

## 30th anniversary of the Single Market

### Key recommendations

1.	The European Commission, European Parliament and Member States' governments need to <b>reinstate the idea of a Single Market as an economic union</b> without internal obstacles and bring the four freedoms back to the top political priorities, which will be the best guarantee for the EU's future economic security.
2.	<b>Stop the regulatory waterfall.</b> A rapidly changing regulatory landscape with increasing obligations for businesses makes compliance more difficult, especially for SMEs.
3.	<b>Member States should notify all relevant (draft) national measures,</b> accompanied by a proper impact assessment, and ensure that these measures are justified, proportionate, and non-discriminatory.
4.	The EU institutions should ensure that all <b>EU legislative proposal and substantive amendments are accompanied by an impact assessment</b> and proper stakeholder consultation, this will improve the quality of EU legislation.
5.	The Commission should <b>make its internal infringement procedure process more automatic, transparent and faster.</b> If in a procedure certain conditions are met the next step should be automatic and not subject to other considerations.
6.	The Commission should have <b>suspension injunction powers</b> where national measures are an obvious infringement of Single Market rules to prevent that citizens and businesses have to suffer from infringements for years.
7.	Each <b>economic actor</b> in the Single Market should carry out <b>responsibilities</b> that correspond and are proportionate to its activity and level in the chain.
8.	The Commission and Member States should take action to <b>tackle Territorial Supply Constraints (TSC).</b> It requires the use of competition enforcement measures, declaring those practices as non-acceptable and monitor the progress on TSCs through annual review processes.
9.	Agree an new mandatory <b>labelling and reporting requirements at EU level and limited to what is strictly necessary</b>

## Introduction – a Single Market for retail and wholesale

The Single Market has brought EU citizens and businesses many economic and social benefits. It has created opportunities and generated economic growth and integration. The four freedoms (people, goods, services and capital) are the foundation of the EU’s accomplishments and should be at the heart of current and future policy discussions. The Single Market also provides citizens and businesses with rights and legal certainty e.g., product safety, data protection, and redress.

Retail and wholesale companies have greatly benefited from the Single Market. Free movement of services and the Services Directive enabled them to establish more easily across the EU and reach many more customers. Free movement of goods enabled them to provide their customers with a wider choice of products for lower prices.

The digital transformation has added a new dimension to our sector. It has enabled companies to sell to customers across the EU more easily. Retail and wholesale companies are transforming into omnichannel businesses, seamlessly integrating the online and offline environment and creating the best experience for their customers. This fuels innovation not only in the sector but also across the value chain.

At the same time, the sector is moving towards sustainable business models, where the main focus is on net-zero operations, sustainable offerings, waste management and a circular economy. It helps customers to make more sustainable choices and it creates markets for suppliers and service providers by fuelling demand for sustainable solutions. Therefore, the sector is a driver for a more sustainable economy.

However, it is important that there is a supportive policy framework enabling investments.<sup>1</sup> A study by EuroCommerce and McKinsey shows that our sector faces a €600 billion investment gap to meet the green, digital and skills ambition required until 2030.<sup>2</sup>

Retail and wholesale companies are the interlocutor between producers and (professional) customers. We check whether the producer has provided all the legally required information, test where required and provide customers with additional information about alternatives, environmental and social impact, etc. Retailers are usually the first port of call for consumers when they have questions about the product they bought or need redress. On top of legal rights, retailers can provide additional commercial guarantees to consumers regarding e.g., repair, maintenance, etc. For consumers this creates the trust they need to shop confidently cross-border online, even where they may not know the retailer established in another country.

That more is needed to bring the Single Market back at the heart of EU policy was made clear in our joint industry statement.<sup>3</sup> It is time that EU institutions calling for a renewed commitment to the Single Market follow through.<sup>4 5 6</sup> This becomes even more obvious in the Commission’s Single Market communication<sup>7</sup> where the retail sector is mentioned as one of the main sectors where Single Market barriers persist. We appreciate the Commission’s ideas for improving Single Market governance. Especially where they are focussed on preventing infringements like the creation of a ‘single notification entry point’ for Member States and improving the Services Directive notification. But this is only possible with a renewed political commitment by all EU institutions to refrain from creating new barriers, removing existing ones and stronger enforcement of Single Market rules.

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<sup>1</sup> Particularly concerning here is the [Commission proposal on Late Payments, that will cost our sector an estimated €150 billion](#) working capital. This will significantly reduce the sector’s capacity to invest in the twin transition.

<sup>2</sup> [Transforming the EU Retail & Wholesale Sector, EuroCommerce & McKinsey, 2022](#)

<sup>3</sup> [Fresh political engagement required to renew economic integration in the Single Market](#), Business Europe, Digital Europe, ERT, Eurochambres and EuroCommerce, July 2022

<sup>4</sup> Resolution on the 30<sup>th</sup> anniversary of the Single Market, [2022/3015\(RSP\)](#), European Parliament, 2023

<sup>5</sup> Sweden’s EU presidency: 11 proposals to reboot the Single Market, Sweden, November 2022

<sup>6</sup> [The EU Single Market at 30, Creating a new momentum for a more resilient integration](#), signed by Belgium, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, The Netherlands, Portugal, Slovakia and Slovenia

<sup>7</sup> [The Single Market at 30, COM\(2023\)162, European Commission, 2023](#)

Compliance is an important pillar of a well-functioning Single Market. We notice that many of our members are struggling to keep up the pace. In the past mandate many new laws were enacted and many new laws from the previous mandate became applicable. More and more, corner pieces of EU legislation are amended again while the previous changes are not even applicable. This regulatory avalanche is becoming very costly and difficult for businesses to comply with, and this is on top of all the new reporting burdens that have been introduced. This is cumbersome for all businesses, but especially for SMEs.

