severely hinder the capacity of rail to raise up to the challenge of modal shift towards a more sustainable transport sector.

Language requirements for train drivers were revised in 2016, to allow the exemption of train drivers from the B1 level language requirement if they only reach the border station of a neighbouring Member State, provided that safety is not be negatively impacted. The sector is currently exploring other options such as rail-specific terminology, or a lower general language level combined with alternative, electronic means to support effective communication. These alternative options can now be tested in the framework of pilot projects in day-to-day operations. This could lead to a possible revision of the Train Drivers Directive<sup>233</sup>, which would give the opportunity to take into account changes due to new technologies in the skills required and job profile of train drivers.

Rail workers need to adapt to technological innovation and the increased use of digital technologies. This has been a focus within the Shift2Rail Joint Undertaking, which has contracted a study to identify what skills will be most important in the future for different categories of railway staff.

From the evidence that the transport sector is one of the most gender imbalanced sectors, the Commission has set up tools to encourage EU stakeholders from all transport modes to strengthen women's employment with the political backing of the European Parliament, Member States, the European Economic and Social Committee and the European social partners. A non-legislative approach has been adopted to encourage transport companies to fight negative stereotypes and to improve their gender balance. It complements the legislative framework addressing working conditions in the various transport modes.

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<sup>(233)</sup> Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, OJ L 315, 3.12.2007, p. 51–78.

The measure implemented include: a business case to increase female employment in transport; the signature of the Declaration on equal opportunities from women and men in the transport sector; an inspiring list of possible measures that companies can take with an indication of their cost; an online module to exchange good practices and an action oriented Platform.

The involvement of the ‘Sectoral Social Dialogue Committee Rail’ is crucial as it puts the social impact of automation/digitalisation on its work programme, or carries out activities to anticipate and manage change. The Commission will continue to participate in and contribute actively to this committee on this matter.

## **72. Supply constraints and/or sourcing restrictions: availability of adapted rail rolling stock**

### **Description**

In order to access rail markets, new entrants need rolling stock adapted to the services they are willing to provide and to the network on which they will provide them.

If new operators lack the appropriate financial resources, they are not able to afford buying new rolling stock and should rely on the secondary and leasing markets.

However, secondary and leasing markets for rolling stock are very limited. Incumbents with their fleets therefore have a competitive advantage and for new entrants it is harder to access rail markets.

A smooth and non-discriminatory access to rolling stock is fundamental for alternative rail operators to enter new markets.

This is particularly true for passenger services. Smaller operators risk lacking the appropriate financial resources to engage in significant investments for buying rolling stock in order to enter a new domestic market or to compete with the national incumbent for bigger PSO contracts.

### **Available quantification**

For passenger services, the unavailability of rail rolling stock is reported as a major market entry barrier by new entrants throughout the European Union.

### **Analysis**

The Fourth Railway Package provides for the gradual opening of public service contracts’ market from December 2019, giving a choice between competitive tendering and direct award until December 2023. From 24 December 2023 the principle of competitive tendering will apply and direct award will be possible only on the basis of exemptions.

The Regulation on public passenger transport services by rail and by road<sup>234</sup> includes some provisions related to rolling stock in the framework of competitive tendering procedures for the

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(<sup>234</sup>) Regulation (EC) 1370/2007 of the European Parliament and the Council of 23 October 2007 on public passenger transport services by rail and by road, as amended by Regulation 2016/2338 of 14 December 2016.

attribution of public service obligations. In particular, the competent tendering authority shall assess whether measures are necessary to ensure effective and on-discriminatory access to rolling stock.

However, the lack of access to adapted rail rolling stock, in particular in the passenger market, is a major entry barrier for new entrants, which puts them at a significant disadvantage compared to dominant incumbent operators. New entrants face financing risk for the acquisition of rolling stock compared to incumbents, as they do not enjoy the implicit state guarantee such as state-owned incumbents, nor the size of incumbents' acquisition projects.

Secondary and leasing markets are limited also limited due to the remaining fragmentation of the EU rail network.

Finally, the asymmetric access of competitors to State guarantees compounds these problems.

## **73. Restrictions on cabotage in road transport**

### **Description**

The markets for the provision of national road transport services in Member States other than the one of establishment of the operators (cabotage) are not fully liberalised at EU level. Cabotage restrictions limit business opportunities for operators abroad.

### **Available quantification**

Cabotage represents around 3% of all national transport activity in the EU. In some Member States, like Austria and Belgium, it can be as high as 8% of national transport.

### **Analysis**

Due to the persistent gaps between Member States in terms of salary levels and social conditions and the non-application of posting rules in most Member States, the EU co-legislators have so far decided to maintain certain restrictions on access to the national markets by non-resident operators.

This non application of EU law is not justified. Firstly, posting rules clearly apply to cabotage, (Regulation 1072/2009, 17th recital, and 1073/2009, 11th recital). Secondly, directive 96/71/EC compels Member States to apply posting rules in their territory, in particular insofar as the rules on minimum wage are concerned.

In Mobility Package I (currently under negotiation with EP and Council), the Commission proposed to keep certain restrictions to cabotage activity, given the persistent pay gaps. Both the EP and the Council agree that limitations must remain on this type of activity.

In the long-term, if pay gaps are significantly reduced and posting rules are fully and consistently applied in all MS, there may be a case to reassess these remaining restrictions.

