

## Making the Single Market a fairer, sustainable and globally competitive space

### Executive summary

This paper addresses a number of key issues for retail and wholesale businesses, with recommendations to improve the single market for consumers and business.

<a href="#"><u>Priority to services</u></a>	EU institutions need to further strengthen the Single Market for Services, including follow up of the Commission communication 'A European retail sector fit for the 21st century' to unleash the full potential of the single market for services <sup>1</sup> to create growth and jobs
<a href="#"><u>Stop protectionism</u></a>	EU institutions need to address Member States' protectionism and discrimination effectively to ensure interests of consumers are equally served in EU and national policy decisions
<a href="#"><u>Product safety and compliance</u></a>	Commission and Member States need to ensure a level playing field for all operators, underpinned by a strong legal framework ensuring all products sold on the EU market are EU compliant and safe, to maintain consumer trust and safety
<a href="#"><u>Enforcement</u></a>	EU institutions need to ensure that the Commission's role as Guardian of the Treaties is safeguarded in a more and more politicised European environment to increase legal certainty for all
<a href="#"><u>Remove unnecessary national barriers</u></a>	Commission and Member States should evaluate if national technical rules are still fit for purpose, future proof and proportionate to improve the free movement of goods
<a href="#"><u>Harmonisation where possible</u></a>	EU institutions should aim for full harmonisation of EU law where possible and appropriate to prevent unnecessary fragmentation of the single market
<a href="#"><u>Eliminate sourcing restrictions</u></a>	EU institutions should take measures to put an end to territorial supply constraints
<a href="#"><u>Single Market for Waste</u></a>	The EU institutions should resolve fragmentation of waste management and recovery
<a href="#"><u>Sustainable communities</u></a>	Commission, Member States and other stakeholders should collaborate to ensure sustainable retail for sustainable communities

<sup>1</sup> Completing the Single Market for Services would create a potential efficiency gain of €297 billion annually, according to the report of the European Parliamentary Research Service, *Europe's two trillion euro dividend, Mapping the Cost of Non-Europe, 2019-24*, April 2019

## Introduction

The digital and circular transformation of the economy is changing and creating new markets all over the world. Retailers and wholesalers are innovating, adapting and experimenting to explore new products, services and business models to keep up with customer demand. Consumers expect us to provide sustainable and affordable products, at any time at the tip of a finger. At the same time, the global trends already point to slower consumer spending growth, higher consumer prices and disrupted global supply chains.<sup>2</sup> The latter caused by a volatile political environment influenced by populist arguments including Brexit, unrest at the EU's borders and an America-first strategy on the other side of the Atlantic. This makes the Single Market even more relevant as Europe's most powerful instrument for ensuring economic and social prosperity on the European continent. **A properly functioning Single Market will enable retail and wholesale to respond to consumer demand and compete in a globally competitive environment.**

Therefore, we are, deeply concerned that over the past decade, retailers and wholesalers have seen certain **Member States becoming less and less committed to the Single Market.** In numerous Council Conclusions Member States commit to further strengthening and deepening the single market, but this does not always translate into similar national policies or public statements at home. This is leading to fragmentation by introducing new, and often protectionist national rules for products and services<sup>3</sup>, and diverging implementation and interpretation of EU law.

In the European Parliament, Commission proposals can undergo literally thousands of proposed amendments, many of them lacking a proper impact assessment or any link to the daily reality of consumers and businesses. This often results in **inconsistent legislation, difficult to understand and implement which leads to uncertain outcomes for consumers and businesses.** This may in part explain the huge increase in cases referred by national courts to the Court of Justice of the European Union for a preliminary ruling.<sup>4</sup> This situation leads to new, burdensome rules for business with unclear benefits to the Single Market, minimum harmonisation rules instead of full harmonisation, and the blocking in Parliament or Council of proposals that could make a real difference.<sup>5</sup>

In addition, **enforcement of EU rules by Member States and the European Commission is inconsistent.** Legitimate retailers and wholesalers who comply with EU rules protecting consumers and ensuring safe products are made available on the market, suffer from unfair competition when facing unscrupulous traders whether established in the EU or outside, who often do not adhere to the same rules. These rogue traders need to be dealt with by targeted, risk-based enforcement, rather than by imposing more blanket obligations on legitimate retailers and wholesalers that non-compliant players will still not observe. Complex rules and inconsistent enforcement can also lead to rogue players being less likely to get caught.