### *Recommendations*

1. Bring the Single Market back to the top political priorities for all EU institutions and make the Single Market an attractive place to invest. A renewed commitment from all EU institutions and Member States to achieve this goal is necessary.
2. Stop the regulatory avalanche. A rapidly changing regulatory landscape with increasing obligations for businesses makes compliance more difficult, for all businesses but especially for SMEs.

### *Free movement of goods*

The core business of retail and wholesale is the reselling of products to consumers or business customers, online, offline or omnichannel. Therefore, the free movement of goods is the foundation for further growth and competition in our sector. The easier it is for our sector to trade and source goods across borders, the more choices we can offer to our customers at the best possible conditions in the EU.

In the past 30 years we have come a long way improving the free movement of goods and increasing consumer protection. Consequent revisions of the horizontal legal framework have brought clarity and proportionality in the roles and responsibilities of economic operators corresponding to their role in the supply chain and supported a level playing field in Europe.

While EU harmonisation in goods is highest it is also the area where often national barriers are created e.g., political or legal pressure to source more locally, national/regional labelling, testing or composition requirements, minimum EU harmonisation, diverging implementation and application of the rules, etc. Good examples are the French Triman logo,<sup>8</sup> the Bulgarian local sourcing requirement,<sup>9</sup> the Slovak obligation to advertise Slovak products,<sup>10</sup> and the Spanish regional regulation that requires labelling in a regional language,<sup>11</sup> etc.

In principle we see high added value in ensuring the further harmonisation of product rules where appropriate and possible, which also includes market surveillance and enforcement. Proper enforcement of the rules throughout the EU ensures the best protection for consumers and businesses, but also creates a level playing field. In the absence of EU legislation, the principle of mutual recognition should apply. Yet, we still see that Member States hold on to their local rules even if a product is already marketed elsewhere in the EU.

The Commission should also invest more in dialogue with Member States to avoid or remedy infringements. Early detection and speed are essential to tackle (potential) infringements, because businesses need time to adapt their operations to new legislation. This means, that businesses will already set in motion changes many months if not years in advance to be compliant. If infringements are in place or potentially infringing measures are threatening to be adopted for a long enough period of time, businesses will have adapted their operations fully. Leading to unnecessary costs for businesses and consumers, including less choice and distorted markets.

### *Recommendations*

3. The Commission should consistently enforce EU law, looking at national measures regularly. The Commission should carry out regular screenings of national measures and assess their compliance with the Single Market principles.
4. Member States should refrain from adoption infringing measures and take into account indirect damages due to draft laws that businesses anticipate that they need to comply with.

<sup>8</sup> INFR(2022)4028

<sup>9</sup> INFR(2020)2231

<sup>10</sup> INFR(2020)4004

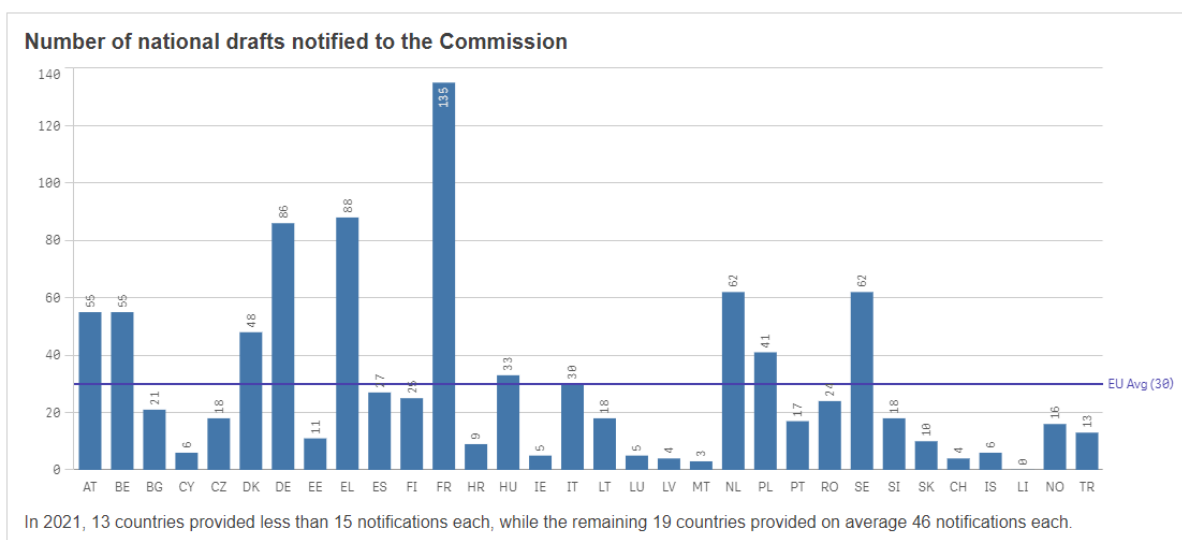
<sup>11</sup> [Law 22/2010, of July 20, of the Consumer Code of Catalonia](#), etc.

## Improve notification of national rules

EuroCommerce appreciates the notification procedure for draft technical regulations for products and information society services under the Single Market Transparency Directive. It is a strong preventive tool, but we see that Member States regularly do not notify measures<sup>12</sup> and that Member States often do not provide a proportionality assessment. In principle every notification is a restriction fragmenting the Single Market. Member States' justifications are often vague and opaque and therefore it should be preferably mandatory to provide a clear and publicly available detailed proportionality assessment. This should become part of the Commission proposal for a single notification entry point in its single market communication.<sup>13</sup> Generally, for goods we first and foremost need Member States to really notify all relevant measures and when necessary, the Commission needs to follow up forcefully.

The 2023 Single Market Scoreboard also shows the big difference between the number of notifications Member States have submitted. The average number of notifications is 30 per Member State, but France submitted 135 restrictions in 2021, Greece 88 and Germany 86, while Cyprus, Estonia, Croatia, Ireland, Luxembourg, Latvia and Malta submitted less than 10.<sup>14</sup> This shows that certainly a number of Member States are not notifying all relevant measures, and countries like France, Greece and Germany introduce likely many unnecessary and disproportionate restrictions. On top of that we regularly observe that national decision-makers do not notify measures while they know these should be notified. An extreme example is the Bulgarian local sourcing ordinance, where Commissioner Breton sent in 2020 a letter to the Bulgarian government explaining the measure was likely an infringement and should be notified. Instead, the Bulgarian government adopted the order without notification two weeks later.