## 74. Lack of interoperability in railways

### Description

Transport is critical for improving economic and social cohesion and delivering the single market. Among the transport modes, rail is unique in its ability to deliver high capacity for both passengers and goods in the most environmentally friendly manner, perfectly fitting EU decarbonisation strategy.

The delivery of a single European rail area would thus be a significant enhancement to the single market, improving the economy through greater passenger and freight flows.

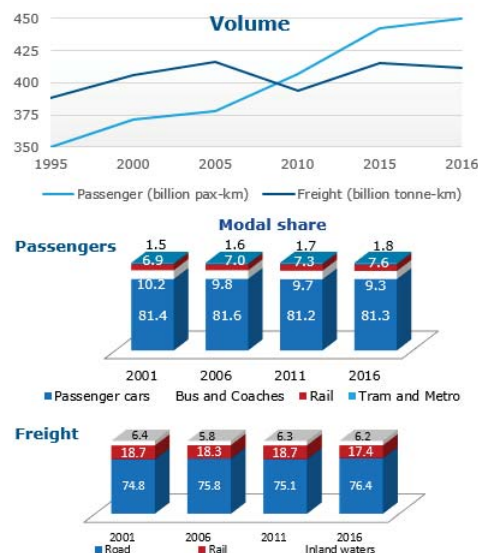
Barriers to the Single European Rail Area include:

- Incomplete European Rail Traffic Management System (ERTMS) installation. ERTMS is essential in further increasing safety and capacity of the rail system in a harmonised manner.
- Lengthy, costly and non-transparent national authorisation/certification procedures.
- Operational issues, hampering in particular cross-border traffic.

### Available quantification

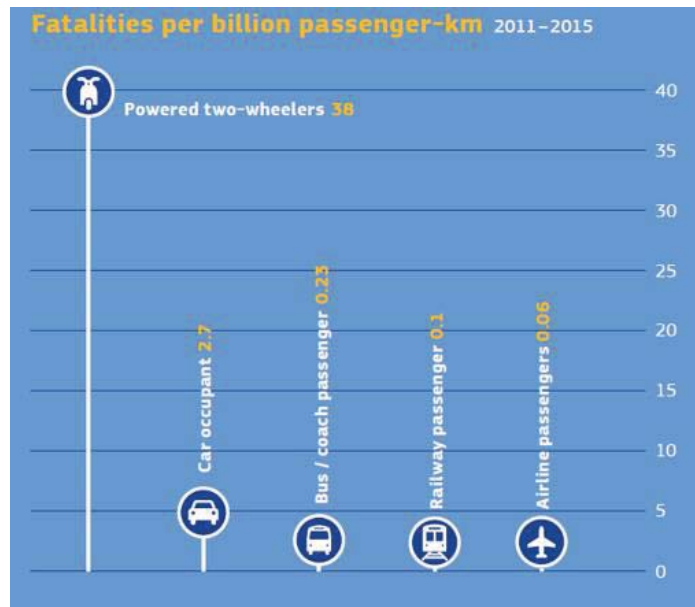
#### *Modal share of rail*

Daily rail moves over 4 million tonnes of freight and nearly 25 million passengers. However, these numbers could and should still be significantly higher, as the modal share of rail is too low and barely increasing.



The Industrial Policy Communication (COM(2017) 479) mentions that, in the context of EU's leadership in a low-carbon and circular economy, strong emphasis must be placed on low emission mobility. Rail transport is critical for a more sustainable transport sector; it only accounts for 2% of total EU energy consumption in transport, while in 2016 it carried 11.2% of freight and 6.6% of passengers of all transport modes (land, air and waterways). Furthermore, rail is the safest land transport mode.





### *Costs of authorisation of railway vehicles and safety certification of railway operators*

The numbers below are examples of costs related to the lack of harmonisation of the EU rail legislation **before implementation of the Fourth Railway Package**:

- Fees for national safety certificate for railway operators (1 per Member State): from EUR 0 up to EUR 70,000
- Total costs for an additional national vehicle authorisation (1 per Member State): from EUR 900,000 up to EUR 2 million per locomotive type
- Duration of the procedure for the authorisation of a railway vehicle: up to 4 years
- Staff involved in interoperability issues in the Member State: from 1 person up to 162
- Sometimes staff employed in the Member States are on secondment from incumbent operators, causing concerns regarding independence and equal treatment.

These costs should be reduced significantly through the full application of the Fourth Railway Package, together with a drastic reduction of the number of national technical, operational and safety rules.

### **Analysis**

The origins of the above-mentioned barriers mainly lie in the long history of rail. Technical and operational rules have developed and diverged over long periods of time and have driven national specificities in terms of network infrastructure, systems and modes of running, impacting both interoperability and a standardised approach across Europe.

With the adoption of the Fourth Railway Package technical pillar, significant steps were taken to deliver the single European rail area, as well as streamline and harmonise procedures at Union level, replacing heterogeneous procedures at Member State level.