**The Rule of Law is one of the fundamental elements of the EU and our democratic society.** When it is ignored or breached, it not only undermines civil and political freedom, but also our economic freedom. A recent study by Bruegel suggests that, countries in Central and Eastern Europe 'experienced authoritarian drift, [and] market-oriented economic reforms were either stopped or reversed.'<sup>6</sup>

EuroCommerce therefore welcomes the conclusion of the European Council of March 2019, inviting the Commission 'to develop by March 2020, in close coordination with the Member States, a long-term action plan for better implementation and enforcement of Single Market rules'.<sup>7</sup> **EuroCommerce calls upon the Commission and Member States to take into account in doing so the considerations and recommendations of this position paper.**

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<sup>2</sup> Deloitte, *Global Powers of Retailing 2019*, 2019

<sup>3</sup> SME Envoy network, *Barriers for SMEs on the Single Market*, November 2018

<sup>4</sup> Court of Justice of the European Union, Annual Report 2018, page 125 – number of referred cases by national courts increase by one third (from 428 in 2014 to 568 in 2018) over the past five years

<sup>5</sup> Some recent examples include the Geoblocking Regulation (EU) 2018/302, the Unfair Trading Practices Directive (EU) 2019/633, for Directive (EU) on Better Enforcement and Modernisation of EU Consumer Protection Rules see adopted text European Parliament: A8-0029/111, Directive on contracts for the sale of goods (see Council document PE-CONS 27/19), proposal for a services notification procedure COM(2016) 821

<sup>6</sup> Bruegel, Marek Dabrowski, *Are economic and political freedoms interrelated?*, October 10, 2018

<sup>7</sup> European Council conclusions, 22 March 2019

## I. 5.4 million retail and wholesale entrepreneurs ask for a properly functioning Single Market for Services

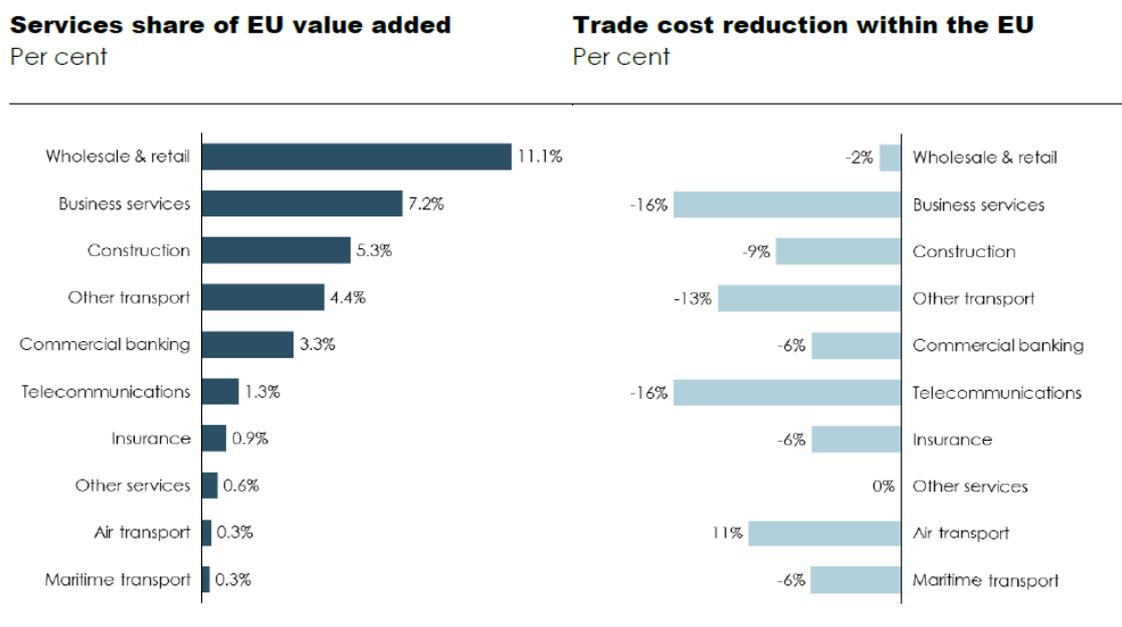
**Retailers and wholesalers are the link between manufacturers and 500 million consumers and over 24 million professional customers in the European Union.** The retail and wholesale sector is the biggest private employer in Europe, providing 1 out of 7 jobs. Young people often start their career in our sector. It is a diverse sector of online and brick & mortar stores selling food and non-food products to consumers, which are quickly merging into an omni-channel business model for consumers. Wholesale represents a wide variety of businesses in e.g. automotive, chemicals, food, pharmacies, serving professional customers with what they need to make better products and that serve their customers in return. 99% of businesses in our sector are SMEs that try to find their way in the Single Market. To survive in a highly competitive market, they need a stable business-friendly environment offering flexibility to innovate, experiment and do what they do best...serving their customers

Figure 1, trade cost reductions since implementation Services Directive per service sector, and EU value added across services sectors

### Ensuring local rules are proportionate and fit for purpose

The Services Directive provides national and local authorities with a legal framework to create equal conditions for service providers, but also offers the necessary flexibility to adapt rules to local needs, and address various legitimate public interests. This is the main legal framework for retailers to establish themselves and operate locally.

