ERT

Single Market Obstacles

Technical Study

Goods · People · Services · Capital

Table of Contents

Executive summary

This Technical Study is an in-depth analysis about Single Market obstacles in the EU and how to address these. It follows the release of the Vision Paper[1] of the European Round Table for Industry (ERT) in October 2023 which strongly advocates for deepening the Single Market and renewing the dynamic of European integration. This Study is in large part based on a Joint Statement issued by 25 associations, a review of the accompanying Compendium containing 100+ examples of obstacles and an evaluation of existing EU policies related to the Single Market.[2] This exercise of collecting 100+ examples of barriers and burdens was inspired after ERT released in December 2021 a flagship publication on "Renewing the dynamic of European integration – Single Market Stories by business leaders" in which 30 CEOs and Chairs of Europe's largest industrial companies had flagged problems of fragmentation in the Single Market. The absence of a formal response on the 30 case studies and lack of dedicated follow-up – by the European Commission and EU Member States – encouraged us to collect even more evidence of obstacles and analyse these.[3]

As recently voiced by ERT Chair Jean-François van Boxmeer in an interview with the Financial Times, Europe is now facing a "Delors moment".[4] In the 1980s, Europe's competitiveness was also being challenged and the Jacques Delors Commission made the removal of cross-border business obstacles across Member States a strategic priority. The proper, systematic enforcement of Single Market rules and the full harmonisation of the regulatory framework in key areas such as Environment, Energy, Digital and Telecommunications, Security, Health, Banking, and Capital across the entire EU should again be at the forefront of policymakers' minds.

The increasingly complex and fragmented regulatory environment has made it less attractive for all companies to invest and scale up rapidly in the EU. Unsurprisingly, this has led to less foreign direct investment, slower growth and less fiscal space for governments, exacerbating the cost-of-living crisis now felt by many European citizens. If fragmentation is not addressed, our continent's competitiveness will continue to erode, fall behind on the green and digital transitions, risk fewer employment opportunities, and attract less talent, as technological progress accelerates outside Europe.

A well-functioning Single Market is indispensable to incentivise more investment and innovation in Europe, finance social security, fund quality education, and take additional measures for the climate.

To reinvigorate the Single Market, the Commission and Member States should spearhead **a new comprehensive programme** to deepen the Single Market in all areas. In this programme, the European Commission should not only spell out a compelling political vision but also start seriously addressing the business barriers that have periodically been flagged by many businesses and associations over the past 20 years. A recent non-paper by 15 EU Member States similarly calls for a new "Horizontal Single Market Strategy".[5]

This new programme could include the following:

New headline target and a broadened set of KPIs

- A new target to achieve the completion of the Single Market by 2030 in a selection of areas would help to mobilise resources, focus, political will and administrative capacity to remove barriers, similar to the process initiated by Lord Cockfield in 1985, which eventually helped set the deadline and move the Member States and other stakeholders towards the creation of the Single Market by the end of 1992.

1 ERT, "ERT Vision Paper: Europe's corporate leaders call for renewed EU integration as focus for EU from here to 2030", 26 October 2023.
2 Coalition of 25 European associations calls for 'more love for the Single Market'.
3 ERT, "Renewing the dynamic of European integration: Single Market stories by business leaders", 2021.
4 FT, "EU's 800bn recovery fund held back by red tape, industry chief warns", January 23, 2024.
5 Non-paper on a new horizontal Single Market Strategy by 15 EU Member States.

- A broadened set of KPIs – beyond those already set out in 2023 Communication on Long-term Competitiveness – should also specifically cover progress on removing obstacles, which would improve accountability.

Renewed focus on enforcement and prevention

- The incoming Commission should consider beefing up the mandate of DG GROW or creating a separate DG for "Market Integration" (DG MINT) to streamline Single Market work across DGs and in cooperation with EU Member State authorities. In practice, this could improve the approach to infringement procedures, which should be dealt with diligently and centrally and not become lost in coordination between DGs.

- There should be a reinforced 'competitiveness check' on all EU rules, accompanied by a reduction in reporting requirements, administrative burden, and compliance costs. This means radically enhancing the Better Regulation agenda to reduce and consolidate EU regulation, going far beyond token measures like the 'one in, one out' rule, which lacked practical application.

A revision of the way the Institutions interact with businesses

- The European Commission and EU Member States should put a clear system in place to follow-up on obstacles and be accountable to those submitting case studies of fragmentation by providing feedback. The European Commission should keep a spreadsheet of all barriers reported by companies (including through various SOLVIT centres) until companies receive an adequate response about the complaint they have brought. The spreadsheet should indicate the status per barrier - to keep track of whether the most persistent barriers have been resolved - and suggest next steps that could lead to potential solutions.

- The Single Market Enforcement Task Force (SMET) should be upgraded and should also explore ways to interact more frequently with the business community, asking for their input on reports or encouraging access to (some of) the meetings. The Commission should not shy away from consulting the business community and inviting companies for fear of not treating all businesses equally. This habit needs to change in favour of a more qualitative and intensive dialogue with various sectors in the business community.

1. Global and European context

1.1 The EU's competitiveness is sliding in an alarming way

1.1.1 Explaining Europe's lagging growth

The EU Single Market – which today consists of almost 450 million consumers and represents 18% of world gross domestic product (GDP) – acts not only as a driver of exports, but more generally as a source of growth and job creation.[6] The EU is the world's biggest exporter of manufactured goods and services, and the biggest import market for over 100 countries. Europe has thus relevant assets to be a good place for doing business.

However, two decades into the 21st century, Europe is losing its place in the world order. Having been at the vanguard of economic development and innovation in the last two centuries, our continent has dramatically lost ground. Its competitiveness has faded, and the US and China have already overtaken the EU on many indicators,[7] just as decarbonisation and digital transition are paving the way to the next era of prosperity.

The statistics are clear and worrying:[8]

- Since 2000, the EU has fallen from a joint first place together with the US in gross value added as a global market share to third, behind China and the US. Europe's share of global industry gross value added declined from almost 25% in 2000 to 16.3% in 2020.
- The EU's share of companies in the Fortune 500 has also dropped to third place. As the continent grapples with persistently low growth, deindustrialisation now looms as a grave and imminent threat.
- Between 2014 and 2019, (large) European companies were 20% less profitable than their US counterparts, grew revenue about 40% more slowly, invested 8% less, and spent about 40% less on R&D.
- The EU continues to lag the US in GDP per capita and per hour worked and there is no EU-wide improvement in the long-term trend. The GDP picture is better than at first glance when exchange rate fluctuations are taken into account but still lagging behind the US. Central and Eastern European Member States have made impressive progress since they joined the Single Market. However, weaker performance (particularly but not uniquely) in southern Europe holds the EU as a whole back.
- Additionally, corporate debt and securitisation markets are much more developed in the US. In equity markets, the EU has a tiny IPO market - with Sweden being the only exception - and very limited venture capital markets. Europe's share in global tech IPO's is only 3% for 2023 (10 months). As a result, America's herd of unicorns (about 700) is twice the size of Europe's (356). And new firms in America are 40% likelier than those in Europe to have secured an injection of venture capital within five years of founding. In AI, for example, 61% of global AI venture capital funding goes to US companies and 17% to Chinese ones. Only 6% goes to EU27 start-ups.