The same situation applies to the notifications under the Services Directive, where 19 countries have notified less than 10 measures since 2019, 4 of them have not notified anything at all under the Services Directive<sup>15</sup>. At the same time, 4 countries have notified 40 or more measures since 2019. This lack of notification under the Services Directive is even more prominent at regional level. In Spain, for instance, regional governments do not notify any measures that constitute a restriction to the establishment and retail activity under the Services Directive.



(source: European Commission, Single Market Scoreboard 2023)

Because in principle all national measures constitute a restriction of the one of the free movements that are at the core of the Single Market, it is important that even when a Member State has not notified a measure, the Commission at the very least would make an ex-post assessment to ensure EU law is respected and consumers and business are not subject to infringements. In addition, during the

<sup>12</sup> See [Commission on the operation of the Single Market Transparency Directive from 2016 to 2020](#)

<sup>13</sup> [The Single Market at 30, COM\(2023\)162, European Commission, 2023](#)

<sup>14</sup> [https://single-market-scoreboard.ec.europa.eu/enforcement-tools/tris\\_en](https://single-market-scoreboard.ec.europa.eu/enforcement-tools/tris_en)

<sup>15</sup> [https://ec.europa.eu/internal\\_market/imi-net/repositories/services-directive-notifications/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/repositories/services-directive-notifications/index_en.htm)

Covid pandemic many Member States introduced crisis-related measures that had a huge impact on our members: ordering business to close, restriction of opening hours and number of customers, closing of borders, etc. While the rules addressed similar situations they differed greatly regarding the scope of and effect on businesses, and in certain cases they were disproportionate and discriminatory. The notification procedure could be an important tool for the Commission and other Member States to guarantee that crisis-related measures comply with EU law. This would require a short and fast-track assessment instead of the usual three months standstill period. Therefore, we support notification of crisis-related measures in the envisaged Single Market Emergency Instrument.<sup>16</sup>

### *Recommendations*

5. The Commission and Member States should ensure that all relevant draft measures are notified and are in line with EU law.
6. Member States should submit a proportionality assessment when they notify a draft measure, this could be part of the Commission’s idea for a single notification entry point.
7. Implement a fast-track notification procedure for temporary crisis-related measures restricting the four freedoms.

### *Remove Territorial Supply Constraints*

Territorial Supply Constraints (TSCs) have detrimental effects on the Single Market. These are restrictions imposed by large, dominant international manufacturers that prevent retailers and wholesalers from sourcing freely within the Single Market. This means retailers cannot realise the economic advantage of the Single Market and source a wider choice of products at better conditions. Since cost efficiencies gained from optimal sourcing within the Single Market would be passed on to consumers on the competition-intensive downstream market, this means that TSCs harm consumer welfare, too. A Commission study found that the restrictions cost EU consumers more than €14 billion.<sup>17</sup> Addressing TSCs now is more important than ever as EU consumers face a cost-of-living crisis.<sup>18</sup>

TSCs manifest themselves in practices such as refusals to or threats to stop supply distributors, restriction of available quantities for sale, the language options for product packaging or differentiations of product ranges and prices between Member States without (sufficient) explanations. At the same time, large consumer goods manufacturers benefit from the Single Market by concentrating their production in a few sites to deliver their products across Europe and sourcing ingredients where they see fit. But this option is not available to retailers and wholesalers, which locally distribute the goods to final consumer.

We ask the EU Commission and member states to put an end to TSCs and to legislation that strengthens the negative effects of these barriers, such as to divergent labelling rules or interferences with the freedom to source abroad as the recently adopted Descroizaille law in France.

### *Recommendations*

- We ask the EU Commission and member states to take decisive action to make Territorial Supply Constraints history, by:
8. Making better use of competition enforcement measures (e.g. through investigations like that into [AB Inbev’s](#) deliberate strategy to fragment the beer market).
  9. Declaring as not acceptable the practices that artificially segment the Single Market and prevent the circulation of products across borders; building on the findings of the AB Inbev case, the [Commission study of TSCs](#) and [the vertical guidelines](#).
  10. Monitoring the progress in stopping TSCs through an annual review process.

### *Labelling*

Labelling is one way for retailers to communicate with consumers every day so they can make informed purchasing choices. Labels should be safeguarded by the Single Market principles allowing free movement of goods. Labels established at national and regional level should not give legal basis

<sup>16</sup> Also see the [EuroCommerce position paper on the Single Market Emergency Instrument](#)

<sup>17</sup> [Study on territorial supply constraints in the EU retail sector, European Commission, 2020](#)

<sup>18</sup> [EuroCommerce campaign: making the Single Market work for everyone](#)

to break the mutual recognition principle. To ensure this, the EU should go back to the basics. Goods and services legally placed in a Member State should be allowed to be marketed all over the Single Market.

National and regional mandatory labelling initiatives and their impact on trade should be closely examined and their efficiency/practicality should be questioned when they pose obstacles to trade. It is possible for national and regional initiatives to pose a risk on the free movement of goods and the ability of economic operators to expand their assortments and reach out to more European customers by offering them a greater variety of products at competitive prices. In practical terms, if such initiatives are adopted, then retailers will have to bear the costs of relabelling their products and/or redesigning their packaging, thus imposing significant administrative and financial burdens on their businesses, especially on SMEs. This has both negative consequences for consumers that can feel misled and have a hard time understanding the different measurements and labels. It will also have a negative impact on sustainability since products cannot be sold in all Member States.