**A recent study by Copenhagen Economics shows that the Services Directive has produced only limited results.** The retail and wholesale sector benefited least in comparison with other sectors (see figure 1). This represents a massive missed potential for growth and jobs in Europe from a sector with the highest EU value added (11.1%) of the other sectors covered by the Services Directive. In total, a quarter of all the companies covered by the Services Directive are retailers and wholesalers.<sup>8</sup>



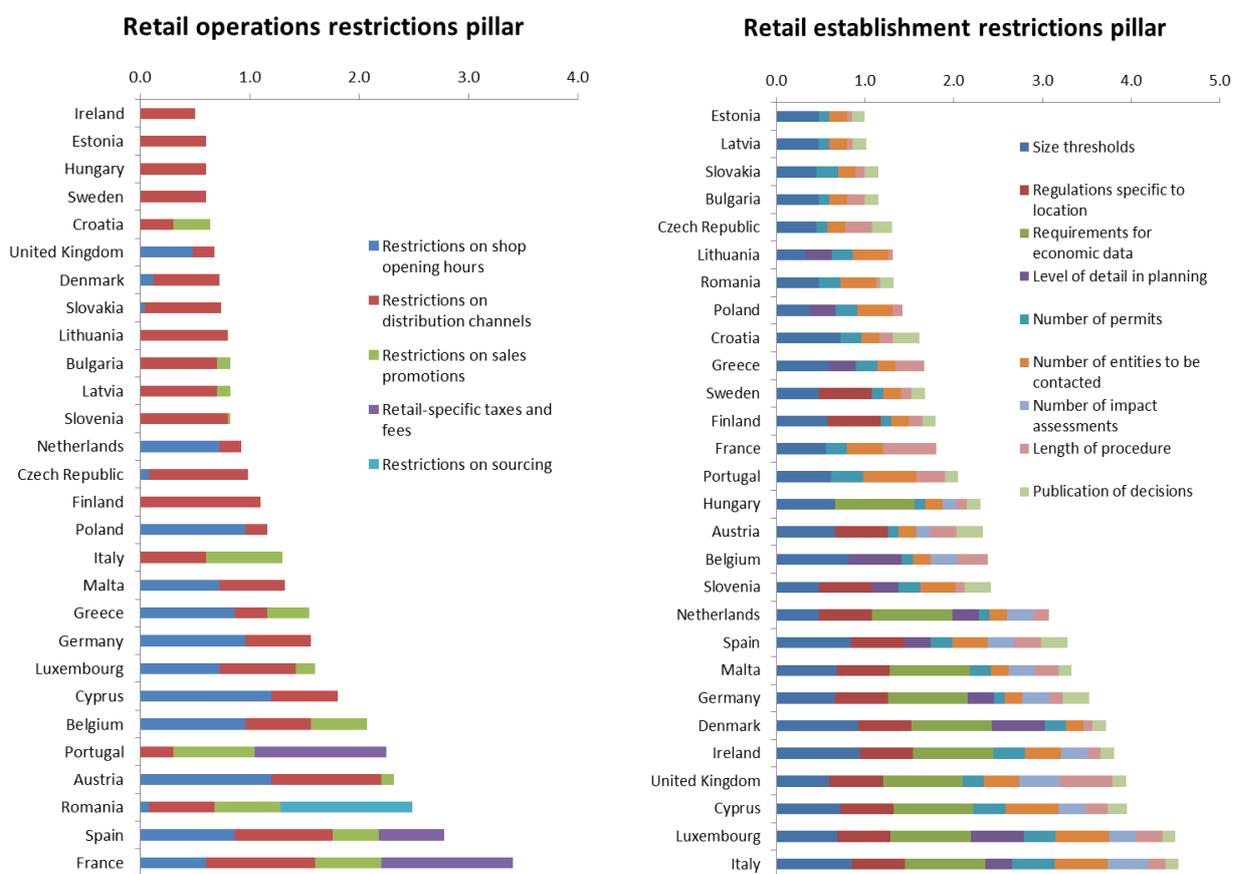
Note: The share of value added is for EU28 in 2016. Trade cost reduction reflect the intra-EU effect for cross-border services trade relative to a typical FTA.