There are structural explanations for Europe's lagging growth over the past 20 years.[9]

Compared to the US, investments in infrastructure have been relatively low. Again, compared to the US, market churn in the EU and especially the Euro Area countries is low. The entry and exit of firms in European markets are held back in some sectors, whereas in other sectors, such as telecommunication, regulation

6 European Commission, "Annual Single Market Report 2023: Single Market at 30", 31 January 2023.

7 ASPI, Critical Technology Tracker, March 2023. By Dr Jamie Gaida et al.

8 ERT, "European Competitiveness and Industry. Benchmarking Report 2022". McKinsey, "Global Institute: Securing Europe's competitiveness. Addressing its technology gap". ECIPE POLICY BRIEFS, "If the EU was a State in the United States: Comparing Economic Growth between EU and US States", July 2023. By Fredrik Erixon Oscar Guinea Oscar du Roy. Atomico, "State of European Tech 23". CEPS, "Forge Ahead or Fall Behind. Why we need a United Europe of Artificial Intelligence", CEPS 2023. Bruegel, "The European Union's remarkable growth performance relative to the United States", 26 October 2023.

9 ECIPE, July 2023.

promotes the market entry of small firms. Barriers to market entry and exit can lead to lower dynamism and resource misallocation. Small companies are not growing as fast as they could and many incumbents face unjustified regulatory and serious economic hurdles, creating markets that are less susceptible to firm and product innovation.

The EU could risk failing to deliver the green and digital transitions

On top of this, economic and geopolitical events in recent years have also taken their toll on Member States. Hit by Russian gas cuts and China's tougher stance on its automotive and machine tool exports, Germany's economy, the largest in Europe, has been contracting.[10] As a result, industrial champions (like ArcelorMittal, BASF, and others) are increasingly investing outside Europe or are downsizing in Europe.[11] The head of MEDEF in France has also set out his concerns about the consequences of the Union's declining competitiveness.[12] Meanwhile, inflationary pressures and higher interest rates cast a shadow on the investment needed to increase productivity.

In addition, recent initiatives to revamp cross-industry productivity growth and competitiveness in response to the US's Inflation Reduction Act (IRA) risk creating new layers of regulation and legal uncertainty in the EU, hindering European businesses, small and large, from adopting new technologies and technology-driven services. Meanwhile, the model of "one Directive + 27 different Member State laws" continues to leave European companies with a structural disadvantage compared to companies that operate in the US or China – where they can more easily access hundreds of millions of customers at much lower costs.[13]

It would be a mistake to only compare state aid schemes across countries. The US is known for having a more agile regulatory framework that is conducive to the growth of companies whilst China is actively pursuing a policy to harmonise its own market.[14] The Chinese state issued new guidance in 2022 to "accelerate the establishment of a unified domestic market". The Chinese consider their market as a scarce resource in today's world. They are dedicated to removing local protectionism, market segmentation, or impediments restricting economic circulation, thus facilitating the smooth flow of products and resources on a larger scale.

With slower growth, declining industrial competitiveness, and defence industries that have been neglected since the end of the Cold War (at least in the years running up to Russia's invasion of Ukraine), the EU could risk failing to deliver the green and digital transitions. Instead of delivering Open Strategic Autonomy, it will continue to be reliant on or unable to compete with third countries on stable energy prices, access to competitive financing on liquid capital markets, swift recruitment of skilled labour, and more.

As Mario Draghi has put it: "The geopolitical, economic model upon which Europe has rested since the end of the Second World War, is gone… To have an economy capable of supporting an aging society at the rhythm we have in Europe, we have to have much higher productivity."[15]

10 The Economist, "Is Germany once again the sick man of Europe?", August 17th 2023. The Economist, "The German economy: from European leader to laggard", August 17th 2023.

11 Eurostat, GDP main aggregates and employment estimates for the second quarter of 2023, 7 September 2023.

12 Euractiv, 14 November 2023.

13 ECIPE, "What is wrong with Europe's shattered Single Market?", April 2023. By Matthias Bauer.

14 The State Council Information Office: "Whats and whys of China's unified domestic market".

15 FT, "Mario Draghi delivers downbeat outlook for EU economic growth", November 8th 2023.

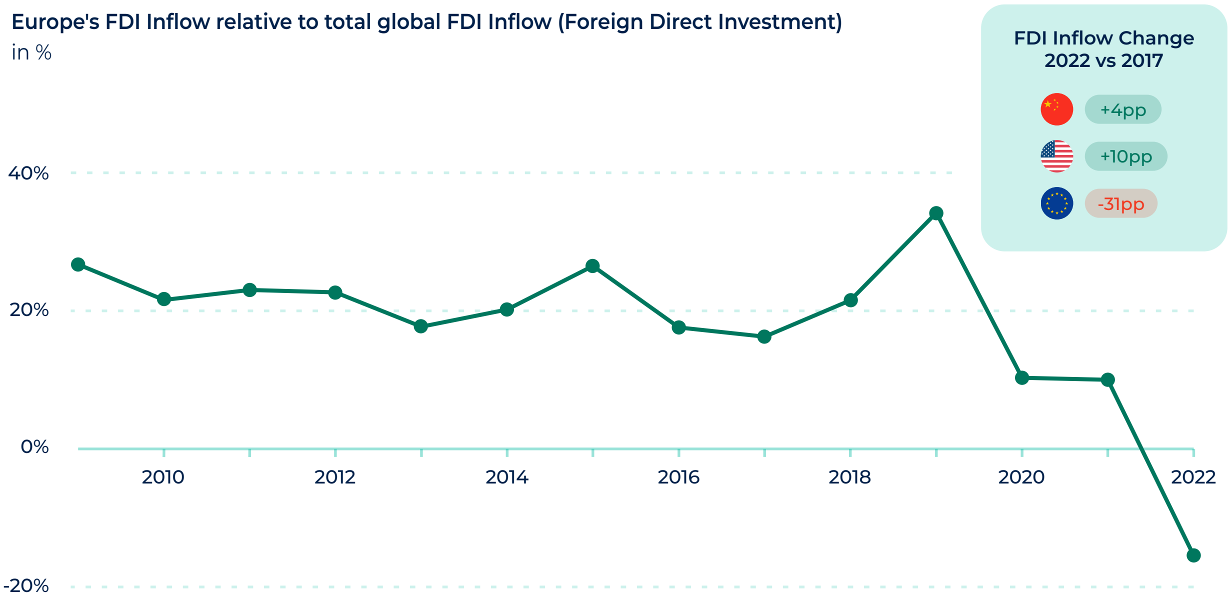
1.1.2 Europe risks becoming unattractive for private investment

Declining Foreign Direct Investment (FDI) inflows to Europe, compared to the total global FDI inflow, does suggest that the EU market is less and less attractive for private investment (see Figure 1).[16] The year 2022 even witnessed negative FDI inflow to Europe, which means that foreign investors divested more FDI from Europe than they invested in Europe during this period. When comparing FDI inflows in 2022 against 2017, it becomes apparent that Europe is the only region with major decreases in FDI inflow (-31pp), while China (+4pp) and the US (+10pp) were able to increase FDI inflow. In international comparison, the negative evolution of FDI in the EU highlights that its economy is becoming increasingly unattractive for private investment, risking further deindustrialisation.