Digital information channels provide retailers and wholesalers with another alternative to satisfy consumers' demands for more information. The European Commission should adopt a coordinated approach to allow for digital means to provide product information. Any digital labelling developments should remain voluntary and consideration should always be given to small enterprises as well as to consumers who are not digitally adept. Importantly, clarity is needed on the responsibilities and obligations of different business actors regarding the provision, security, access and quality of this information; the current state should be maintained and any shift in responsibilities should be avoided.

#### *Recommendation*

11. Member States should seek for EU harmonisation where appropriate and possible, especially for labelling.
12. Any EU labelling legislation should work toward ensuring the smooth functioning of the internal market and not impose trade restraints.
13. The Commission should adopt a coordinated approach to allow for digital means to provide product information.

#### *Cross-border VAT compliance*

VAT compliance when trading cross border is amongst the highest barriers for companies. Despite the welcomed improvements through the VAT One Stop Shop (OSS), VAT registration in different Member States is often still time-consuming and costly. European SMEs are spending around 8,000 euros on compliance costs per year and in each country. EuroCommerce supports the Commission's proposal on a Single VAT Registration initiative. This would facilitate trade within the EU by making VAT compliance simpler, fairer and more efficient.<sup>19</sup> [You can find more information here.](#)

#### *Recommendation*

14. The EU needs to extend the existing VAT One Stop Shop system to all goods transactions where the seller is not located in the EU country of taxation:
15. Extension to cross-border movement of own inventory across the EU;
16. Extension to domestic sales from distribution hubs by a seller that is not established in that EU country.

#### *VAT rules regarding donations*

The current VAT legislation gives Member States the possibility to implement a VAT relief on donations. However, only a handful of countries make use of this VAT neutralisation option to support sustainability and circular economy goals, whereas other EU countries continue to levy VAT on charitable donations. This is counterproductive as it is making donations of surplus products more onerous than their destruction, which is VAT-free. Especially in light of the current focus on environmentally friendly practices, it is important to allow unsold products to be donated without companies needing to pay VAT. The topic is currently widely debated at EU level.

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<sup>19</sup> [EuroCommerce – Ecommerce Europe campaign to simplify VAT](#)



## Recommendations

17. EuroCommerce calls upon the Commission to resolve the issue and clarify and amplify VTA relief solutions for charitable donations to align VAT rules with EU environmental and circular economy objectives.<sup>20</sup>

## Improve freedom of establishment

Freedom of establishment is one of the cornerstones of the Single Market, especially for retail. Even with the continuing growth of online sales most consumers buy their products in brick & mortar stores, and omnichannel retailers combine their online and offline sales channels to serve their customers better. This means that the opening of and operating brick & mortar stores remains essential. At the same time, the 2022 study by EuroCommerce and McKinsey shows that close to 10 million sqm of commercial real estate (2% of the total) will need to be repurposed by 2030, with new functions and locations to meet consumer demand.

The Commission 2022 [Retail Restrictiveness Indicator](#) (RRI)<sup>21</sup> and the 2018 retail communication<sup>22</sup> show that retail is a highly regulated market at national and regional level, as also stated in the Commission's recent Single Market communication. Another study from the Commission showed that retail was one of the few services sectors where the number of restrictions did not go down after the adoption of the Services Directive.<sup>23</sup> For example, in Hungary foreign-owned retailers do not get a licence for a new store anymore and can only grow by taking over existing stores due to the so-called Plaza Stop 3 Law. In Spain opening larger retail stores is problematic in many autonomous regions.

But we see also many indirect infringements of the freedom of establishment. Some Member States and public authorities are trying to make it as difficult as possible for already established EU retailers originating from other Member States to operate in their markets by restrictive product rules, advantages for local players, restricting B2B relationships, sector-specific taxes, price & margin caps, etc.<sup>24</sup> For more details see the part on [protectionism](#) in this paper. This undermines the functioning of the single market and shows the lack of commitment by these Member States to strengthen and deepen the Single Market.

We need stronger enforcement by the Commission and more effective preventive measures. There is a notification obligation for Member States in the Services Directive to notify measures affecting the freedom of establishment (Services Directive, Art. 15(7)) and a second about measures affecting the freedom to provide services (Art. 39(5)). However, the Single Market Scoreboard 2023 clearly shows this procedure is not working. In 2021, 11 Member States did not notify anything at all. Most Member States notified between 1 and 6 measures, while Hungary and Sweden notified 19 and 16 measures.<sup>25</sup> This would indicate that many national measures are now not notified and the Commission has not scrutinised those measure on compliance with the Services Directive.

## Recommendations

18. The European Commission should ensure that the Services Directive is well-implemented and enforced across the EU.
19. The Commission and Member States should reduce fragmentation by removing disproportionate and unnecessary national and regional measures. The Commission could provide further guidance on proportionality to Member States following its study on proportionality.<sup>26</sup>
20. Improve the existing notification procedure under the Services Directive.

<sup>20</sup> <https://www.eurocommerce.eu/app/uploads/2023/09/20230906-eurocommerce-position-paper-vat-relief-for-donations.pdf>

<sup>21</sup> [https://single-market-economy.ec.europa.eu/single-market/services/retail/retail-restrictiveness-indicator-rri\\_en](https://single-market-economy.ec.europa.eu/single-market/services/retail/retail-restrictiveness-indicator-rri_en)

<sup>22</sup> A European retail sector fit for the 21st century COM/2018/219 final

<sup>23</sup> [Mapping and assessment of legal and administrative barriers in the services sector, European Commission, 2021](#)

<sup>24</sup> Turnover-based retail specific taxes are particularly damaging for the freedom of establishment, because retail is a sector with very high turnovers but slim margins (1-3%).