Source: Copenhagen Economics based on Eurostat data and simulations from Professor Joseph Francois

<sup>8</sup> Copenhagen Economics, *Making EU trade in services work for all, Enhancing innovation and competitiveness throughout the EU economy*, November 2018

The Commission communication on retail of April 2018<sup>9</sup> showed that significant progress still needs to be made in harmonising or otherwise dealing with the wide variety of national retail-specific rules and regulations (see figure 2). The Commission underlines that '[s]tepping up reforms to reduce regulatory barriers in the retail sector would have a number of positive economic effects. Increased competitive pressures would lead to the entry and survival of more efficient and innovative firms, consumers would enjoy lower prices, more variety, innovation and higher quality. This would also have a positive spill-over effect in other sectors of the EU economy.'<sup>10</sup> The report sets out examples of good practice in Member States, but also provides a retail restrictiveness index for establishment and operational restrictions in Member States<sup>11</sup> and a guide on how to revitalise small retailers.<sup>12</sup> A recent European Parliament study reinforces the Commission's findings, pinpointing the retail sector 'because it tends to be rather restrictively regulated at several levels [local, regional, national and EU level]'.<sup>13</sup> An article by ECIPE also emphasizes that the retail sector still suffers from high entry barriers.<sup>14</sup> That restrictions involve costs for consumers shows a report of the Spanish competition authority regarding a 3 year ban on large retail outlets in Mallorca. It estimated that the loss of consumer welfare due to the measure amounted €23.8 million.<sup>15</sup>

Figure 2, European Commission Retail Restrictiveness Index (source European Commission)



<sup>9</sup> European Commission, *A European retail sector fit for the 21<sup>st</sup> century*, COM(2018) 219 final, 19 April 2018

<sup>10</sup> European Commission, *Staff working document accompanying the communication A European retail sector fit for the 21<sup>st</sup> century*, SWD(2018) 236 final, 19 April 2018

<sup>11</sup> European Commission, *Annex to the communication A European retail sector fit for the 21<sup>st</sup> century*, COM(2018) 219 final, 19 April 2018

<sup>12</sup> European Commission, *Facing the future, A practical guide for fostering the revitalisation and modernization of the small retail sector*, 2018

<sup>13</sup> European Parliament Policy Department for Economic, Scientific and Quality of Life Policies, Jacques Pelkmans, *Contribution to Growth: The Single Market for Services, Delivering economic benefits for citizens and businesses*, February 2019

<sup>14</sup> Erik van der Marel, *European Centre for International Political Economy, Reforming Services: What Policies Warrent Attention?*, Policy Brief, No 1/2017

<sup>15</sup> Comisión Nacional de los Mercados y la Competencia, *LA/01/2016: Grandes Establecimientos Comerciales. Moratoria Mallorca*, 31 January 2018

Even though there has been strong debate of the best way of measuring restrictiveness, it is clear that, 10 years after the implementation deadline of the Services Directive, progress has been limited. Meaning that in a rapidly changing environment, retailers operate under rules which are neither proportionate nor fit for purpose. It is therefore the appropriate time for the EU institutions to review existing rules and ensure that they provide a fair chance for all business models to succeed, and ensure that rules are proportionate and non-discriminatory. This points to a number of urgently-needed actions:

- Member States should rapidly **implement the recommendations** in the 2018 retail communication;
- The Commission should facilitate, coordinate and encourage active, solution-oriented debate in the **Services Directive Expert Group** and include stakeholders;
- The EU institutions should ensure regular monitoring of the implementation of the recommendations in the 2018 retail communication, including an update of the retail restrictiveness index and an annual report on the **state of retail for review and discussion in the Competitiveness Council**;
- The Commission should **ensure that all Member States fulfil their notification obligations** under article 15(7) of the Services Directive and enforce if necessary. Member States could appoint national gatekeepers to select the most relevant notifications for Commission assessment, to prevent the Commission from being flooded by notifications.

### *Addressing protectionism and discriminatory policies*

**Over the past 10 years, our members have been experiencing growing levels of discriminatory policy measures and regulations in EU countries outside their home market.** A study among 53 large food retailers active in 22 Member States revealed that 1 out of 3 companies considered that they were discriminated against domestic competitors. The latter felt more strongly in the 4 Visegrad countries than elsewhere in the EU. 4 out of 5 of these companies would increase their investment and trade across borders if such barriers were removed.<sup>16</sup> Often state aid rules, and basic EU principles of freedom of establishment and free movement of goods are infringed by many member states in:

- Introducing high discriminatory taxes focused on foreign players;<sup>17</sup>
- Obliging retailers and wholesalers to sell or promote more local products;<sup>18</sup>
- Regulating B2B relations in favour of certain players in the supply chain;<sup>19</sup>
- Treating foreign retailers as dominant regardless of their market share;
- Performing more inspections on and imposing disproportionate and high fines on foreign players.<sup>20</sup>

In addition, we see a deterioration of the **Rule of Law in Hungary, Poland and Romania**, where the Commission has initiated procedures to counter these developments, which also undermine the position of foreign players and products in these markets. Such policies perversely have a negative impact on the potential of these Member States to catch up with the economies of the EU-15. This in turn creates tensions in labour markets due to younger skilled workers from these countries moving *en masse* to Western Europe to find better jobs and often enjoy greater political freedom.