This view matches with testimonies from European business leaders. In the past 5 years, the CEOs of Europe's largest companies have systematically flagged they have a more positive outlook on sales, employment and capital investment opportunities outside of Europe rather than in Europe. BASF's and others' recent investment announcements around projects outside of Europe point to what could happen if this negative outlook on European competitiveness persists. The complex and fragmented regulatory environment in Europe is one of the main reasons why, according to these CEOs, Europe's competitiveness has been lagging.[17]

In this light, it is surprising that the recent "Annual Single Market and Competitiveness Report (ASMCR)" of the European Commission does not reflect the same sense of urgency. The Report is a worthwhile exercise in (partial) stocktaking but fails to benchmark the EU's performance against our major competitors. Furthermore, the Report does not contain a list of obstacles which prevent companies in the EU from scaling-up faster and attracting more investment. This Report also falls short of recommending tangible improvements to remedy the worrying state of affairs, overcome the fragmentation in the Single Market and radically simplify the increasingly complex and burdensome regulatory environment.[18]

Fig. 1. Europe's FDI inflow has decreased significantly from 2017 to 2022



Source: OECD, BCG analysis

16 FDI inflows represent transactions that increase the investment that foreign investors have in enterprises resident in the reporting economy less transactions that decrease the investment of foreign investors in resident enterprises. Source: OECD 2023 & UNCTAD 2023.

17 ERT / The Conference Board, "Complex and Incoherent Regulation Puts Pressure on Europe's Competitiveness And Green Transition Efforts", 2023 H2 results.

18 European Commission Press Release (14 February 2024): Commission monitors strengths and challenges of EU's competitiveness.

1.1.3 Making the case for the Single Market

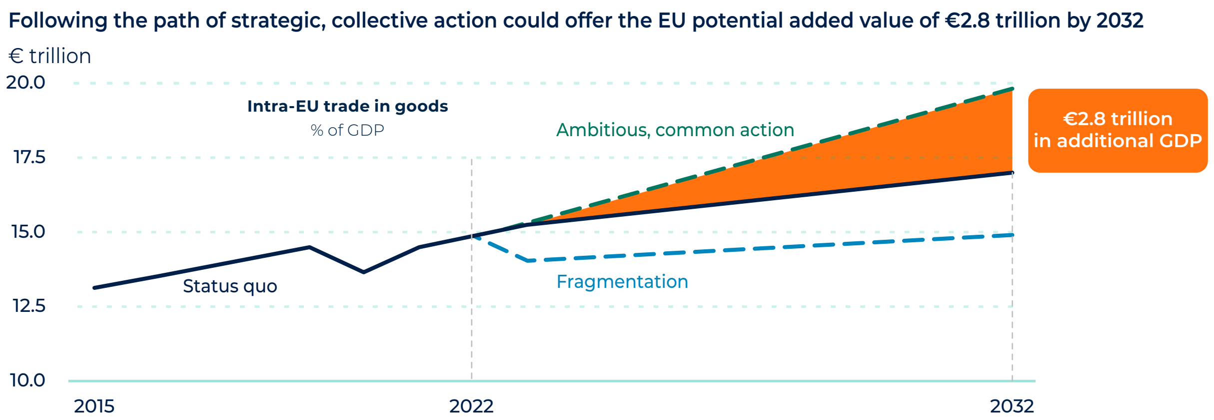
The EU Single Market is the motor behind the EU's productivity and competitiveness. So, restoring its proper functioning should be a cornerstone of the EU's response to the Inflation Reduction Act (IRA) in the US, but it is conspicuously absent from current strategic or policy objectives in the EU. Without restoring the proper functioning of the Single Market, the European Commission, the European Parliament and EU Member States will not be able to achieve the objectives of the twin transitions, Open Strategic Autonomy, and "economic security," or boost EU competitiveness to face competition from the US and China.

Intensifying EU integration and reducing remaining barriers within the internal market would lead to substantial welfare gains for the euro area and the EU

A stronger and more integrated EU market will also provide incentives for diversification away from geopolitically riskier jurisdictions. Only a true Single Market in the digital, energy, environment, and finance and capital spheres – as opposed to differentiated national approaches or applications of EU rules – would truly improve the Single Market from a security standpoint and strengthen European power. However, deepening the Single Market is now unfortunately being neglected by politicians and officials, who are much more oriented towards mapping "risks" and "supply chain vulnerabilities" without clear solutions as to how to improve them.[19]

Finally, the benefits of deeper market integration in the EU should be obvious. Intensifying EU integration and reducing remaining barriers within the internal market would lead to substantial welfare gains for the euro area and the EU.[20] In an attempt to quantify it, the European Parliament Research Service estimates that removing barriers could generate €2.8 trillion in additional GDP by 2032.[21] In addition, in a model of innovation and multinational offshore production, the IMF finds that at least lowering internal barriers within the EU would generate large welfare effects – on the order of 7 percent of GDP – and accrue to both EU innovating and manufacturing countries.[22]

Fig. 2. The impact in terms of potentials added value (in euros), by showing where different levels of ambition and the consequent GDP could go[23]



19 No real improvements to the Single Market is being offered in the updated European Economic Security Strategy. It insists on increased monitoring of "strategic products and services", such as through the Single Market Emergency Instrument, which is fundamentally different from removing existing barriers.

20 Baba, C, T Lan, A Mineshima, F Misch, M Pinat, A Shahmoradi, J Yao, and R van Elkan (2023), "Geoeconomic fragmentation: What's at stake for the EU", IMF Working Paper 23/245.

21 European Parliament Research Service (EPRS), "Increasing European added value in an age of global challenges: Mapping the cost of non-Europe (2022-2023)", February 2023.

22 IMF, Europe in a Fragmented World: First Deputy Managing Director Remarks for the Bernhard Harms Prize, November 30, 2023.

23 EPRS, February 2023, p.12

Policy-makers are familiar with the cost of non-Europe: the growth that would have been forgone had the Single Market not existed. Here we face the other side of non-Europe: the growth the EU is missing out on where the Single Market is unrealised.[24] When public finances are constrained this is all the more important: removing barriers is budget-neutral – it does not require new funds or subsidies.

Therefore, deepening the Single Market and addressing fragmentation should become a strategic, cross-departmental priority of the incoming Commission in 2024. The benefits of free trade (free circulation) within the EU should come back as a *Leitmotif* for the European administration and also become a key objective for national administrations. In the face of ever sharper global competition, renewing the dynamic of European integration through deepening our Single Market is the most practical way to boost the EU's competitiveness, improve living standards and raise citizens' income.

A long-term, comprehensive strategy for achieving Europe's twin transition targets – and, in the end, Open Strategic Autonomy – should address Europe's lack of competitiveness and aim to deliver a revitalised business environment that addresses critical gaps in productivity, innovation, investment, capital formation, and security & resilience. If we deepen our Single Market and bolster the dynamics of European integration, the EU will be much better equipped to deal with those challenges.