<sup>25</sup> [https://single-market-scoreboard.ec.europa.eu/enforcement-tools/tris\\_en](https://single-market-scoreboard.ec.europa.eu/enforcement-tools/tris_en)

<sup>26</sup> [Study on the proportionality assessment by the Member States when adopting the retail establishment related requirements pursuant to Directive 2006/123/EC, European Commission, 2022](#)

21. We encourage the Commission to regularly update the RRI and improve it where necessary, also in dialogue with retail and wholesale stakeholders.
22. The Commission should discuss the outcome with the Member States bilaterally, in the Single Market Enforcement Taskforce (SMET), and also in the Services Directive Working Group. The aim should be to exchange on good regulatory practice that will help Member States to achieve their public policy objectives in the most effective and efficient way, in line with the Services Directive.

### *Sustainability*

Fragmentation of the single market is also seen in waste legislation and regulations, a worrisome development which retailers and wholesalers believe is an obstacle for the transition towards a Circular Economy. Not enough high-quality recycled material is available, while conflicting European legislation hampers its use. Fragmentation can be found in different areas, reaching from different national decisions regarding when waste ceases to be waste (end-of waste criteria) due to diverging or unclear criteria, different requirements and rules for extended producer responsibility schemes in the EU up to difficulties to ship waste for recycling or reuse from one Member State to another. Creating a real Single Market for Waste is paramount to underpin the goal of a Circular Economy. Without proper and well-functioning rules for the waste phase circular business models will not be able to thrive.

We also experienced distortions of the Single Market in relation to national packaging labelling legislation. Member States taking unilateral measures and introducing divergent requirements to improve labelling, sorting and collection of packaging for their potential recycling may be well-intentioned, but also pre-empt legislative developments at EU level like the Packaging and Packaging Waste Regulation, compromise the effectiveness of an EU-wide approach and fragment the Single Market. For example, if one Member State requires that packaging bears the “Green dot” while a neighbouring Member State bans the same logo, the free movement of goods is distorted without any real benefit for the environment or consumers. On this basis, the Commission recently opened an infringement against the Triman logo in France ([INFR\(2022\)4028](#)).

### *Recommendations*

23. Set clear and harmonized rules at EU level, addressing product sustainability (incl. Performance and information requirements) and a Single Market for Waste (e.g. Extended producer responsibility, waste definitions).
24. Make sure that there are common definitions in place across the EU for circular economy.
25. Create a Single Market for waste and avoid fragmentation to achieve a circular economy. The Commission should ensure that national packaging labelling legislation do not fragment the Single Market and react promptly to rules that act as barrier to trade.

### *Digital Transformation*

Our sector is in the middle of a fundamental digital transformation. Until 2030 we expect 90% of the growth in retail and wholesale to take place online. Incremental investment of up to €230 billion is required. While digital megatrends disrupt current business models, they also present unprecedented growth opportunities. To take advantage of these growth opportunities and build resilience, retailers and wholesalers need to accelerate the adoption of digital channels, automation, advanced analytics, use and access to data and IT modernization.<sup>27</sup>

Retailers and wholesalers are often users of technology like artificial intelligence, cloud services, software, IoT, cybersecurity, hardware, and depend often on other digital service providers. This is important to understand when discussing new legislation like the AI Act, Data Act, DSA, DMA, HVER, VBER etc. It is important to strike the right balance between the interest of the different value chain actors based on proper impact assessment and stakeholder consultation, and not to distort competition or create well-intended but costly and disrupting new measures.

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<sup>27</sup> [Transforming the EU Retail & Wholesale Sector, EuroCommerce & McKinsey, 2022](#)



The Single Market should enable our members to invest, innovate and compete for the favour of the customer. The focus should not only be on what is happening in Europe but also outside. We see strong competition from non-EU based players targeting EU based customers, which are not always playing by the EU rules but also sometimes get strong support from their governments. If we want to have a strong EU retail and wholesale sector that serves EU customers and can compete with other players across the world, we need to make the EU the most attractive place to invest. The flood of new digital legislation that is sometimes too prescriptive or lacks a good understanding of the business reality may actually undermine this.

### Recommendations

26. Have a legal framework that enables experimenting and allows new digital and sustainable business models to grow (VBER, HBER, AI Act, Data Act, DSA, DMA, etc), and refrain from over-prescriptive legislation.
27. Adopt a channel neutral approach, which ensures a level playing field, including in relation to taxation and other rules that operates equitably across industries and between different forms of business activities and business models and avoids national standalone measures that can fragment the Single Market further.
28. Ensure effective enforcement in Member States, cross-border and also of third-country players that target EU-based consumers.

### People

The retail and wholesale industry is the largest private-sector employer in the EU, providing jobs for close to 26 million people, about 13 percent of the total workforce. In the coming years, retailers and wholesalers will have to accelerate a comprehensive skill and talent transformation to stay competitive and contribute to upskilling, reskilling and the lifelong learning of their employees. Meeting rising customer expectations will likely require harnessing data and digitalisation, strengthening sustainability efforts, adapting to demographic change, and keeping pace with peers and evolving business dynamics—all of which will require new skills, create entirely new roles and engagement with trade unions. We play a key role as an education and training engine for the EU, that has positive spillover effects to the wider EU labour market. To enable the digital transformation and green transition, the sector will need to train up to 13 million employees and hire up to 1.5 million new people every year through 2030. The incremental investment required to transform the workforce could amount to €25 billion to €35 billion through 2030, which will come on top of the €50 billion to €70 billion that the sector would already invest through 2030 at the current investment pace.<sup>28</sup>

It is estimated that large companies will need to invest 30% more and SMEs double their investment in people by 2030. This means an investment of between €75 and €105 billion until 2030 (current and incremental investment, on top of the time and resources already invested in on-the-job training and other informal learning that has not been quantified). €25 to €30 billion would be needed for upskilling, which is 40-60% more than what the sector spends now and between €500 million to €3 billion in reskilling up to 2030.

SMEs would need to double their investment in people by 2030, at a cost of up to €20 billion or about 0.1% of sector revenue. While SMEs employ almost two-thirds of the retail and wholesale sector's workforce, SME investment has room to grow but has been hindered by time and budget constraints such as the opportunity costs of employees spending time in training. In general, as roles shift and evolve, many retailers will need to build internal expertise and capabilities and increase employee attraction and retention.