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<sup>16</sup> Centre for European Policy, Dr. Matthias Kullas & Till Brombach, *What do trade companies perceive as discriminatory national restrictions against their business in the Internal Market? Results of an EU-wide survey*, August 2017

<sup>17</sup> e.g. Taxes **DG COMP** considered unlawful state aid: SA.52194 (2018) Slovak Retail Turnover Tax, SA.44351 (2016) Polish tax on retail sector with progressive rates, SA.39235 (2014) Hungarian advertisement tax, SA.40018 (2014) Amendment to the Hungarian food chain inspection fee. The **Court of Justice of the European Union** ruled that the Hungarian Retail Crisis Tax from 2010 to 2012 was indirectly discriminatory in the case C-385/12 - Hervis Sport - és Divatkereskedelmi.

<sup>18</sup> e.g. 2019 Slovakia obliging food operators to ensure at least 50% of food products in promotions is of Slovak origin, 2016 Romanian Food Law obliging retailers to promote and display Romanian food products, and source 51% via the 'short supply chain', 2013 Czech Republic and Slovakia obliging retailers to report on the origin of food products at the entrance of the store.

<sup>19</sup> In recent years Croatia, France, Romania, Slovakia revised their laws on unfair trading practices often mainly in favour of suppliers with restrictions only applying to retailers, while a **Commission report (COM(2018) 706 final) showed that most competition enforcement actions took place against food processors.**

<sup>20</sup> Also see our regularly updated 'Single Market barriers overview' on [www.eurocommerce.eu](http://www.eurocommerce.eu) under resources

The European Commission is trying hard to counter anti-democratic developments in these countries, but this has only had limited impact. The same accounts for the existing **European Semester** process: a recent Bruegel study found implementation of country-specific recommendations under the Semester only modest, and had even worsened in recent years.<sup>21</sup>

To ensure legal certainty for businesses and citizens there should be concrete consequences for governments ignoring the core principles of the European Union:

- EuroCommerce supports the introduction of a **mechanism in the Multiannual Financial Framework that links EU funding to respect of the Rule of Law**;
- The European Commission and Member States need to ensure **proper implementation of the country-specific recommendations** under the European Semester e.g. by setting up realistic implementations plans and deadlines;
- More **effective EU instruments** should be developed to ensure the interest of citizens and businesses are protected against Member States that undermine the Rule of Law;
- The EU should make available more funding for **promoting the single market and an open, democratic society**.

## II. Business and consumers need proper enforcement & governance of the Single Market

In 2017 the turnover of the 5.4 million businesses in our sector was €8591 billion, providing 29 million jobs. The core of retail and wholesale is sourcing and distributing products. The single market makes it possible for retailers and wholesalers to enter and invest in new markets, move goods freely and efficiently by sourcing from anywhere in the EU. A better single market that protects and builds on what we have achieved so far is of utmost importance to enable us to increase choice and lower prices. **Completing the Single Market for Goods would have a potential efficiency gain of €183 billion annually.**<sup>22</sup>

### *Enhancing enforcement of single market rules*

The adoption of the Goods Package<sup>23</sup> is a first step in modernising and stepping up enforcement of EU product law by Member States and ensuring better application of the principle of mutual recognition, although further work is needed. We wait to see how the new rules will be transposed and applied in practice in the coming years. As enforcement against rogue businesses is still a real problem holding back the EU economy from the growth and employment that a properly working single market will bring.

**Consumers have to be confident that all products, available on the EU market are safe and compliant, whether these are sold online, offline or omnichannel.** Compliance in the EU is enforced by national competent authorities in the country in which the retailer is established or active. However, consumers buy more and more from online players established outside the EU that are difficult for national authorities to reach. In some countries already the majority of online sales originates from third countries, and this is likely to further increase. A study shows that China is the most popular country of which European consumers buy online. China was mentioned most often by 54.6 % of the respondents in 2018, up from 38.7 % in 2017.<sup>24</sup> The inability of enforcement authorities to ensure compliance when operators are established outside the EU can create risks for consumer health, potentially undermines consumer trust in products sold online and puts at a disadvantage online and offline retailers who apply the rules on safety, labelling and consumer information, marketing, environment, recycling, intellectual property. EU and national law should ensure a level playing field for all operators, effective and efficient application of the new Regulation on Compliance and Enforcement should have Member States' priority.<sup>25</sup>

<sup>21</sup> Bruegel, Konstantinos Efstathiou and Guntram B. Wolff, *Is the European Semester effective and useful?*, June 2018

<sup>22</sup> European Parliamentary Research Service, *Europe's two trillion euro dividend, Mapping the Cost of Non-Europe*, 2019-24, April 2019

<sup>23</sup> The Goods Package: Reinforcing trust in the single market, 19 December 2017, COM/2017/0787 final

<sup>24</sup> PostNord, *E-commerce in Europe 2018, Consumers' buying behavior increasingly global*, September 2018

<sup>25</sup> See adopted text European Parliament: P8\_TA-PROV(2019)0397.