The technical pillar of the Fourth Railway Package<sup>235</sup>, together with the 2019 revisions of the Technical Specifications for Interoperability, introduced important changes concerning all barriers mentioned above:

- Incomplete European Rail Traffic Management System (ERTMS) installation:
  - o Enhancement of the role of the European Union Agency for Railways (ERA) as the ERTMS system authority;
  - o In addition to the measures included in the Fourth Railway Package, the European ERTMS Deployment Plan Implementing Regulation (EU) 2017/6 sets out the milestones to equip ERTMS on the core and comprehensive trans-european networks.
  - o The above measures are expected to deliver a breakthrough in the harmonisation of the EU railway system.
- Lengthy, costly and non-transparent national authorisation/certification procedures:
  - o As of 16 June 2019, ERA has started acting as European authorisation body for railway vehicles and as European safety certification body for railway operators.
  - o 14,000 national technical rules for vehicle authorisations have been reviewed. Only 1,000 are still valid under the Fourth Railway Package. Next steps are the actual removal by Member States of the obsolete national rules and further harmonisation to continue reducing the costs of vehicle authorisations.
  - o In addition, cleaning up still needs to be done for national rules for infrastructure.
  - o In terms of product certification, divergent interpretations of the legislation by conformity assessment bodies is an issue for the rail supply industry. The Fourth Railway Package introduces a monitoring system of the performance of conformity assessment bodies to progressively ensure transparent and quality certification services from conformity assessment bodies.
- Operational issues:
  - o Cleaning up also needs to be done for national operational and safety rules that hamper smooth cross-border traffic, particularly for freight operations.
  - o Trust building between railway operators of different Member States, among others through a more harmonised implementation of safety management systems, is another pre-condition for cross-border traffic to improve.

Focus should thus now be on application and enforcement for the Fourth Railway Package to produce its full effects, including actual removal of obsolete national rules by Member States.

In parallel with this, full advantage should be taken of the digital and ERTMS game changers, including automated train operations, in order to further improve capacity and safety of the railway system while reducing costs. Further revisions of the Technical Specifications for Interoperability are planned to reach this goal.

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<sup>(235)</sup> The 'technical pillar', which was adopted by the European Parliament and the Council in April 2016, includes:

- [Regulation \(EU\) 2016/796 on the European Union Agency for Railways and repealing Regulation \(EC\) n° 881/2004](#)
- [Directive \(EU\) 2016/797 on the interoperability of the rail system within the European Union \(Recast of Directive 2008/57/EC\)](#)
- [Directive \(EU\) 2016/798 on railway safety \(Recast of Directive 2004/49/EC\)](#)

## **75. Lack of harmonised processes for authorisation of railway products and for safety certification of railway operators**

### **Description**

The rail transport industry makes a substantial contribution to the EU economy, directly employing over 1 million people and generating an equivalent number of jobs in connected sectors and ancillary services. It generates an estimated turnover of EUR 74,113 million.

However, numerous national rules, ineffective national authorities, lengthy, costly and non-transparent certification and national authorisation procedures constitute barriers to achieve the single European market for railway products. They are thus hampering the development of the European Rail Supply Industry.

Similarly non-transparent procedures for safety certification of railway operators and non-transparent national safety and operational rules are barriers to achieve the single European market for railway services.

### **Available quantification**

Quantification of the main barriers hampering the establishment of the Single European Rail Area is addressed in the previous section. Costs related to authorisation of railway vehicles and safety certification of railway operators are particularly relevant for the European Rail Supply Industry and for Railway operators (*see previous section on the Single European Rail Area*).

## **76. Lack of rail network coordination**

### **Description**

Railway undertakings providing EU cross-border transport services use more than one network and deal with more than one national infrastructure manager. A lack of cooperation in the management of respective national networks makes more difficult for railway undertakings to provide cross-border services and can discourage new entry in neighbouring markets. Examples of this lack of EU-wide view are:

- lack of cross-border coordination when works are performed on neighbouring networks;
- fragmentation and national orientation of IT tools used for capacity planning and traffic management by the infrastructure managers;
- poor cooperation on charging and performance management, which may have a significant impact on the provision of cross-border services.

Lack of cooperation translates in missing information for businesses, which in turn limits market opportunities and efficient use of capacity.

### **Available quantification**

The lack of coordination and the consequent unavailability of information relevant to businesses has a heavy impact on the performance of international rail services in the single European

railway area. This is particularly true for international rail freight services, for which around 50% of volumes are cross-border.

Transport customers rate the quality of international rail services (availability, reliability, speed) as much worse than road. Moreover, there has not been considerable improvement, which makes rail less attractive and hampers its ability to integrate into a multimodal logistic chain. This has also adverse effects on transport sustainability, as a larger role of rail would also be instrumental for the decarbonisation of the sector.

## **Analysis**

**EU legislation leaves flexibility in the level of harmonisation and implementation of rules.** This favours a national focused approach with a negative impact on rail transport business operated across borders.

A number of EU legislative acts currently define the general framework in which rail infrastructure managers operate in the single market. Directive 2012/34/EU establishing the Single European Railway Area provides for mandatory coordination of infrastructure managers but only in very general terms, leaving to infrastructure managers to establish appropriate procedures, aiming in particular to guarantee the optimal competitiveness of international rail services and the efficient creation and allocation of infrastructure capacity which crosses more than one network within the Union. Directive 2016/2370 introduced further provisions for an independent, non-discriminatory management of the network.

The Rail Freight Corridors Regulation<sup>236</sup> lays down the rules for the establishment and organisation of international rail corridors for competitive rail freight in order to develop a European rail network for competitive freight. It introduces a number of instruments (the corridor one-stop shop, the pre-arranged train path, priority rules for managing traffic, etc.) and a governance structure that strengthens cooperation and coordination between rail stakeholders and Member States. Despite some progress, challenges for rail freight remain in particular in regard to capacity allocation, planning and coordination of infrastructure works, traffic management, etc.