### Recommendations

29. Facilitate access to funding and empower retail and wholesale associations so they have the resources, knowledge and skills to enable companies to use the funding programmes (e.g., grants, loans, fiscal incentives, etc.) to support skills development and transformation and find quality training providers.
30. Continue engagement, support services and project finance for the Pact for Skills/Skills Partnership to enable collaboration (e.g. among social partners, private companies, public authorities and education and training providers) to design and implement education and training

<sup>28</sup> [Transforming the EU Retail & Wholesale Sector, EuroCommerce & McKinsey, 2022](#)

programmes to address skills shortages, basic skills needs (e.g. digital skills) and anticipate new skills needs.

31. Analyse and assess common industry skills needs to build up the pool of talent needed for the digital and green transformation (e.g. data scientists, engineers and technicians) and work with Member States to enable this (e.g. through dedicated chapters in the European Semester country reports).
32. Develop initiatives that showcase the opportunities for career development in EU industry, particularly the retail and wholesale sector (e.g. through joint voluntary campaigns such as roadshows, job fairs) to attract and retain talent.
33. Enable international and national learning mobility through, for instance, eliminating barriers for vocational educational and training VET learners and apprentices to participate in exchange programmes across EU in the retail and wholesale sector.
34. Raise the profile of the Large Skills Partnership for Retail, to encourage greater participation from interested stakeholders that could support and contribute to best practice exchange or other initiatives that may be developed to reach the objectives of the partnership.

### *Division of responsibilities among the various actors in the supply chain*

More and more we see in EU law that decision-makers do not make a clear differentiation between different actors in the value chain. Therefore, clear rules and responsibilities for each player are missing. This creates legal uncertainty for economic operators. In the Single Market it is particularly important to have clear rules and responsibilities among the various actors in the supply chain. This will ensure effective enforcement and provide consumer trust.

In several recently proposed legislative measures, the burden of compliance of those who place products on the market (manufacturers or importers)<sup>29</sup> is extended to those who make these products available on the market (retailers/wholesalers/traders/distributors).<sup>30</sup> However, as clearly established under EU product law, the obligations of distributors should be proportionate to their role in the chain. Recent examples of this trend include the proposals for legislation on Corporate Sustainability Due Diligence,<sup>31</sup> Forced Labour,<sup>32</sup> Construction Products,<sup>33</sup> and the Cyber Resilience Act.<sup>34</sup>; as well as the recently adopted Deforestation Regulation<sup>35</sup>.

The trend is in contrast to *EU aquis* that ensures operators up the chain (manufacturers, importers) have provided the necessary conformity documents; while retailers/traders/distributors need to check the presence of the required documents and labels and take corrective measures if needed.<sup>36</sup> This shift does not reflect the practical realities of the Single Market. It often leads to a duplication of tasks – and consequently legal uncertainty as to who is ultimately responsible for the task, and unnecessary costs. Coherently constructed Single Market regulation can help retail and wholesale companies on their clear understanding of responsibilities.

### *Recommendation*

35. Each economic actor in the Single Market should carry out responsibilities that correspond and are proportionate to its activity and level in the chain.

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<sup>29</sup> The 'Blue Guide' on the implementation of EU product rules 2022, p.35 and p.39.

<sup>30</sup> *ibid* p.41.

<sup>31</sup> COM(2022) 71.

<sup>32</sup> COM(2022) 453.

<sup>33</sup> COM(2022) 144.

<sup>34</sup> COM(2022) 454.

<sup>35</sup> Regulation (EU) 2023/1115.

<sup>36</sup> E.g., New Legislative Framework, EU General Product Safety Directive, Machinery Product Directive, Toy Safety Directive, Artificial Intelligence Act, proposal for the Eco-design for Sustainable Product Regulation, and proposal for Food Information to Consumers.

## Need of effective and efficient enforcement

Enforcement is one of the cornerstones of the Single Market. Effective enforcement is the basis for trust between Member States, for trust between businesses and consumers, and for trust between businesses. It is important that all businesses comply with the relevant rules and rogue players in or outside the EU cannot take advantage of lacking enforcement.

### *Consumer protection & level playing field*

Consumers need to be able to trust that the products they buy are safe and they can exercise their rights as appropriate. Retail has an important role here as the interlocutor between producers and consumers. We service consumers by checking whether all legally required information is attached to the product, provide advice and redress to consumers. We work with our suppliers and competent authorities when necessary and we can facilitate recalls of products.

To serve our customers better it is important to understand as best as possible what our customers want. This involves collecting data which will help to offer more meaningful products or services and reduce time spent and annoyance. This is why retailers often have loyalty programmes and provide personalised offers to loyal customers. It allows them to ensure that their customers are notified of the right offer at the right time, with the right message, and through the right channel.<sup>37</sup> Consumers also demand a more personalised approach from retailers and the ones that do this successfully are outperformers in the market.<sup>38, 39</sup>

Digital is creating new challenges as the recent debates on digital fairness have uncovered. However, in our view, it is yet unclear whether existing EU rules are fit for purpose due to the lack of enforcement. Many cases have been brought forward by the different stakeholders,<sup>40, 41, 42</sup> but it is not clear why current rules would not be fit for purpose. The risk is that all retailers and traders in the EU will be confronted with higher regulatory requirements because of a group of (notorious) rogue traders that will try to circumvent any new requirements by default. Increasing the price gap between compliant and non-compliant products, which in turn may make it more tempting for consumers to opt for the cheaper non-compliant version. In some cases, like in the EP study on personalised pricing<sup>43</sup> examples of the bad behaviour by non-EU marketplaces are used to argue there is a problem in the EU, while the problem here is caused by third-country players targeting EU consumers. The solution here is better enforcement of third country operators not increasing the burden for EU-based retailers.