We therefore ask that:

- The Commission undertakes a **comprehensive study** to increase understanding of the many different business models using online, of the scale and growth of online sales from third countries, looking at the safety, economic, legal, fiscal and environmental impact on EU consumers and businesses;
- EU legislators ensure a **level playing field for all business models** to be competitive and to respond to customer demand in a rapidly changing environment;
- Enforcement authorities take a **risk-based approach**, focussing on products and businesses where non-compliance is shown to be most likely, or where the potential risk to consumers is highest;
- **Training of and exchange and coordination between relevant authorities** to be further improved (e.g. CPC network, Product Compliance Network, customs and tax) at national level and cross-border. Including increased collaboration and exchange with businesses selling online and other stakeholders to increase knowledge, be aware of the latest technological developments, share best practice and open up to new ways of ensuring compliance e.g. 2018 product safety pledge<sup>26</sup>

### *More political impetus for improved single market governance*

**The many crises, the Commission has had to face over recent years, whether financial, political or in respect of migration, have made it more difficult for it to fulfil its essential role as Guardian of the Treaties.** The increasing support for populist parties<sup>27</sup> and their election to national governments has created new pressures on the single market. The Commission faces a dilemma of its duty vigorously enforcing EU law while needing to tread with care in countries in which such action will reinforce populist opposition to the EU. This can lead to a vicious circle of weak enforcement and politicisation of what should be a straightforward legal and technical process.

EU competition law provides the Commission with strong powers, for example to suspend national laws via injunctions, block mergers, fine businesses and directly enforce compliance with EU law. Regrettably, single market law does not provide the same tools to the Commission when addressing abuses of single market rules. **In a number of cases where Member States (knowingly) breach single market rules, the Commission has only been able to open an infringement procedure that takes years to resolve.** Member States sometimes exert heavy political pressure to stall or prevent infringement procedures. In the meantime, citizens and businesses have to comply with what are later found to be illegal rules and sustain the damage and costs which these impose.

Additionally, we think **businesses may sometimes be better served with faster or informal solutions.** For them, it does not always make sense to appeal or go to court. It is expensive, may take a long time and the outcome is uncertain. Instead of challenging a decision of a public authority, it may be cheaper and easier to comply with the decision, even if this decision may be unjustified or disproportionate. The informal dispute resolution mechanism SOLVIT may still provide a way forward here, but so far businesses have made limited use of SOLVIT and more complex cases have been rejected or unresolved.

Therefore, we suggest that the following solutions be explored:

- The Commission should assess if it is possible to **develop a fast-track procedure for notified cases, either directly with the Commission or via SOLVIT.** In addition, Member States should implement the SOLVIT Recommendation of 2013<sup>28</sup> properly and implement the SOLVIT Action Plan of 2017<sup>29</sup>. Special attention could be addressed to unsolved SOLVIT cases. The Commission may be able to do more to help solve these cases, even beyond SOLVIT remedies;

<sup>26</sup> Product Safety Pledge, Voluntary commitment of online marketplaces with respect to the safety of non-food consumer products sold online by third party sellers, 25 June 2018

<sup>27</sup> Tony Blair Institute, Eiermann M., Mounk Y., Gultchin L., *European Populism: Trends, Threats and Future Prospects*, REPORT, 29th December 2017

<sup>28</sup> C(2013) 5869 final, *Commission Recommendation on the principles governing SOLVIT*, 17 September 2013

<sup>29</sup> COM(2017) 255 final, *Action plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses*, 2 May 2017

- The Commission should **assess the efficiency and effectiveness of the infringement procedure process**, and make it more automatic and transparent and increase legal certainty in Member States with similar policies. This could be done by providing more clarity on why the Commission does, or does not pursue or stops a case, limiting the number of steps in a procedure, developing clear criteria that lead without delay to the next step in a procedure with less room for political bickering;
- The Commission should also take a **stronger public stance against Member States infringing EU law**, this would increase trust by consumers and businesses in the EU and send a strong signal to Member States;
- The EU institutions should introduce the **power of injunction for the Commission when there is a clear breach of the four freedoms**, which, as under competition law, should apply pending an in-depth investigation leading to a final decision.

*Better Regulation Guidelines should no longer be considered optional*

**Improving the quality and predictability of EU and national law is vital for businesses and consumers.** The 2015 Better Regulation Guidelines<sup>30</sup> and the Inter-Institutional Agreement on Better Law-Making signed by all three EU institutions were a promising step in the right direction. However, we have seen over the past years that, for political reasons, legislation with a direct impact on business and consumers has been adopted with little regard to these agreed approaches.