1.2 Fragmentation in the Single Market is real and has an opportunity cost

1.2.1 Underlying factors at the heart of Europe's economic malaise

Years after the establishment of Europe's Single Market, regulatory convergence has come to a halt or has even reversed in most policy areas. There is still no Single Market for Environment, Digital, Energy, and Capital Markets. For years, European Council Conclusions have, rightly, called for the Single Market's completion but good intentions on paper have not been translated into effective administrative action.[25] In practice, there is insufficient enforcement of the Single Market *and* no comprehensive policy programme to further deepen it. Problems that have been repeatedly flagged by the business community – and by other organisations more broadly – remain unaddressed, with no proper procedure or governance structure in place to follow up on them thoroughly.[26]

While it is admittedly not easy politically to push for more convergence in all these sectors, too little effort has been made to build a new consensus and refocus EU institutions on delivering a better functioning Single Market.[27] Meanwhile, no effort has been made to address some of the low-hanging fruit that could have improved the regulatory and business environment much earlier.

1.2.2 The opportunity costs

The opportunity cost of not having a fully-fledged EU Single Market is tangible. The rollout and take-up of green tech in the EU and the acceleration of the energy transition more broadly is obstructed by permitting bottlenecks, divergent standards, and complex customs procedures, which are all hampering the development of the renewables sector, such as the wind industry.[28]

24 See further Pelkmans, *Empowering the Single Market*, pp 10-15.

25 A recent example are the European Council Conclusions on 23 March 2023 which built on the Commission Communication 'Long-term competitiveness of the EU - looking beyond 2030' and called on national and EU policymakers to enforce the Single Market rules effectively to ensure regulatory convergence in all sectors, including services, and to step up efforts at to reduce barriers to cross-border business.

26 ERT, "Renewing the dynamic of European integration: Single Market Stories by Business Leaders", December 2021.

27 Mario Monti, "A New Strategy for the Single Market: At the service of Europe's economy and society", 9 May 2010.

28 Implement Consulting Group, 'A European Green Single Market', October 2023.

The lack of fully developed capital markets further hampers Europe's competitiveness; for example, Spotify, the Swedish-bred unicorn, decided to expand in the US first.

As a result, the attractiveness of the EU as a global regulatory power – or its "Brussels effect" – is diminishing. Of course, the EU has so far been able to make its rules stick in large part because of its substantial consumer purchasing power. But sliding productivity and competitiveness are in effect decreasing consumers' wealth.

The EU is in turn getting smaller – and with it its "Brussels effect". In addition, the "Brussels effect" is further undermined if every Member State goes its own way and develops unilateral policies or rules. This is especially important in the digital sphere: how long can the EU claim to set global standards if it continues to undermine its potential as an economic powerhouse and when it may well play a minor role in the next wave of technological innovation?[29]

1.3 The political case for radically deepening the Single Market

1.3.1 Is the mood shifting?

There is a growing understanding at political and societal level of the alarming state of the EU's Single Market, which hampers its competitiveness and economic security. French President Emmanuel Macron recently called for a "regulatory break" to help industry digest the standards of the European Green Deal.[30] Soon after, the French and German governments asked the European Commission to reduce reporting obligations for companies and red tape overall.[31] In addition, EP President Roberta Metsola has recently said Europe must not forget the 'one in, one out' principle - for every new regulation, an existing one should be deleted.[32]

But the Commission has so far not followed up. We are far from seeing a tangible cut in the reporting requirements on companies since President of the European Commission Ursula von der Leyen's pledge in March 2023 to reduce reporting obligations by 25%. It was a good starting point. However, the exercise needs to yield tangible results and be broadened to all kinds of barriers and restrictions on companies. While the President of the Commission's State of the European Union address on 13 September 2023 showed some acknowledgement of the alarming state of the EU's industry and understanding businesses' needs, there were no measures to deepen the Single Market.[33] In fact, due to new EU legislation and implementing acts that were recently passed (amongst others in relation to the Foreign Subsidies Regulation, Corporate Sustainability Reporting Directive, Taxonomy and Cybersecurity), the actual reporting requirements on companies have actually risen since the spring of 2023… It is a signal that the decision-making processes in Brussels need to be fundamentally revisited in the next political mandate if the public administration is unable to effectively stop and reverse the trend of adding costs on companies operating in the EU, even though the President of the European Commission committed to a reduction of reporting obligations by 25% by the autumn of 2023.

A 'regulatory break' might be beneficial for some sectors, but for others such a 'one-size-fits-all' approach would not address barriers in the Single Market. Some areas – such as batteries, the net-zero technologies, and crowd-in investments – would benefit from more harmonisation and new standards. But standards only evolve in an environment of fair competition – where standards are better drafted

29 The Economist, "Why the EU will not remain the world's digital uber-regulator", Sep 21 2023.

30 Euractiv, "Macron calls for 'regulatory break' in EU green laws to help industry", 12 May 2023. This is echoed by French SME confederation CPME: Euractiv, "Green transition: French SMEs cry for help amid 'regulatory tsunami'", 29 September 2023.

31 Euractiv, "Germany, France ask EU to cut bureaucracy for companies", 30 August 2023.

32 Handelsblatt, 'EU-Parlamentspräsidentin Metsola verspricht weniger Bürokratie', 7 September 2023.

33 Among other things, Von der Leyen promised a **competitiveness check** by an independent board for every new piece of legislation and **increased communication** with SMEs. 2023 State of the Union Address by President von der Leyen, 13 September 2023.

and change less often. Deepening the Single Market can be achieved through streamlining and simplifying regulation, which would help moving towards a more efficient, simplified and harmonised regulatory framework across 27 EU Member States so that companies can enjoy the advantage of scale to invest, develop, and sell goods and services that achieve the twin transitions.

1.3.2 Reforms on the cards

Although it is early to tell, there are some hopeful signs policymakers may be moving in the right direction. Former Italian Prime Minister Enrico Letta will present his "independent High-Level Report on the future of the Single Market" in the spring of 2024.[34] There are already promising signs that it will be ambitious and look at hard issues that could unlock significant benefits in areas such as business law, taxation, and state aid. Furthermore, former Italian Prime Minister Mario Draghi has been tasked with preparing a report on the future of European competitiveness.[35]

Both Reports represent a special opportunity to fundamentally re-orient the European Commission on its role as a guardian of the Treaties, of the implementation and enforcement of the EU Acquis and as the enabler of the four freedoms, by removing barriers between EU Member States. In many ways, this is already being advocated by a growing group of Member States who call on the Commission to improve the Single Market's governance and remove cross-sectoral barriers. These Reports could give further substance to their demands.[36]

In addition, these Reports should redress the EU's current fascination with the creation of new funds (Recovery and Resilience Facility, Strategic Technologies for Europe Platform (STEP), etc.) as quick-fix solutions to boost the EU's competitiveness, and step back from relaxing state aid control to pour ever more subsidies into the European economy.