Also, in other policy areas we see this becoming problematic e.g. sustainability, B2B relationships. In the end, the EU's decision-makers approach of tackling coming up with new rules instead of focusing on enforcement of existing rules is undermining future growths and jobs, and also the EU's global competitiveness. It becomes more difficult to invest and innovate in the EU and other economic powers outside the EU continue to grow. This results into increased regulatory costs and higher prices for consumers in the EU, and our dependencies on non-EU products, services and operators will grow. A recent Spanish study shows the impact of the increased regulatory burden across all policy areas and this is topped off by further fragmentation at national and local level.<sup>44</sup> We have also emphasised this problem in a joint industry statement in June 2022 with four other leading businesses

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<sup>37</sup> [Navigating the market headwinds – The State of Grocery Retail 2022: Europe](#), EuroCommerce & McKinsey, 2022

<sup>38</sup> During COVID many consumers started to buy or buy more online because many stores were closed or out of safety concerns. Recent figures now show that many consumers buy again in brick & mortar stores. However, the long-term trend remains omnichannel.

<sup>39</sup> [Global Powers of Retailing 2023, Deloitte](#): every large retailer quoted in the report invest heavily in omnichannel and sees this as the future model to engage with customers

<sup>40</sup> "Dark patterns" and the EU consumer law acquis, 2023, BEUC

<sup>41</sup> [Behavioural study on unfair commercial practices in the digital environment : dark patterns and manipulative personalisation : final report](#), 2022, DG JUST

<sup>42</sup> [Personalised pricing](#), 2022, EP

<sup>43</sup> idem

<sup>44</sup> [La mejora de la calidad institucional del comercio en España: cuantificación de su impacto económico y social](#), 2023, Instituto de Estudios Económicos

associations.<sup>45</sup>

### *Recommendations*

36. The Commission and Member States should via the Consumer Protection Cooperation Network test whether EU consumer protection law is fit for purpose regarding emerging issues online;
37. New policy proposals should be evidence-based, accompanied by a proper impact assessment and stakeholder consultation. Including a careful assessment of which type of traders are causing the problem (i.e. is there a problem with EU based traders or third country traders?).
38. Reflect how Single Market freedoms can be better understood within the Commission and incorporated into transposition meetings to reduce or curtail goldplating, especially where this affects the level playing field or fragments the Single Market.
39. The EU institutions should avoid regularly changing EU Consumer Law as has now happened over the past two Commission mandates. This will ease the compliance burden on retail and make it easier to understand how to be compliant

### *Improving enforcement*

Every year EuroCommerce lodges several complaints against Member States. This is a measure of last resort. The focus is always on preventing infringements from occurring at all, because infringement procedures can take years and the outcome is uncertain. For businesses and citizens, this means that they need to adapt to reality and comply with infringing rules. Even if the infringement is removed the damage has been done, and businesses and citizens still have to separately to court in case they have suffered damages. It may help if the Commission has the power of issuing a suspension injunction when there is a clear violation of EU law. It would ensure that in those cases businesses and citizens do not suffer damages, and deter Member States to introduce opportunistic and protectionist measures. Such a suspension injunction should be followed by an investigation like under EU Competition Law.

We also experience that it can take a long time before complaints are being handled, or that during the infringement process it may take a long time before next steps are taken. Sometimes this is caused by more procedural reasons (Member States exceed deadlines, translation causes delays, Member States do not provide correct or complete information, etc.) but can also be more political e.g. when the Commission does not want to offend a Member State because it needs its support elsewhere. This undermined effective enforcement of Single Market rules and also undermines the position of the Commission as enforcer.

### *Recommendation*

40. The Commission should have the power to issue a suspension injunction in case a national measure clearly breaches Single Market rules. This should be followed by an in-depth investigation where Member States have the right of appeal.
41. The Commission should review its internal infringement procedure processes and make them more automatic, transparent and faster. If in a procedure certain conditions are met then the next step should be automatic and not subject to other considerations. The Commission should be transparent about why a case is not progressing as it should.

### *Increasing protectionism*

Across the EU we see an increase of protectionist measures. The aim of those measures is to give local businesses and locally produced products and advantage vis-a-vis foreign businesses, which are often businesses from elsewhere in the EU. Especially food retail has been subject to this but not exclusively. Protectionism is done via product laws, restricting establishment, restricting B2B relationships, retail-specific taxes, enforcement, political pressure to change behaviour, etc.<sup>46</sup> The recent crises have made protectionist behaviour by Member States worse.<sup>47</sup> Some examples are below.

In 2022, Hungary introduced price caps for seven food products, capped at the prices of October 2021.

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<sup>45</sup> [Businesses Call for Fresh Political Engagement to Renew Economic Integration in the Single Market](#), 2022, BusinessEurope, Digital Europe, ERT, Eurochambers, EuroCommerce

<sup>46</sup> [Single Market Barriers Overview](#), 31 August 2022, EuroCommerce

<sup>47</sup> [Price control mechanisms at food retail level](#), 2022, EuroCommerce

This 'temporary' crisis measure is still in place and cost retailers an estimated tens of millions of euros a month. The rules however are only strictly enforced on foreign-owned (EU) retailers in that market. In 2022 Romania transposed the UTP Directive but introduced among other restrictions on retailers' own private label products. In Slovakia from 2019 until 2021 there was an obligation for retailers to show at least 50% of local products in their promotions, this was abolished after an infringement procedure. In 2020 Bulgaria obliged retailers to allocate 90% of shelf space to regional dairy products, the Commission opened an infringement procedure but the measure expired on 31 December 2020. In 2020 Hungary introduced a retail tax up to 2.5% of a retailers turnover, mainly paid by foreign-owned (EU) retailer. The tax burden is now 4.1% after several increases. The French government forced retailers to voluntarily lower prices in 2023 under threat of introducing price caps. We also have seen in a number of Member States like the Czech Republic, Hungary and Slovakia that foreign-owned (EU) retailers active in their territory got (at a certain moment) more inspection, more fines and higher fines than local players.

