



Position Paper

October 2018

EUROCHAMBRES' reaction to the European Commission's proposal for the 2021-27 Single Market programme

The Single Market is widely recognized as one of the core achievements and a cornerstone of the European Union. It is a major contributor to growth, competitiveness and employment and is supposed to contribute substantially to the success of European enterprises. Nevertheless, obstacles to a proper functioning of the internal market remain and new obstacles are emerging. This is the result of numerous studies and surveys, also of EUROCHAMBRES¹. The further completion of the Single Market is, therefore, one of the most important tasks at the moment – both concerning the regulatory aspects and the financing of supportive measures.

The Commission's draft for the 2021-2027 Single Market Programme foresees a vast number of useful projects to improve the functioning of the Single Market. This includes for example, studies on the implementation of legislation and programmes, new tools to collect information using new digital technologies in order to support and improve the law-making process; measures to enhance the cooperation among Member States. However, the priority of the Single Market is not reflected in the Commission's draft budget in general. The total current budget for the Single Market is just under € 6 bn or 0.55% of the total EU28 budget. These financial efforts are not proportionate with the pending tasks and the importance of the Single Market in general.

For EU legislation to be implemented and followed-up, an important part of the EU budget should be allocated to make this law become reality on the ground. Without sufficient funds for agencies in charge of supervision and awareness raising, there is little use to legislate as good policy-making also requires an investment in compliance after the law-making process. This holds especially true for the Single Market, in times that are marked by a protectionist revival. There have been enough reports of businesses and citizens not knowing their Single Market rights very well and reports of agencies not having enough means to perform their tasks to the best of their potential. Therefore, more than in previous years, the Single Market needs an ambitious programme, lest European businesses lose the benefits associated with the built-up rights of the past 25 years.

¹ http://www.eurochambres.eu/custom/150923-Internal_Market_business_barriers_and_solutions_identified-2015-00326-01.pdf

European Statistical Programme

In order for the Commission to be able to identify the right issues in the Single Market, good (sectoral) statistics are undeniably fundamental to good policy-making. However, at national and EU level, many data are already collected by public and scientific bodies as well as by business associations. Rather than resorting to instruments such as the Single Market Information Tool ("SMIT", COM(2017) 257; part of the May 2017 Compliance Package), which we consider to be too intrusive, statistical authorities, particularly Eurostat, should be given the necessary means to improve the collection, aggregation and analysis of existing data using all available data sources so that the Commission understands better where the Single Market is failing to deliver. The use of privately held data has to be considered very carefully as there are plenty of legal challenges (e.g. data ownership, trade secrets). Moreover, it would not be acceptable that businesses are accountable for the quality of the data provided (e.g. through quality reports). The administrative burden on businesses has to be considered. The data revolution does not only mean to use new data sources but also to link and match existing data.

As already highlighted in our contribution to the consultation on the new MFF, we repeat our plea for the EU to extend the funding of the European Statistical Programme. The Commission needs to make extra efforts to improve the statistics, to use existing information as well as advanced and innovative data collection and data analytics methods also via digital technologies. The aim is to execute extra research and to analyse more data and evidence in order to understand better what prevents or discourages companies – particularly SMEs – from entering other EU markets and how to improve the situation. Is it specific procedures and national bureaucracy and if so which? Is it unfamiliarity with legal requirements? Is it practical challenges like language or identifying potential clients in a new market? The proposals mentioned in the Impact Assessment go in the right direction. However, the funding should be extended to be able to investigate in detail the reasons for dysfunctions and to acquire necessary data that may help policy-makers to better target legislative or non-legislative measures in order to address the existing barriers more effectively.