## **77. Fragmented EU airspace with 27 separate air traffic management systems**

### **Description**

The European Air Traffic Management (ATM) system consists of 27 national authorities overseeing providers of air traffic control services [Air Navigation Service Providers - ANSPs]. The Commission's Single European Sky (SES) initiative sought to tackle the fragmentation, congestion and the related costs by creating a single market for Air Navigation Service Provision.

### **Available quantification**

The absence of single market originates extra delays and congestion costs.

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<sup>(236)</sup> Regulation (EU) No 913/2010.

Air traffic increased from 9.5 million flights (26.000 flights per day) in 2013 to 11 million flights (>30.000 flight per day) in 2018 and is expected to further increase to 16 million flights by 2040.

Delays:

- In 2018, 1 out of 4 flights had a delay of more than 15 minutes
- A significant part of the delay is caused by air traffic flow management (ATFM) delays
- 0.5 min of delay per flight over 1 year are considered an optimum at EU level as anything beyond is not efficient from a system perspective.
- Since 2017, ATFM delays have increased by 97%, leading to an ATFM delay of 1.73 minutes/flight in 2018

Financial and environmental impact of delays:

- In 2018, the total economic cost of delays and cancellations was EUR 17.9 billion and approximately 350 million passengers had their flights impacted through delays or cancellations. The cost was over EUR 3.9 billion higher than in 2017.
- Since January 2019, air traffic generated 120 million tonnes of CO2 emissions, which is an increase of 3.3%

## **Analysis**

The barrier lies in the fragmentation of the European airspace. Member States will remain sovereign over their territory (Chicago Convention) but the SES2+ initiative could address some of the barriers created by this situation.

A proposal for a revision of the Single European Sky (SES 2+) was put forward by the Commission in 2013, but has not made progress since then.

## **78. Fragmentation of the aviation radio band spectrum**

### **Description**

The national fragmentation of the European airspace is one of the main factors pertaining for the lack of interoperability of the European air traffic management (ATM) network. One particular issue related to the fragmented EU airspace concerns the use of the radio band spectrum. The delays incurred in the European-wide deployment of 8.33 kHz voice channel spacing is an obstacle to the efficient use of aviation band spectrum.

### **Available quantification**

There is no quantification of this specific barrier. Yet, inability to meet future demand for frequency assignments will delay or make impossible airspace improvements to increase capacity and will lead to increase in delays entailing significant costs.

## Analysis

Regarding the interoperability of the European ATM network, Commission Implementing Regulation 1079/2012 the Commission has set specific rules for the deployment of 8.33 kHz voice channel spacing to ensure the most efficient use of aviation band spectrum.

Reaching deployment implementation deadlines by the end of 2018, the Commission has organised a dedicated workshop end of 2017 to raise awareness and identify the best practices and challenges ahead. Furthermore, it has set up a monitoring process through mandates given to the Network Manager and the European Union Aviation Safety Agency.

The results of the monitoring process implemented have been systematically reported to Member States at each Single Sky Committee meetings (comitology). This process has helped to achieve by spring 2019 a deployment rate above 85%.

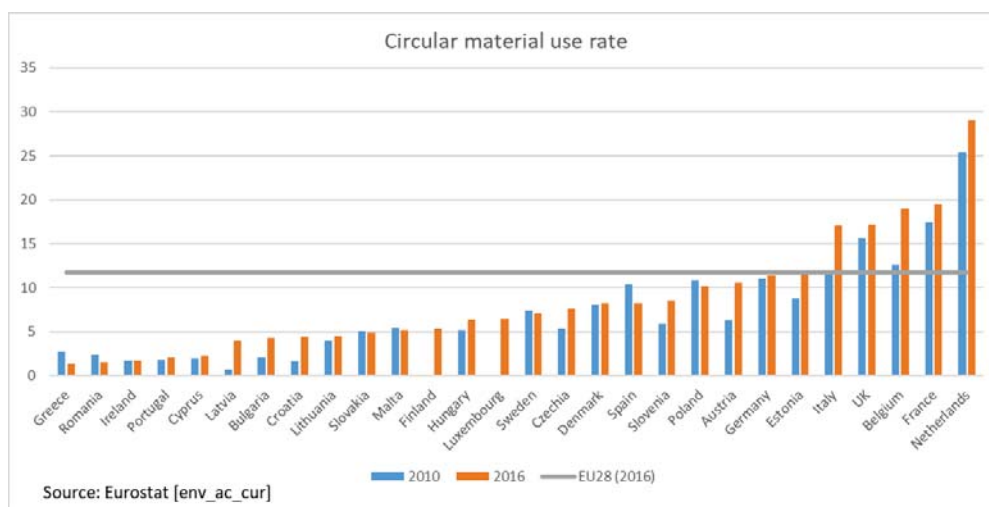
The Network Manager coordinates and harmonises the processes and procedures to enhance the efficiency of aeronautical frequency management. It also coordinates the early identification of needs and resolution of frequency problems.

Harmonised frequency use in the entire European airspace under Member States responsibility for specific applications will further optimise the use of limited radio spectrum resources.

## Waste management

The Communication on “The single market in a changing world” acknowledges that the single market has to integrate circularity further. The single market is one of the main vehicles to help mainstream circularity, by creating a level-playing field for the EU manufacturing sector, providing a critical mass for our standards and offering protection towards products coming from countries with lower standards.