**The Commission has been pressured into proposing legislation for which there was insufficient evidence base to justify far-reaching measures** e.g. the Unfair Trading Practices Directive (2019/633), the amendment addressing dual quality in the Unfair Commercial Practices Directive (COM(2018) 185), Single Market Information Tool (COM(2017) 257), Geo-blocking Regulation ((EU) 2018/302), etc. Amendments by the European Parliament fundamentally changing the scope and nature of proposals with a major impact have been adopted with no impact assessment. Transparency about the impact and legislative process is further undermined when trilogue negotiations hammer out compromises which lead to unclear legal provisions and unforeseen consequences. This undermines the quality of legislation, undermines the reputation of the EU, and creates legal uncertainty for businesses and consumers. This seems to be reflected by more national court cases that are referred to the European Court for interpretation of EU law, due to a lack of clarity.<sup>31</sup>

- EuroCommerce urges the EU institutions to **increase transparency of the legislative process, especially during the formulation of compromise amendments in trilogue negotiations**, including timely public stakeholder access to important documents and changes. Amendments that have a significant impact should be subject, as provided for in the Inter-Institutional Agreement, to a proper impact assessment, aided by the Commission. We would suggest that to allow such an assessment, there should be a 3-month pause built into the trilogue process, before the compromise amendments or interinstitutional agreements are put to the vote;
- EuroCommerce urges the EU institutions to **apply the better regulation guidelines properly, to ensure evidence-based policy and proper stakeholder consultation**. Including the 'Think Small First' principle when drafting new legislation and step up their efforts in the application of the SME test, which is a compulsory element of impact assessments.

<sup>30</sup> (SWD(2015) 111 final)

<sup>31</sup> Court of Justice of the European Union, Annual Report 2018, page 125 – number of referred cases by national courts increase by one third (from 428 in 2014 to 568 in 2018) over the past five years

### III. Countering fragmentation of the Single Market

#### *Are all national technical rules still fit for purpose?*

Every year there are about 700 new notifications by Member States to the Technical Regulation Information System (TRIS).<sup>32</sup> Most of these cover national technical rules that often have the effect of fragmenting the single market for products with a justification that these meet overriding reasons of public interest. In some cases, the justification of public interest is only vaguely formulated.

**Technology and value chains are constantly changing, which must raise the question of whether all rules are future proof, fit for purpose and proportionate.** Especially in the digital age, many information and language requirements become outdated or superfluous, and what seemed perfectly normal 25 years ago is no longer so today. It is necessary to create a mechanism that evaluates existing rules, explores new (technological) developments and to keep legislation up to date. This was indeed the substance of the European Parliament's call upon the Commission and Member States<sup>33</sup> and the recommendations of the SME Envoy Network.<sup>34</sup>

We therefore ask:

- The European Commission and Member States to **initiate a process to continuously assess national technical rules for their fitness for purpose** and whether they remain relevant, future proof, proportionate and non-discriminatory. In order to make the work manageable, a first assessment could focus on identifying the product categories or technical aspects which should have priority over others.

#### *Full harmonisation where possible and appropriate*

Much fragmentation of the single market occurs because Member States implement EU law more strictly than necessary or use the minimum requirements of the EU measure as a platform for additional rules. EU minimum harmonisation directives or minimum harmonisation provisions in regulations leave the possibility open to Member States to go further than rules in other Member States, risking fragmentation of the single market. Recent examples include the recently adopted Directive on Contracts for the Sale of Goods,<sup>35</sup> the Directive on Unfair Trading Practices (2019/633), the Directive on Enforcement and Modernisation of EU Consumer Protection Rules. Instead of creating harmonisation, such an approach can lead Member States to diverge further, undermining legal certainty for businesses and consumers, and affecting consumer trust. **While legislators may understandably want to keep certain flexibility for unforeseen situations or specific local conditions, it is difficult to justify consumers and businesses having varying levels of protection.** Such differences are not justified and undermine the ability of consumers and businesses to reap the benefits of the single market.

We therefore call for

- The EU institutions to increase the levels of predictability in EU law in all Member States, by aiming for **full harmonisation provisions as a default** for e.g. consumer protection

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<sup>32</sup> Since the publication of the last EuroCommerce single market paper in 2015 where this issue was addressed as well, there have been 2972 new notifications. That is on average over a 100 per Member State in 4 years time. The calculation is based on the publicly available data in the TRIS database.

<sup>33</sup> EP IMCO, *report on the proposal for a regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State*, 5 September 2018, A8-0274/2018, amendment 4

<sup>34</sup> SME Envoy Network, *Barriers for SMEs on the Single Market*, November 2018

<sup>35</sup> Not yet into force, see interinstitutional agreement in Council document PE-CONS 27/19

## *Retailers and wholesalers cannot source where they want in the EU*

**Brand manufacturers of food and non-food consumer products prohibit retailers and wholesalers from choosing the country where to source their products**, prevent them moving these products between countries and offering them for sale there, or restricting access to the full range of products available in other markets. Territorial supply constraints (TSCs) are illegitimate restrictions – i.e. not justified on grounds of, for example, different national regulations or consumer taste. This practice fragments the single market and makes it impossible for retailers to ensure that consumers get the best deal in terms of choice and prices – and serves as an impediment to cross-border e-commerce, leading to higher prices and less choice for customers.