The Consumer Programme and funding under the New Deal for Consumers

As indicated in the impact assessment, the Consumer Programme of the last MFF promotes *"the development and enforcement of consumer rights in the EU and supports measures to inform and empower consumers"* (SWD(2018) 320, p. 189). As a partner of the Consumer Law Ready² project, EUROCHAMBRES encourages all initiatives making businesses and consumers better aware of the extensive EU law acquis. By enhancing knowledge on both seller and buyer side, a better understanding can emerge, effectively avoiding disputes and misunderstandings. This is beneficial for all parties involved in commercial transactions. However, it is important not to forget the equally important aim to improve the competitiveness of businesses, especially SMEs. Of decisive importance for all measures is that a suitable balance is achieved between the interests of companies and those of consumers. The scales must not tip too far in favour of consumers. This has not always been achieved.

In this respect, we encourage the Commission also to evaluate the directives on ADR/ODR with regard to reducing unnecessary bureaucracy.

The Commission published the New Deal for Consumer in April 2018, including a proposal for a Directive setting a common framework for Collective Redress (COM(2018) 184). In the press

² <https://www.consumerlawready.eu/>

materials of that package, the Commissioner in charge, Vera Jourova, is quoted saying: “*For the first time, we will also fund collective redress procedures, as we announced in the New Deal for Consumers.*”³ This idea is highly questionable. The Commission has no competence to become a third-party funder or a sponsor of so-called qualified entities to enable them to sue companies on whichever grounds this may be. Furthermore, in the impact assessment the Commission mentions “*support and training of qualified entities*” “*for the revision of the Injunction Directive*” (SWD(2018) 320, p. 201, 206). It needs to be clarified what kind of funding this might entail. Consumers have the right to organise themselves, but there is no legitimate ground to fund qualified entities as defined in the New Deal.

We do share the Commission’s objectives to fund initiatives to tackle the current “*shortcomings of the existing regulatory framework and enforcement tools to address new safety and economic risks linked to the globalisation of the production chain, direct internet sales (including from outside the EU) and the continuous appearance of innovations in consumer products and services enabled by the rapid digitalisation of all sectors of the economy such as connected products, artificial intelligence, robotics, new online business models, etc.*” (SWD(2018) 320, p. 193). A level playing field needs to be ensured for all the law-abiding European SMEs who are trading within the boundaries of the Single Market. We, therefore, support all initiatives which are giving flesh to the bone of the Goods Package (see also below).

Internal market governance tools

Positive is the aim of the Commission to strengthen the funding of the internal market governance tools (Your Europe, Your Europe Advice (YEA), SOLVIT, the Internal Market Information system) which are, indeed, needed to help businesses to be informed about their internal market rights and to efficiently use them. As mentioned also by the Commission (SWD(2018) 320, p. 14, 221), the majority of businesses considers it as difficult to find out which national requirements they need to fulfil in cross-border activities⁴. Furthermore, “*the administrative burden to operate a business, such as obtaining permits and licenses, or complying with regulatory framework in the area of company law and corporate governance often remains high*” (SWD(2018) 320, p. 23). A well-functioning comprehensive information tool is of utmost importance.

Therefore, it is very positive that the Commission plans an upgrade of the “Your Europe” portal under the project of a Single Digital Gateway with the aim of boosting the quality, the visibility and the transparency (SWD(2018) 320, p. 14). EUROCHAMBRES is pleased to see that the Single Digital Gateway shall be given sufficient funding in order to perform its tasks. The financial resources must be sufficient to continuously improve and expand this tool. Moreover, it must be ensured that enough awareness is created. Failing to do this, will render all efforts in the set-up of the tools rather useless. Therefore, more budgetary efforts should go to the promotion of the tool.

The Commission also mentions the possibility to develop a training offer, pooling existing training activities and focusing on re-usable online training material which shall be open to the EU institutions and all Member States and could have modules for specific policy areas and users, particularly SMEs (SWD(2018) 320, p. 34). An important aspect is also here to use well-functioning existing information tools and support schemes – for example offered by the chambers of commerce– as best practice and to involve them as network partners to explore synergies.