Unfortunately, secondary raw materials only meet less than 12% of EU’s demand for materials (latest available data from 2016), and variation across Member States is very significant. This is mainly due to their difficulties to compete in price, safety, performance and quality with primary materials. A well-functioning EU market is critical to make it possible for safe, performing secondary raw materials to compete with primary raw materials.



## 79. Lack of data and information on secondary raw materials

### Description

Improving the quality and harmonisation of raw materials data collection is essential to facilitate information sharing. There is a lack of reliable data on stocks, and flows of raw materials, including on secondary raw materials, which constitutes a barrier to access and trade in sustainable raw materials for the manufacturing industries in the EU and for all other actors of the circular economy. While also relevant within Member States, the issue is particularly relevant for cross border flows of materials, since geographical distance, language differences and heterogeneous regulations and approaches to waste management make it even more difficult to identify business partners. Currently, however, the EU data on raw materials, both primary and secondary, are incomplete, not harmonised and thus inconsistent and difficult to compare. Moreover, data are not available from a single source, but rather scattered amongst a variety of institutions, including government agencies, universities, NGOs and industry.

The recycling of raw materials at end-of-life is not yet sufficient to meet the EU's current demands<sup>237</sup>. The European Green Deal pointed to the need to increase the circularity of secondary raw materials and mobilising the potential of the circular economy.

### Available quantification

For what concerns waste electrical and electronic equipment (WEEE), a study<sup>238 239</sup> on collection rates identified a number of difficulties that Member States face when implementing the WEEE Directive. One of the major difficulties is the high rate of unaccounted collection<sup>240</sup>.

According to Plastics Recyclers Europe (PRE), an organization representing European plastics recyclers, the European plastics recycling industry lacks sufficient transparency and traceability levels.<sup>241</sup>

The ProSUM (Prospecting Secondary raw materials in the Urban mine and Mining waste) project under Horizon 2020 established the PROSUM Urban Mine Platform<sup>242</sup> where time series of raw materials put on the market, in use and available for collection and treatment are available, for various product/waste categories (WEEE, end-of-life vehicles and batteries), in all EU countries. Such datasets are being updated, for example for batteries at the EU aggregated level<sup>243</sup>.

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<sup>237</sup> Raw Materials Scoreboard 2018

<sup>238</sup> The final report of the study is available at [http://ec.europa.eu/environment/waste/weee/pdf/Final\\_Report\\_Art7\\_publication.pdf](http://ec.europa.eu/environment/waste/weee/pdf/Final_Report_Art7_publication.pdf)

<sup>239</sup> <https://publications.europa.eu/en/publication-detail/-/publication/09c7215a-49c5-11e8-be1d-01aa75ed71a1/language-en>

<sup>240</sup> WEEE Compliance Promotion Exercise <https://op.europa.eu/en/publication-detail/-/publication/09c7215a-49c5-11e8-be1d-01aa75ed71a1/language-en>

<sup>241</sup> <https://www.plasticsrecyclers.eu/challenges-and-opportunities>

<sup>242</sup> <http://www.urbanmineplatform.eu/homepage> [accessed on 04/02/2020]

<sup>243</sup> <https://rmis.jrc.ec.europa.eu/apps/bvc/#/p/dataviewer> [accessed on 04/02/2020]

## Analysis

There is no universally agreed definition of ‘circular use’ of raw materials, the share of secondary sources in raw materials supply is one simplified approach to assess circular use<sup>244</sup>.

Data on secondary raw materials in Europe is currently insufficient. Quality improvements and harmonisation of raw materials data collection are necessary in order to facilitate information sharing at the different levels within the EU. The inability to easily produce reliable statistics about reserves, resources, stocks, and flows of raw materials is a barrier to providing access to sustainable raw materials for the manufacturing industries in the EU. In this area, the Horizon 2020 ORAMA project (Optimising quality of information in Raw Materials data collection across Europe) makes recommendations<sup>245</sup> for improving the datasets and harmonisation concerning both primary and secondary raw materials.

Information about secondary raw materials relates to Pillar 3 of the Raw Materials Initiative, “Resource efficiency and supply of ‘secondary raw materials’ through recycling”.

One of the aim of this pillar is to improve the availability of statistics on waste and materials flows, in relation to the European Union Raw Materials Knowledge Base (EURMKB).

Recycling contributes to the security of supply of raw materials and helps to improve the sustainability of materials in the EU economy. It is seen as a risk-reducing factor in the EU criticality assessment.<sup>246</sup>

## 80. Non-harmonised End-of-waste criteria

### Description

The revised Waste Framework Directive (WFD)<sup>247</sup> sets the onus on Member States to take appropriate measures to ensure that waste which has undergone a recovery operation and meet the established conditions is considered to have ceased to be waste. End-of-waste criteria can also be set at EU level. So far, Union-wide criteria have been set up for iron, steel, aluminium and copper scrap and glass cullet<sup>248</sup>. When end-of-waste criteria are not defined at EU level, Member States are free to set up their own set of criteria or apply single-case end-of-waste decisions. In case of national end-of-waste criteria or single-case decisions, these are usually not recognised beyond Member State borders. Article 28 of the Waste Shipment Regulation provides for a dispute settlement procedure mechanism in case Member States disagree on the end-of-waste status and if they do so, the waste status prevails. The uncertainties to the economic operators associated with this legal regime are reflected in the Communication on the implementation of

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<sup>244</sup> JRC Report on Critical Raw Materials and the Circular Economy

<sup>245</sup> [https://orama-h2020.eu/wp-content/uploads/ORAMA\\_WP2\\_DEL2.-2\\_20181207\\_UNU\\_v1.0.pdf](https://orama-h2020.eu/wp-content/uploads/ORAMA_WP2_DEL2.-2_20181207_UNU_v1.0.pdf)  
[accessed on 04/02/2020]

<sup>246</sup> COM(2017)490

<sup>247</sup> Directive 2008/98/EC as amended by Directive (EU) 2018/851

<sup>248</sup> [https://ec.europa.eu/environment/waste/framework/end\\_of\\_waste.htm](https://ec.europa.eu/environment/waste/framework/end_of_waste.htm)



the circular economy package: options to address the interface between chemical, product and waste legislation<sup>249</sup> and related public consultations.