Finally, what is missing in the discussion so far is the enlargement perspective. A recent Franco-German paper largely focused on enlargement and published ahead of the October meeting of the European Political Community gave a first outline of the deep kind of reforms the EU would need to consider if it were to take forward the enlargement during the next political cycles. While the paper's recommendations advocate treaty changes and "principles for differentiation" when it comes to taking on new members, no consideration is given to reforms to deepen the Single Market – an area that went hand-in-hand with previous waves of enlargement in the 1980s and 1990s.[37]

The European Union has overcome past crises in its competitiveness by taking a leap forward in its integration process. By intertwining its economies, addressing fragmentation and enlarging to new countries, the EU will regain dynamism, revitalise the economy, and lead the way to a more prosperous future for its citizens. As succinctly put by Enrico Letta, Rapporteur of the High-Level Report on the future of the Single Market: "We need to understand that the growth of the Giants around us is such that either there is a European integration which is finally complete, or we will disappear."[38]

The European Union has overcome past crises in its competitiveness by taking a leap forward in its integration process

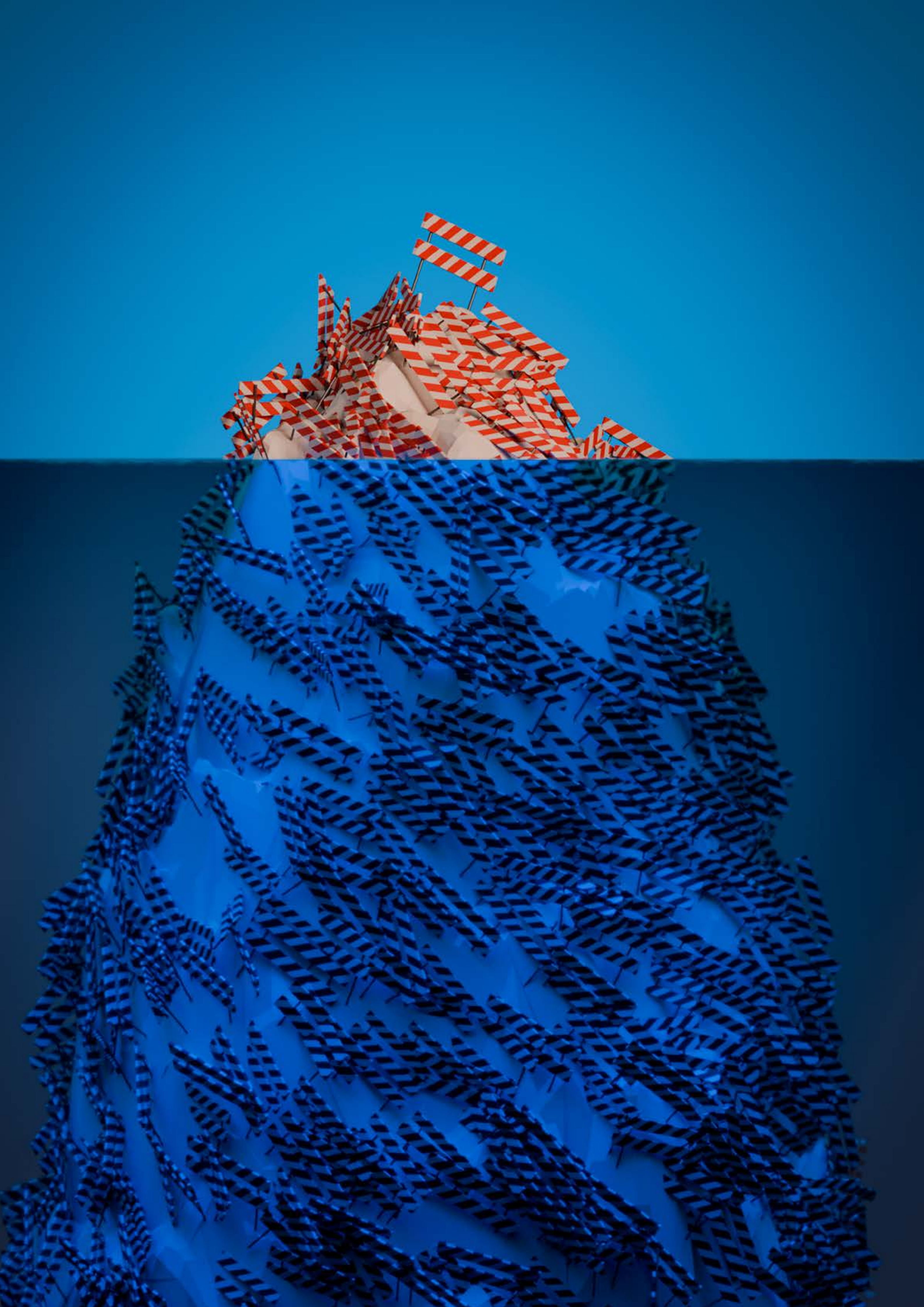
34 European Council conclusions, June 29-30 2023.

35 2023 State of the Union Address.

36 Non-paper on a new horizontal Single Market Strategy of: Croatia, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden (15 January, 2024).

37 Report of the Franco-German Working Group on EU Institutional Reform, "Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century", 18 September 2023.

38 La Vanguarda, Enrico Letta: "O hay una integracion europea completa, o desapereceremos", 20 November 2023.



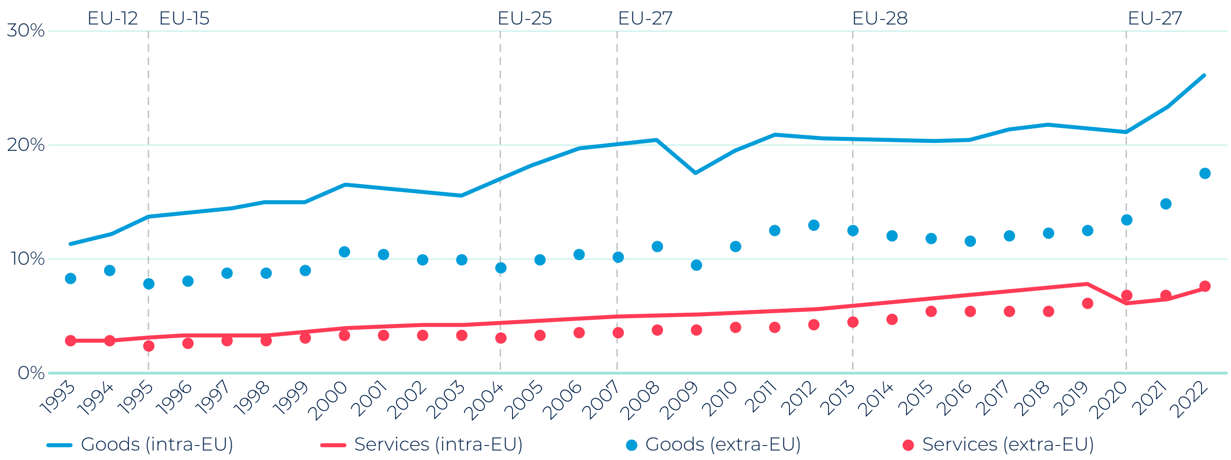
2. Analysis of barriers & governance challenges

2.1 Type of barriers and paths towards a solution

2.1.1 What's going on?

2.1.1.1 Looking back at this Commission's term

Fig. 3. The integration of the EU Single Market for goods has been stagnant since the global financial and eurozone crises over a decade ago, while intra-EU trade in services has remained very low.[39]



Barriers to business in the Single Market are well-known by public authorities, at national and European level, and have been well-documented, including by the European Commission. Amongst others, the European Commission's 2020 **"Business Journey on the Single Market"** – part of the Single Market Barriers Report – is a rich source of documented practical obstacles to trade and investment across borders in the Single Market. These include major horizontal policies, such as differences in national labour market regulations, tax policies, and digital policies, as well as differences in sector-specific rules for commerce in the Member States.[40] The Staff Working Documents also offer a useful model for categorising barriers – identifying them along the steps of businesses' respective "journeys" towards cross-border activities. This model is still used today by relevant Commission officials dealing with addressing Single Market barriers.[41]

In 2020, the Commission identified regulatory choices by Member States and inadequate implementation of EU legislation as one of the root causes behind the creation of unnecessary or disproportionate barriers for business in the Single Market.