³ http://europa.eu/rapid/press-release_IP-18-4049_en.htm

⁴ http://www.eurochambres.eu/custom/150923-Internal_Market_business_barriers_and_solutions_identified-2015-00326-01.pdf

It is also useful to collect more systematically user feedback and statistics from information and assistance services and from IMI to analyse the functioning of the single market, also for developing new legislation (SWD(2018) 320, p. 26). However, the information received from business associations, for example, surveys on internal market obstacles, should be taken seriously and influence policy-making as well.

Programme for the development of the internal market for Goods and Services as well as Company Law

Concerning the internal market for goods EUROCHAMBRES agrees with the priorities defined in the Impact Assessment (SWD(2018) 320, p. 235 et seq.). Indeed, more awareness should be raised around the principle of mutual recognition for goods as it is still underused. Funding should also go to better cooperation between national authorities in this area.

When it comes to services, which is an area significantly less integrated than goods, there is an acute need to identify the areas which need more integration. We urge the Commission to investigate further in this –as proposed (SWD(2018) 320, p. 236)– by gathering data, doing regulatory mapping and assessing the impact of restrictions and possible reform options. Surveys of EUROCHAMBRES and its member organisations show again and again that discrimination and bureaucracy, particularly concerning the posting of workers, continue to be one of the main problems⁵.

Another problem is the lack of support for businesses to fulfill all the administrative proceedings when going abroad. SMEs would prefer contact persons in their home countries which help them in their native language. The Points of Single Contact (PSC) have proven not to be sufficient. More than five years after the Services Directive entered into force, EUROCHAMBRES conducted an EU wide mystery shopper exercise and study. It showed that the performance of these PSCs is generally low (54%), with only two countries passing the 75% threshold of very good performance⁶. This type of exercises can prove very useful for policy-makers to understand where the Single Market fails to deliver and compliance is not optimal. The study showed that SMEs foremost were left with unfulfilled promises and a fractured Single Market. EUROCHAMBRES encourages the Commission to come up with a follow-up of the study.

Also concerning the right of establishment there is still room for improvement. A European Company law for cross border conversions could further the predictability and legal certainty of company transformations, lead to significant cost reductions for companies and implement the freedom of establishment the European Court of Justice (ECJ) has already stated. Unnecessary restrictions of the freedom of establishment and disproportional requirements should, therefore, be avoided. Digital tools in company law should be an option for companies and respect the quality and reliability of the company register in the Member States.

Training for national judges

For a correct and uniform application and effective implementation of internal market law it is necessary that national administrative staff and particularly national judges know the applicable EU law. However, in a number of Member States the judicial system is still not effective enough. The

⁵ See DIHK: <https://www.dihk.de/themenfelder/international/europaeische-union/recht-und-binnenmarkt/umfragen-und-prognosen/umfrage-dl-binnenmarkt-2016>

⁶http://www.europarl.europa.eu/meetdocs/2014_2019/documents/imco/dv/psc_study_final_report_/psc_study_final_report_en.pdf

World Justice Project Rule of Law Index⁷ and the Commission's Justice Scoreboard (COM(2018) 364) show this again and again. Capacity building and continuous training are, therefore, of great importance. As the Commission states: "*Adopting rules is only one part of the picture; making them work is just as important: citizens and businesses need to know their rights, local administrations need to know how to apply the rules and courts need to know how to enforce them*" (SWD(2018) 320, p. 4). Until now the training of judges is organised for the area of competition law under the Single Market Programme (p. 83 f.) and for other areas within the European Judicial Training under the Justice programme (p. 20)⁸. Both programmes need not only more funding to reach more national judges but also a good coordination to ensure an efficient use of the available means. It must be ensured that national judges are well-trained in EU law and attend regularly and continuously training measures.

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EUROCHAMBRES – The Association of European Chambers of Commerce and Industry represents over 20 million enterprises in Europe – 98% of which are SMEs – through members in 44 countries and a European network of 1700 regional and local Chambers.

⁷ <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

⁸ https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do