Member States should refrain from protectionist measures. They cannot commit every time in Council Conclusions to protecting and deepening the Single Market but do the opposite at home.<sup>48</sup> Our sector does a lot to support local suppliers and local communities. Especially food retail is a local business. Stores need to be close to consumers and provide local jobs and career opportunities, also in remote areas.<sup>49</sup> The sector uses buying alliances to reap the benefit of the scale of the Single Market to enable the pass through of savings to consumers. Action taken by Member States with national rules that de facto restrict the operation of alliances at EU level through requirements on the choice of law, are steps toward re-fragmentation of the Single Market to the detriment of consumers. An example is the recently approved Descrozaille law in France,<sup>50</sup> which makes it impossible for retailers and wholesalers active in France to negotiate contracts with their suppliers under the laws and jurisdiction of other EU member states, depriving them of the freedom to choose applicable rules in breach of EU single market rules.

### *Recommendations*

42. The Commission should apply a zero-tolerance policy against protectionist measures. These directly undermine trust among Member States and the integrity of the Single Market.
43. Member States should renew their commitment to the Single Market and refrain from adopting protectionist measures.
44. Highlight the benefits that European alliances bring consumers, which enable them to enjoy better prices and more choice.
45. The Single Market Enforcement Taskforce could play a role to prevent or resolve protectionist measures, especially where there is a risk other Member States will implement similar initiatives; but should not replace swift and decisive enforcement by the Commission.

### *Rule of law*

Also businesses suffer from a lack of respect for the Rule of Law e.g. the national judicial process is slow or not independent; sometimes our members are not consulted or had very limited time to contribute to the decision-making process (also compared to other stakeholders); and, the quality of legislation is low. A good example of the latter is the transposition of the Unfair Trading Practices Directive in Romania. The transposition act included a number of provisions that are not part of the Directive and are even infringements of EU law. Local lawmakers were informed about this upfront but adopted the transposition act nevertheless. Rule of law ensures legal certainty for businesses, it is a necessary condition for a well-function Single Market.

### *Recommendation*

46. The encourage the Commission to continue its work on Rule of Law, and in particular further develop the impact on businesses in the Annual Rule of Law Report.

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<sup>48</sup> [European Council conclusion, February 2023](#)

<sup>49</sup> <https://www.eurocommerce.eu/farm-to-fork/>

<sup>50</sup> [Loi n° 2023-221 du 30 mars 2023](#); <https://www.eurocommerce.eu/2023/03/french-law-jeopardises-the-single-market-and-affordable-consumer-prices/>.



## Fragmentation of the Single Market

Minimum harmonisation, diverging transposition and diverging interpretation of EU rules is causing fragmentation. This is problematic in many policy areas: goods, services, sustainability, digital, etc. This risk has and will become bigger with enlargement.

Fragmentation is the key factor explaining why investment in retail and wholesale is so much lower in Europe as compared to the US.<sup>51</sup> This shows that fragmentation does not only hold back businesses in the EU, but has an impact on the competitiveness of EU-businesses globally. While it is important to ensure and enhance well-functioning trade flows globally the EU's economic security agenda should help to support businesses to grow and compete on the global stage.

Fragmentation creates high costs for businesses and will ultimately result in less choice and higher prices for consumers. Prevention, dialogue, guidance and enforcement are all important elements in reducing fragmentation. Better notification, better impact assessments at national level, maximum harmonisation and Single Market clauses in EU law reducing national divergence will help.

Not only directives, but also regulations can contain minimum harmonisation requirements. Some examples are diverging interpretation and application of the GDPR,<sup>52</sup> the Price Indication Directive,<sup>53</sup> and the Unfair Trading Practices Directive.<sup>54</sup> Also the minimum harmonisation of the legal guarantee for consumers in the Sales of Goods Directive has led to a wide variety of gold-plating. Some Member States implemented the minimum of two years and others implement 10 years or even indefinite legal guarantees (i.e. Finland and the Netherlands).

Also, the implementation of the Services Directive is especially diverging for retail. Implementation is not only diverging between Member States, but also between Member States' regions and municipalities. A 2021 implementation report of the Commission shows that reducing barriers in services has been minimal since the implementation of the Services Directive.<sup>55</sup>

Another recent example is the revision of the Vertical Block Exemption Regulation. Here excessive flexibility on the use of selective and exclusive distribution system was introduced. This will likely cause fragmentation.

### Recommendation

47. The European Commission should make an assessment of where the costs of fragmentation in the Single Market is highest and develop together with the Member States a concrete action plan to reduce the burden of fragmentation significantly for businesses and consumers.
48. Member States should refrain from adopting national diverging rules; ensure proper impact assessments assessing whether national rules are properly justified, proportionate and non-discriminatory; notify all relevant national (draft) measures.
49. The EU institutions should strive for maximum harmonisation and add single market clauses to EU legislation.
50. The Commission could provide guidance to Member States where necessary. the Commission should consider what further support it can provide to Member States to raise the overall level of understanding and assessment of proportionality (e.g., workshops, a roadshow, best practice exchange, and other capacity building).
51. Ensure that at EU level all legislative proposals and substantive amendments are accompanied by an impact assessment and proper stakeholder consultation (e.g. Price Indication Directive, dual quality in the UCPD, withdrawal function in the Financial Services Directive, etc.).

<sup>51</sup> [Transforming the EU Retail & Wholesale Sector, EuroCommerce & McKinsey, 2022](#)

<sup>52</sup> [GDPR review report](#) (COM(2020) 264 final), 2020, European Commission

<sup>53</sup> [EuroCommerce public statement implementation](#) & [EuroCommerce recommendations Price Indication Directive](#)

<sup>54</sup> [Implementation of the Unfair Trading Practices Directive](#), 2021, EuroCommerce

<sup>55</sup> [Mapping and assessment of legal and administrative barriers in the services sector](#), 2021, European Commission