In March 2023, the Commission Communication on "Single Market at 30" celebrated some achievements of the Single Market but fell short of identifying the real bottlenecks, let alone proposing solutions for the persistent nature of some barriers. The Communication says:[42]

39 "Commission Staff Working Document accompanying the Annual Single Market and Competitiveness Report", page 3, February 2024.

40 European Commission, "Single Market Barriers Report, In 'A Europe Fit for the Digital Age' ", March 2020.

41 Corroborated by informal responses from European Commission sources.

42 European Commission, "Single Market at 30", March 2023, p. 14.

Some types of barriers have proven to be persistent: 60% of the barriers that businesses report facing today are of the same type as were reported 20 years ago. Many of these relate to national regulation as well as administrative practices, which, in the first instance, have to be addressed directly by Member States.

Barriers confirmed by stakeholders include the complexity of national procedures and lack of information on them, disproportionate national requirements in the area of services, including mobility of professionals, burdensome administrative requirements for posting workers and difficulties related to taxation in a cross-border context. Many such barriers are not amenable to legislative harmonisation and hence reducing obstacles at national level remains the major objective.

These observations are corroborated by several recent business surveys.[43] Yet, the Communication shies away from analysing these problems further and from proposing political, administrative or practical solutions that could actually help turn the tide.

2.1.1.2 What was done differently in 1985-1992?

Going back in time, in 1985, Lord Cockfield, who was part of the Delors Commission, authored a white paper titled "Completing the Internal Market". The white paper was a compendium of 300 legislative proposals aimed at the elimination of physical, technical and fiscal non-tariff barriers between Member States of the then European Economic Community (EEC).[44] The European Council endorsed the Cockfield white paper in June 1985, setting a deadline for the completion of the internal market by 1992 at the latest.[45] The internal market project received an additional push in 1986, when Heads of State or Government adopted the Single European Act, which set the deadline for the completion of the Single Market by the end of 1992.[46]

Why has the Commission's 2020 mapping exercise, as well as the 2015 attempt to revamp the single market strategy,[47] not led to the same ambitious results seen in the period 1985-1992? As the European Parliament noted in 2019, strong political commitment to progress on difficult issues – especially amongst Member States but also in the Commission – is often lacking.[48]

Admittedly, there is a real difficulty in achieving compromise on a number of issues. The Commission's Communication "The single market in a changing world: A unique asset in need of renewed political commitment", which was requested by the European Council to measure progress on single market strategies, was published in 2018 and listed 67 legislative proposals, of which only one third have been adopted.[49] Instead of following up on the proposals and having further "in depth-discussions at leaders' level (…) to identify common priorities for action and appropriate mechanisms to match the much needed new political commitment to the single market with concrete delivery at all levels of governance", the Heads of State or Government moved discussion to the new strategic agenda on the single market after the European elections in May 2019.[50] This led to the 2020 communication which, as discussed, did not deliver as intended.

Unlike the 2015 and 2020 Communications, the 2010 Monti report and other flagship documents of the last decades, the newly formulated ambitions on tackling the Single Market – including the recommendations that will flow from Enrico Letta's High-Level Report on the Future of the Single Market, to be presented in the spring of 2024 – should be taken seriously and tackled under the next Commission mandate.

43 Eurochambres, "Business Survey, The State of the Single Market: Barriers and Solutions", December 2019. DigitalEurope, "Single Market barriers continue limiting the EU's potential for the twin transition: examples in key sectors", 3 March 2022.

44 COMPLETING THE INTERNAL MARKET White Paper from the Commission to the European Council (Milan, 28-29 June 1985).

45 European Council conclusions, 28-29 June, 1985.

46 Single European Act.

47 European Commission, The Single Market Strategy 2015.

48 European Parliament, "The European Council and the completion of the single market", March 2019.

49 European Commission, 'The single market in a changing world: A unique asset in need of renewed political commitment', November 2018.

50 European Parliament 2019.

2.1.1.3 The ERT's exercise anno 2023-2024

Over the course of the last six months, ERT has collected standardised templates on cross-border barriers, which were developed in coordination with DG GROW. The templates were submitted by ERT members, a broader set of companies as well as European and national associations. As of the beginning of January, the ERT Secretariat has received over a 100 examples of obstacles in the Single Market.[51]

The following chapters attempt to set out an extensive overview and analysis of the persistent cross-border barriers on the Single Market today. The analysis is largely based on input from the templates collected by ERT but also supplemented by earlier publications (from the European Commission and business associations, among others).

The following sub-chapter starts by re-examining, first, some of the persistent sector-specific barriers:

1) Environment & sustainability: in particular barriers related to divergent **labelling requirements** and **waste management**;
2) Digital: issues around **spectrum allocation, data availability and interoperability**, and **fragmented regulation of digital services**;
3) Energy: issues around recent **national interventions** in energy and electricity markets, **divergent standards, permitting**, and **PPAs**;
4) Infrastructure (energy and mobility);
5) Capital markets;
6) Security.

The analysis then turns to a selection of cross-cutting barriers flagged by companies and associations that affect multiple industries or sectors (and are thus "non-sector specific"):

1) Posting of workers;
2) Services;
3) Public procurement;
4) Mutual recognition
5) Trade: issues around **customs** and **unfair trading practices**;
6) Taxes: issues around **VAT**, **excise duties**, and **tariffs**;
7) Standards and standardisation.

2.1.2 Sector-specific barriers

2.1.2.1 Environment & sustainability

Labelling

There are continued business concerns about diverging standards and labels for products that include information on green criteria, such as paints, as well as a patchwork of environmental standards, recycling systems and reporting requirements between countries in areas where the EU already has existing legislation or is creating new laws. An often-cited example of a persistent issue is the use of the "Green Dot" logo within the EU as well as the obligatory "Tri-man logo" in France. These conflicting requirements impose unnecessary costs and risks for businesses.[52]

Environmental labelling measures can constitute barriers as well. A growing number of Europeans pay attention to the environmental footprint of the food they consume. This trend has led many business operators, as well as some governments, to introduce different kinds of environmental labels for food products. These labels are often private, voluntary initiatives, with significant differences in the categories of impact taken into consideration, the type of data used for the analysis (for example secondary data, based on averages calculated on a wide sample of producers, or primary data, sourced from each producer to reflect individual performance), the formulas used to convert Life-Cycle Assessment (LCA) results into a piece of information which can be displayed on a label and how this information is visualised.

51 For additional details, please consult the full compendium of case studies 2023-2024.
52 DigitalEurope 2022.

More recently, unilateral national targets – of, among others, France, Spain, and Austria, which are multiannual plans to increase the share of reusable packaging on their national markets – risk fragmenting and distorting the market even more. Producers exporting to these EU countries would need to create an entirely new logistic chain to be able to comply with the reuse targets. This would put them at a competitive disadvantage to local producers, for whom these new provisions would be easier to comply with.