**A Benelux study found that businesses of all sizes suffer from TSCs**, leading to higher consumer prices and limiting access to the full range of products available in neighbouring countries.<sup>36</sup> The DG Competition decision to fine AB Inbev with a €200 million is clear evidence that this practice is happening.<sup>37</sup>

A recent **EuroCommerce questionnaire** among members revealed that suppliers fragment the internal market in the following ways:

- Refusal to supply, limiting the quantities and threats to stop supplying;
- Differentiating product ranges between EU member states;
- Tariff differences between EU member states;
- Limiting language options.

**Removing TSCs would lead to lower prices for retailers, wholesalers and consumers**, greater market integration, reduced costs for suppliers for enforcing TSCs, higher efficiencies for retailers and higher incentives for manufacturers to innovate.

- EuroCommerce supports the Commission fact-finding exercise and asks the EU institutions to **take action to address the TSCs**;
- EuroCommerce asks the Commission and Member States to ensure **industry wide application of the outcome of the AB Inbev case**.

## *Creating a Single Market for Waste*

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 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.

EuroCommerce therefore asks the Commission to ensure:

- **A holistic approach to climate, environmental and circular policies** to include all aspects of the supply chain, from production to transport, reuse and waste management. In a world of limited resources and climate change, business-oriented legislation harmonised across the EU will increase competitiveness;
- **Clear criteria for the end-of waste status** via an implementing act harmonising criteria for waste management of the most relevant waste streams (iron, plastic and electrical and electronic waste). This will provide legal certainty for businesses, which is the basis to ensure a proper waste management and recovery;

<sup>36</sup> Benelux, *Territorial Supply Constraints in the Retail Trade in Belgium, the Netherlands and Luxemburg, Consequences for the Benelux internal market*, February 2018

<sup>37</sup> DG Competition, Antitrust / Cartel cases, 40134 AB InBev Beer Trade Restrictions

- **Uniform implementation of the new general minimum requirements for extended producer responsibility (EPR) schemes** set out in Article 8a of the revised Waste Framework Directive. Therefore, it is necessary that the Commission adopts implementing acts, as foreseen in article 8(5) of the revised Waste Framework Directive, to avoid distortions of the single market;
- Establishing **harmonised definitions** on key terms, such as recyclability, reusable and recyclable;
- That the to be revised rules in the upcoming **revision of the Waste Shipment Directive legislation** apply better to plastic waste, simplify the notification procedure and through harmonisation of the waste classifications (hazardous vs non-hazardous waste) to support the move towards a Circular Economy.

#### IV. Sustainable retail for sustainable communities

**Retail is not just any business. It brings people together in rural areas, towns and city districts.** Often it complements a wider set of services like bars, restaurants, fairs, public services and is part of the public space. This makes retail an integral part of the socio-economic fabric of a local community, also by providing local jobs and career opportunities.

**Sustainable retail businesses are key for creating and maintaining sustainable communities, whatever their size.** In many Member States trends like the digital transformation, ageing consumer demography and changing consumer behaviour are leading to closure of stores. This trend is accelerated in a town where high vacancy rates of retail space<sup>38</sup> creates a vicious circle of consumers no longer coming to the town centre or village, leading other businesses to leave as well. Rural areas and smaller cities are most vulnerable. Villages without shops and restaurants very quickly become ghost communities.

EuroCommerce is deeply concerned about this trend, which can only be reversed if all stakeholders (e.g. businesses, public authorities, real estate owners, public-private partnerships) work together to maintain at least a minimum retail function in communities. Nevertheless, there are good practice that offer hope, and of which all can draw lessons for other local projects, like the projects of URBACT Retailink.<sup>39</sup> **In order to improve conditions for local communities there is a wide range of issues relevant for shopping areas e.g. security, attractiveness, accessibility, supply, employment/skills, digital.**

EuroCommerce recommends:

- EU institutions to develop a **more holistic approach** helping towns and communities to maintain sustainable and vibrant, and align the different policy work being done by different Commission services and Member States;
- The next Commission to **allocate funding for retail associations for local projects aimed at revitalising local communities, services and retail**, with the aim of sharing experiences and best practice throughout Europe. The earlier mentioned Commission guidance on revitalisation and modernisation of small retailers could be a good basis to initiate projects.

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<sup>38</sup> For example more than **12%** on average in France (source: Procos, *Palmarès Procos 2019 des centres-villes commerçants*, 3è édition – février 2019), **10.3 %** of retail spaces empty in Belgium (Locatus, *Winkelleegstand in België weer gestegen, maar is keerpunt in zicht?*, 31 January 2019)

<sup>39</sup> <https://urbact.eu/retailink>