### Available quantification

The European Recycling Industries (EURIC), i.e. the umbrella organisation for European Recycling Industries puts forward five top priorities of the recycling industry for the period 2019-2024.<sup>250</sup> Among them, they stress the importance of realizing “an internal market for recycling through simpler and faster waste shipment procedures, **harmonized EU or national end-of-waste criteria for targeted streams**, a new status of “secondary raw materials” to level the playing field with primary materials, both in terms of regulatory constraints and public perception.

### Analysis

The Communication on the implementation of the circular economy package provides options to address the interface between chemical, product and waste legislation<sup>251</sup>. Further measures facilitating secondary raw materials are envisaged in the European Green Deal and the new Circular Economy Action Plan both with regard to end-of-waste criteria and the rules on the shipments of waste.

The ongoing revision of the Construction Product Regulation will introduce new requirements to increase the sustainability, recyclability and re-use of construction products. This will require the introduction of measures for harmonised end of waste criteria at European level in order to allow a unified assessment of the performance of construction products.

With regard to shipments of waste, the Commission adopted in January 2020 a report on the evaluation of the waste shipment regulation (WSR)<sup>252</sup>. The report shows that the WSR has been generally effective in delivering its objectives to protect the environment and human health from the adverse effects of waste shipments and to implement the EU’s international commitments on the subject. At the same time, different ways of applying and enforcing the WSR, often combined with different interpretations of its provisions and different inspection regimes, have hampered its optimal implementation throughout the EU. **These factors limit or discourage legal shipments of good quality waste materials to adequate recycling facilities, which are important for the transition to a circular economy in the EU.**

The main obstacles to the efficient implementation of the WSR are the complex and time-consuming (often paper based) notification procedures as well as different interpretations of waste classifications by the Member States. This can result in heavy and cumbersome processes for economic actors willing to ship waste within or outside the EU.

The rules governing the movements of waste are relevant for the transition to a circular economy. However, the WSR was not specifically designed to ensure that the transition to circular

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<sup>249</sup> COM(2018)32, SWD(2018)20

<sup>250</sup> European Recycling Industries ‘TOP 5 PRIORITIES OF THE RECYCLING INDUSTRY FOR THE PERIOD 2019-2024’, 2019

<sup>251</sup> COM(2018)32, SWD(2018)20

<sup>252</sup> SWD (2020) 26 final COMMISSION STAFF WORKING DOCUMENT EVALUATION of Regulation (EC) No 1013 /2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

economy is facilitated, as the emergence of circular economy as a new overarching EU political priority occurred only after the adoption of the WSR.

## **81. Absence of standardised system to demonstrate the performance of recycled materials**

### **Description**

The quality of the recycled materials depends on the quality of waste collection and sorting and of the treatment processes that are applied. This is the case for all types of waste, including municipal, commercial or industrial waste. In order to achieve a better market for recycled materials, industrial users should be aware and confident that recycled materials offer equivalent safety, functional quality and availability as the primary ones. At the same time, prices should be competitive.

Within the Single Market, there is currently no standardised way to track the exact composition and quality of waste material used for recycling; however, regional, national and industry lead standards exist for various wastes and materials. Recyclers need to adapt to the local waste collection processes and the quality standards required by the users of the recycled materials in products. This makes it very difficult for manufacturers interested in using recycled materials to compare the quality and the performance of the recycled materials available on the market. While this problem is obviously also relevant within Member States, differences of procedures and processes across Member States render cross border transactions significantly more difficult.

The lack of standardised system also applies to the chain of processes to be applied to waste. For example, in the case of Critical Raw Materials (CRMs) that are used in a wide range of applications including electr(on)ic equipment and batteries, low quantities and/or concentrations of CRMs currently turn their recovery from end-of-life products technically and economically difficult, or even unfeasible. There is indeed the need to support economically viable and environmentally sound state-of-the-art waste management approaches and treatment technologies, including by mapping existing standards and current gaps.