Overall, the direct impact on businesses is twofold: 1) the fragmentation increases costs for companies who want to use environmental labels across multiple markets, as they may need to adapt to different systems; 2) the different formulas per market used to calculate LCA means no thorough assessment of the product's environmental impact can be made, hindering businesses' ability to gain a marketing advantage and reinforce their brand.

More broadly, the fact that the information on the labels is not always properly assessed and coherently communicated to consumers in the end undermines the trust in environmental labels and hampers the market uptake of these solutions and eventually the transition to a sustainable food system.

Waste

Another issue is that the Waste Framework Directive (WFD) sets out only some minimum generic requirements for the design, implementation and operation of extended producer responsibility (EPR) for any waste stream, providing Member States the freedom to decide how these requirements are to be achieved and implemented. The resulting fragmentation has already been well documented in multiple publications.[53]

53 This includes the Commission's 2020 'Business Journey' Communication.

One prominent example is that there is a lack of EU-wide End-of-Waste criteria for certain products. When end-of-waste criteria are not defined at the EU level, Member States are free to set up their own set of criteria or apply single-case end-of-waste decisions:

- Currently, any material recovered from End-of-Life Tyres (ELTs) is deemed to be waste in most European countries. The waste status of ELT-derived materials creates a set of administrative and financial burdens, including specific requirements for transportation, particularly for cross-border shipments. In addition, the use of such materials in manufacturing as waste can only be handled by industrial sites holding a waste permit. This prevents the use of ELT-derived material across value chains as a secondary raw material, with a negative impact on the circularity of the tyre industry.
- Current legislation does not yet provide sufficient guidance on the rules governing the classification and shipment of the materials in the battery recycling loop. It is unclear whether the product or (hazardous) waste classification is applicable to end-of-life lithium-ion batteries as well as intermediates of recycling such as battery production waste and black mass. The views on the proper classification of these materials differ dramatically across EU Member States, creating significant uncertainty for EU recyclers. As end-of-life lithium-ion batteries and intermediates of recycling do not fulfil the end-of-waste criteria laid out in Article 6 of the Waste Framework Directive, they cannot be classified as a "product" by some companies in some Member States.
- There is a lack of common objectives, principles and definitions for textiles (i.e. clear definitions of "waste textile"). As a result, clear differences emerge between national EPR schemes for textiles.

In addition, there are adjacent issues related to the transportation of waste. While current legislation relating to circular economy in the Single Market focuses on the mass market, it should address and facilitate the transfer of used Electronic and Electrical Equipment (EEE) from one country to another between two affiliates from a company, or two separate companies.[54]

Reflections on the solution's attainability

The harmonisation of labelling requirements is underway (Ecodesign Regulation [ESPR], Packaging and Packaging Waste Regulation [PPWR], etc.). In other words, the European Commission is to set common terms and symbols for the collection, sorting and recycling of products across the EU Single Market. Depending on the final text of the legislation, the Packaging and Packaging Waste Regulation (the Directive currently in place would be turned into a Regulation) could prevent Member States from introducing additional national labelling requirements for the purpose of identifying EPR schemes and recyclability. But the final compromise for the PPWR is likely to be very much in line with the Council's position – that is, still giving more leeway to Member States in their approach to packaging waste-sorting labelling. Businesses and some Commission officials are thus concerned that the current patchwork of national requirements for packaging will not disappear. Furthermore, once a regulation has been put in place, it will be very difficult to address the issue. It will likely take 6-8 years before it can be dealt with by new legislation.

On voluntary labelling (and divergent formulas per market used to calculate LCA), the European Commission is aware of this barrier and is partly addressing it through the proposed Green Claims Directive. However, its provisions are not specifically targeting the agri-food sector. This barrier could be addressed by the adoption of sustainable food labelling provisions to be included in the future legislative framework on Sustainable Food Systems, foreseen by the Farm to Fork Strategy. However, this proposal has not been tabled yet.

The Digital Product Passport (DPP) present in the agreed upon Ecodesign Regulation and digital labelling more broadly provide an efficient and scalable way to keep a product's compliance information up to date and to facilitate cross-border trade. Digital labels can be amended or updated in real time and be provided in all local languages, where relevant (including through machine translation). Customers can scan the QR code on a product, for example, to access all mandatory information in their language of preference. Currently, these digital solutions

54 In this case, this is not the WFH but **Directive 2012/19/UE** on waste electrical and electronic equipment (WEEE).

are only present in a few pieces of legislation; Instead, they should be consistently considered in ongoing and future regulations (e.g., Toy Safety Regulation, Detergents Regulation, Cosmetics Regulation). Additionally, policymakers should ensure that digital labelling and the Digital Product Passport (DPP) are implemented in a harmonised manner so as to ensure that they fulfil their goal of facilitating, rather than fragmenting, cross-border commerce.

On waste, since the 2018 revision of the Waste Framework Directive, the initiative on the definition of end-of-waste criteria has lain with Member States. Currently, there are only four waste streams for which harmonised EU criteria exist. In 2022, the Commission prioritised two additional streams – plastics and textiles – out of 39 sectors assessed by the Joint Research Centre (JRC), with a timeline extending to 2024 to complete the work. But at the same time no measures have been taken so far to classify recycled rubber derived from ELTs (the third in the ranking, following plastics and textile); materials generated during the end-of-life lithium-ion battery recycling process, such as black mass and battery, module and cell waste, which continue to be strictly classified as "waste" and therefore cannot be considered as "product"; and "waste textiles".

Resolving these barriers seem to be relatively low-hanging fruit – they require addressing missing provisions in existing legislation and/or further harmonising existing legislation. Despite the political difficulties that comes with that, it seems relatively easier to address than "gold-plating" or divergent interpretation of existing laws, which lie behind the barriers outlined in the next subchapters.

While the General Data Protection Regulation (GDPR) has to a large extent done away with the fragmented landscape that existed under the previous directive, it leaves some margin for national legislation to specify certain provisions

2.1.2.2 Digital

Data protection

There is a lack of a unique and aligned position on the concept of personal data and non-personal data among Member States, and still no adequate and recognised standards on the anonymisation of personal (health) data.

While the General Data Protection Regulation (GDPR) has to a large extent done away with the fragmented landscape that existed under the previous directive, it leaves some margin for national legislation to specify certain provisions.[55]

For example, the fragmentation of GDPR interpretation across Member States leads to a fragmentation of local conditions on data processing for scientific research purposes (GDPR allows Member States to introduce further conditions and limitations to the processing of health data). Germany, for instance, requires consent for the processing of personal data for any clinical evaluation and research. This is at odds with the possibility of relying on public interest or legal obligation flowing from the Medical Device Regulation (MDR) to guarantee the safety and efficacy of medical devices (Regulation (EU) 2017/745). This has an impact, not only on the effectiveness and ease of use of digital health products and services, but also on the proliferation of job-creating R&D in Europe.[56] These issues have been repeatedly flagged by various business associations, as highlighted by the European Commission's 'Business Journey' communication.[57]

55 EC communication, March 2020

56 DigitalEurope 2022.

57 EC communication, March 2020

Data availability

Some public agencies in the EU may require data to be hosted in their home country or within EU territory. This may be the case in particular for highly sensitive categories of data (e.g. related to national security), where the risk of access by third countries is unacceptable. Moreover, each public institution may have its own information security programme which may contain specific requirements. Without EU-wide harmonisation, businesses face a situation in the EU where data access and re-use happens at different speeds in different countries. Opportunities to develop cross-border applications are therefore limited.