### **Available quantification**

According to Plastics Recyclers Europe (PRE), an organization representing European plastics recyclers, unstandardized and unharmonized collection and sorting schemes across Europe are important factors having an impact on the quality of the sorted waste that is subsequently recycled and the market uptake of recycled materials. This can create quality fluctuations that hampers the recyclers' ability to compete with virgin materials. The uncertainty in the supply chain makes converters hesitant to rely upon secondary raw materials.<sup>253</sup>

The SCRREEN (Solutions for CRITICAL Raw materials- a European Expert Network) project under H2020 has made proposals on the prevalence, recyclability, cost and financing of recycling of critical raw materials from WEEE.<sup>254</sup>

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<sup>253</sup> <https://www.plasticsrecyclers.eu/challenges-and-opportunities>

<sup>254</sup> <http://screen.eu/results/>

In addition, unrecyclable products due to the presence of recycling disruptors in the composition of the product (e.g. non-recyclable packaging, composite materials, presence of hazardous substances) is an issue that arises at the design phase of the products and may not be addressed adequately through waste management practices but rather through producer responsibility.<sup>255</sup>

## **Analysis**

The absence of clear and standardised information on technical performance and chemical composition is a serious obstacle to the development of efficient markets for secondary materials. Standardisation gaps for recycled materials are one of the factors that hamper the recovery of high-value materials from complex products at the end of their life and subsequently the quality of the secondary raw materials. Other important factors concern design of products that prevent or hamper recycling and shortcomings in the separate collection, sorting and treatment methods.

Recycling of key raw materials in the EU can be more material-efficient and reach higher quality. This would foster re-use and circularity for all the products containing them. The EU Raw Materials Initiative and the Renewed Industrial Policy Strategy of 2017 promote improved access to key raw materials for manufacturing industries, both through primary extraction and through recycling and reuse.

Existing standards on WEEE treatment, mandated by the Commission to CENELEC, such as the EN 50625 series on collection, logistics and treatment of WEEE or more specifically on the TS50628-5 on final treatment requirements for copper and precious metals can improve the quality of the entire treatment chain from proper handling during collection to the final recovery of valuable fractions, compounds and materials.

## **82. Insufficient enforcement of European environmental legislation on the shipment of waste**

### **Description**

Illegal shipment and processing of waste by Member States is a crucial obstacle to build an effective waste recycling industry. According to Europol, environmental crime is highly lucrative – it can be as profitable as illegal drug trafficking – but the sanctions are much lower. These factors make it highly attractive for organised crime groups. Involvement in the illegal trafficking of waste is now routine for many organised crime groups. The existence of such illegal practices is not only highly damaging to the environment but also has an impact on the level playing field of the waste management operators and damages the image and consumer trust in those ethical and circular businesses that base their production and management choices on honesty and sustainability.

### **Available quantification**

The prevalence of illegal shipments of waste is indeed a source of serious concern, as reflected in the evaluation report of the waste shipment regulation published by the European Commission in

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<sup>255</sup> EURITS contribution to the European Green Deal Roadmap, 20 January 2020

January 2020<sup>256</sup>. In its latest EU Serious and Organised Crime Threat Assessment report<sup>257</sup>, Europol points out to the involvement of criminal actors in illicit waste trafficking. Addressing waste trafficking was identified for the first time as a priority in the overall EU policy against organised crime for the period 2018-2021<sup>258</sup>. Violations of EU waste legislation are also identified as areas where more efforts are foreseen as part of the 2018 Commission Communication on EU actions to improve environmental compliance and governance<sup>259</sup>. Data are difficult to obtain on illegal shipments of waste, as for any other illegal activities. One source of data are the annual reports by Member States that contain information on illegal waste shipments<sup>260</sup>. Overall, an increased amount of illegal cases is reported, however there is significant variation in the amount of reported cases per Member States, as well as in the level of detail of the reported information

## Analysis

An analysis of the root causes of the insufficient enforcement of the EU legislation on shipment of waste is provided in the evaluation report of the waste shipment regulation published by the European Commission in January 2020. This issue will be addressed as part of the ongoing review of the waste shipment regulation

Concerning WEEE, the main challenges and best practices regarding implementation of the WEEE Directive, including shipments of waste, were assessed in an extensive compliance promotion exercise in 2017<sup>261</sup>.

## 83. Heterogeneity of extended producer responsibility schemes in Member States

### Description

Extended producer responsibility (EPR) is one of the foundations of the EU waste legislation, and it links product design and end-of-life management, as producers are to pay the cost of the management of waste from their products. Several products are subject to EPR as a result of EU

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<sup>256</sup> SWD (2020) 26 final COMMISSION STAFF WORKING DOCUMENT EVALUATION of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

<sup>257</sup> <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-andorganised-crime-threat-assessment-2017>

<sup>258</sup> <http://data.consilium.europa.eu/doc/document/st-9450-2017-init/en/pdf>

<sup>259</sup> COM(2018)10

<sup>260</sup> Commission Staff Working Document SWD (2018) 468 final accompanying the 2018 report from the Commission to the European Parliament and the Council on the Implementation of Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste, gives an overview of this information for the period 2013-2015: [https://eur-lex.europa.eu/resource.html?uri=cellar:44a84bd6-ee4e-11e8b690-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:44a84bd6-ee4e-11e8b690-01aa75ed71a1.0001.02/DOC_2&format=PDF). More recent annual reports have been submitted since then, covering the period until 2017

<sup>261</sup> WEEE Compliance Promotion Exercise <https://op.europa.eu/en/publication-detail/-/publication/09c7215a-49c5-11e8-be1d-01aa75ed71a1/language-en>

legislation. Some Member States also impose EPR on a range of additional products. The implementation of the EU obligations regarding EPR by the Member States has led to a diversity of systems and varying results in terms of costs, performances and transparency. As a consequence, there is no real European level playing-field and the obliged industry and the waste operators have to adapt to 27 different systems, with different fee calculation methods, administrative procedures, repartition of roles and general governance.

Within many Member States and for different waste streams, tensions exist between the obliged industry, the compliance schemes, the public authorities and the private waste collection or treatment sector, mainly on questions of a level playing field, market access, service to citizens, cost-efficiency and transparency regarding the use of the collected funds. Free-riding is also prevalent in almost all Member States, in particular in the area of online sales. For example, for some products like lighting appliances, online free riding reaches 80 %, according to the sector itself. The current situation leads to uneven competition between online sellers and between online and offline sellers.

### **Available quantification**

The EPR obligation is rooted in the Waste Framework Directive (WFD) and a number of specific waste streams directives. The recent revision of the WFD increased the level of harmonisation by introducing minimum requirements for EPR schemes addressing their governance, transparency and efficiency aspects. The impact of these measures will become visible in the coming few years.

At EU level, four Directives introduce EPR as a policy approach: the Packaging and Packaging Waste Directive (94/62/EC), the ELV Directive [2000/53/EC](#), WEEE Directive [2012/19/EU](#) and the Batteries Directive [2006/66/EC](#).

Table 1: Overview of all existing EPR schemes in the EU-28 in 2013

MS	Batteries	WEEE	Packaging	ELV	Tyres	Graphic paper	Oils	Medical waste, old/unused medicines	Agricultural film	Other
AT	x	x	x	x	x	x	x	x		
BE	x	x	x	x	x	x	x	x	x	Disposable plastic kitchenware; photo-chemicals
BG	x	x	x	x	x					
CY	x	x	x	x	x	x	x			
CZ	x	x	x	x						
DK	x	x	Δ	x	x	x				
EE	x	x	x	o	x			o		
FI	x	x	x	x	x	x		x	x	
FR	x	x	x	x	x	x		x	x	Fluorinated refrigerant fluids; pharmaceuticals; lubricants; textiles; infectious healthcare waste; furniture; dispersed hazardous waste; plant protection product packaging and unused products; fertiliser and soil amendment packaging; seed and plant packaging; mobile homes; office equipment ink cartridges
DE	x	x	x	o			x		x	
GR	x	x	x	x						
HU	x	x	Δ	x	Δ					
IE	x	x	x	x	x				x	
IT	x	x	x	x	x				x	
LV	x	x	x	x	x	x	x			
LT	x	x	x	x	x	x				
LU	x	x	x	x						
MT	x	x	x	N/A						
NL	x	x	x	x	x	x				Window panes
PL	x	x	x	x	x		x			
PT	x	x	x	x	x		x	x		Packaging of medical waste, old medicines; packaging of phytopharmaceuticals
RO	x	x	x	o						
SE	x	x	x	x	x	x		x	x	
SK	x	x	x	x	x	x				
SI	x	x	x	x	x		x	x		Waste from hazardous pesticides; graveside candles
ES	x	x	x	x	x		x	x	x	
UK	x	x	x	x						
HR	x	x	x	x	x		x	x		Waste containing asbestos
<b>Total</b>	<b>28</b>	<b>28</b>	<b>27</b>	<b>27</b>	<b>20</b>	<b>11</b>	<b>10</b>	<b>10</b>	<b>8</b>	
x EPR scheme    o Takeback obligation but no PRO    Δ Product fee legislation / Governmental fund										

Source: Development of Guidance on extended producer responsibility (EPR), FINAL REPORT, European Commission – DG Environment 2014

## Analysis

Extended producer responsibility (EPR) schemes are a means of ensuring that the “polluter pays” principle is applied to waste management. The Waste Framework Directive states that the costs of waste management are to be borne by waste producers or holders or partly or wholly by the producer of the product from which the waste comes from.

In principle, full cost coverage is required in an EPR-system, based on article 8a of the Waste Framework Directive, but the scope of costs to be covered differs from one Member State to another and according to the type of product/waste. It also varies in function of the level of service provided and the quality of collection and treatment. Another issue is the lack of transparency within the producer responsibility organizations (PROs) leading to efficiency losses. Member States and the obliged industry need to agree on common goals, on efficient reporting processes and ensure that the collected fees are used in the most cost-efficient way taking into account the environmental objectives.

Within EPR schemes, the lack of modulated fees adjusted to the full net costs of the end-of-life management of individual products may reduce the incentives to adopt circular solutions. EPR schemes aggregate costs and calculate recycling performances for a whole sector or for the whole pool of members. Hence, currently, where there is no eco-modulation of fees in place, the applicable fees do not create incentives to improve design to facilitate recycling. With an ambitious bonus-malus fee modulation, EPR systems can help fostering the recycling market by taking out non-recyclable products out of the market, or by rewarding easy to disassemble

products. Article 8a of the revised Waste Framework Directive now requires Member States to implement the modulation of fees for EPR collective schemes.

The enforcement of EPR rules remains a challenge in the case of online sales due to the lack of awareness and confusion of obligations among some online sellers, the wide variation in regulation between different countries and regions, the difficulties of enforcement activity and coordination across jurisdictions and the deliberate avoidance of compliance by some online sellers. This leads to important free-riding practices. Therefore, the role of the online platforms for the EPR compliance of their sellers should be clarified.

The new EPR requirements included in the Waste Framework Directive aim at correcting the lack of harmonization and the uneven implementation of EPR across the EU. The requirements oblige Member States to define clearly the roles and responsibilities, establish measurable targets, establish reporting systems, ensure equal treatment, put in place the modulation of fees taking into account durability, re-usability, recyclability, hazardousness, ensure that necessary costs are covered in a cost-efficient way and ensure transparency and dialogue with the actors involved.