Data localisation measures create a major misallocation of resources and threaten the continent's productivity and competitiveness. If data can be stored and processed anywhere within the EU, the move would boost the commitment to achieve a true Digital Single Market and send a clear political message that Europe is open for business. 2016 data suggests that if existing data localising measures are removed, GDP gains are estimated to up to 8 billion euros per year (up to 0.06% of GDP), which is on par with the gains of recent free trade agreements (FTAs) concluded by the EU.[58]

Data interoperability

In the same vein, the lack of data interoperability is directly impacting areas beyond digital.

The landscape for Health Technology Assessments (HTAs) is highly fragmented in terms of data, analysis, and methodologies that are required in national submissions. HTAs are important as they are used to estimate relative effectiveness of (usually) innovative medicines with the purpose of informing decisions about the allocation of budgetary resources in the field of health, for example on establishing the pricing or reimbursement levels of health technologies. The duplication of submissions and consideration of different timings for submission across Member States constitute a significant administrative burden for health technology developers, in particular for smaller companies with limited resources, and contribute to impeding and distorting market access, leading to a lack of business predictability, higher costs and, in the long run, negative effects on innovation.

Separately, in the construction area, there are currently no joint technical standards across the European Union for digital twins and Building Information Modelling (BIM) software. This

58 ECIPE, "Unleashing Internal Data Flows in the EU: An Economic Assessment of Data Localisation Measures in the EU Member States", No. 3 / 2016.

absence is causing projects like Building Twins to be developed based on different proprietary software – ultimately risking issues with interoperability and making it less attractive for SMEs to invest in BIM. In other words, this means that there is no common set of rules or specifications that all digital twins and BIM software must follow. There is no common standard for the exchange of data between digital twins and other systems, such as building management systems and energy management systems. This can make it difficult to integrate digital twins into the existing workflows of building owners and operators. All this leads to increased costs, especially for small and medium-sized enterprises (SMEs). Without open BIM standards, companies have to invest in multiple BIM software platforms in order to collaborate with other stakeholders on projects.

Spectrum allocation

There has been limited to no progress on resolving conflicting regulatory environments across the Single Market relating to spectrum allocation. While the European Electronic Communications Code (the "Code") includes several new provisions aiming at developing a more common approach on spectrum allocation, this has not materialised into practice when implemented at national level.

This relates notably to substantial differences between Member States on:

- Auctions timing – creating delays for the wide availability of 5G in the EU;
- Reserve prices – diverting capital budget from network investment;
- Spectrum annual fees – increasing operating costs;
- Spectrum licence duration – creating uncertainty over long term service continuity and risk of stranded assets.
- Renewal conditions – creating legal uncertainties for market players.

For example, a number of Member States (Spain, Germany, Portugal) have recognised the importance of long-term licensing certainty to encourage investment, and have extended (or are in the process of extending) 5G licences for up to 40 years, or have renewed authorisations for older generations free of charge in return for commitments to invest in areas with no or very limited internet connectivity. However, in France, licenses were extended for only 15 years. Europe would benefit from license extension being adopted consistently across all Member States.

In addition, with advances in both mobile and satellite network technology, there will be an increasing overlap in the markets they serve – and yet the radical differences in approaches to spectrum access and charging are likely to introduce discrimination and disadvantage the provision of mobile services.

It remains important for 6G that timely actions are being taken to reserve the appropriate spectrum. 6G will require additional new spectrum to address exponential mobile data growth. This means that if the current divergent national approaches to spectrum policy go unaddressed, also towards the upcoming 6G technology, the EU's economy and society will not be able to exploit new innovations promised by the newest wireless connectivity technologies that will be vital for the digital and green transitions.

Mergers in the telecoms sector

While the European Commission is taking the view that cross-border consolidation in the telecoms sector is favourable, without a true Single Market there currently is no strong commercial case for cross-border deals. This is especially pertinent for network operators. At this stage, only in-country scale and consolidation seem to deliver the required investment incentives and efficiencies. The Commission should re-evaluate its substantive approach to merger review and adopt a more favourable approach to in-country consolidation (e.g. by moving away from focusing on short-term consumer pricing effects, instead taking a more long-term view leading to sustainable competition and recognising the need for minimum viable scale to enable investments in markets with high fixed costs).

While the European Commission is taking the view that cross-border consolidation in the telecoms sector is favourable, without a true Single Market there currently is no strong commercial case for cross-border deals

Fragmented regulation of digital services

A key obstacle to full integration of the Single Market is the fragmentation of regulation and lack of uniform implementation across the EU. Differences in regulatory and technical requirements – e.g. lawful intercept, privacy and reshoring requirements – not only make it impossible to create cross-border connectivity services, but also prevent telcos' abilities to operate resilient and secure networks across Member States and leverage centralised systems and capabilities. The simplification of regulation would make EU markets and the potential roll-out of translational services more attractive.

Reflections on the solution's attainability

Apart from some flexibility left to Member States to specify provisions in EU legislation (as is most obvious in the data protection area), there is also - as already flagged in the 2020 'Business Journey' Communication - inadequate implementation of EU legislation, which hampers the sector.[59]

On availability and interoperability, there is also a lack of EU-level data governance mechanisms addressing the challenge of data interoperability within and between sectors, and this applies to EU data spaces as well.

But reinvigorated measures for reducing the costs of deployment of electronic communications networks could face difficulties due to **fragmented and overly complex existing administrative processes** (often dealt with by local authorities), and the cross-sectorial character of the measures. In addition, divergent regulatory approaches by national regulators are also holding back the development of cross-border connectivity services.

59 EC communication, March 2020.

2.1.2.3 Energy

Divergent taxes & levies through recent national interventions

While the energy crisis, triggered by Russia's invasion of Ukraine, has been strongly addressed by the European Commission (EC), primarily to reduce the impact on European companies. it has also resulted in a further fragmentation of the EU's single market for electricity. Council Regulation (EU) 2022/1854 "on an emergency intervention to address high energy prices", intended to set a common framework, but resulted in the current patchwork of national demand reduction measures that is harming the integrated internal electricity market and undermining investments in renewables.[60] Additionally, divergence between Member States' national taxes and levies, that was already an issue before,[61] continued to grow during the energy crisis.

Council Regulation (EU) 2022/1854 opened the door to the implementation of a national revenue cap for inframarginal technologies. More than 14 Member States introduced a cap. In June 2023, the EC published its assessment report on the emergency interventions. The report found that the inframarginal cap implementation was too heterogeneous.

This patchwork of market and fiscal interventions is hampering the EU's ambition to build a robust Energy Union and creates additional burdens on the alignment of taxation with the EU's ambitious

60 Council Regulation (EU) 2022/1854.

61 The Energy Taxation Directive (ETD), that entered into force 20 years ago, has eroded over time and a complex patchwork of exemptions and reductions has proliferated across Member States so that there is currently not a level playing field across the single market. In addition, the revenue cap for inframarginal technologies, incl. RES, in RePowerEU potentially disrupts cross-border intraday trading. Source: case studies 2023-2024.

energy and climate policies. These are already well documented but to give a few examples:

- Direct Support measures to households (tax reductions);
- Ex-ante taxation regime (windfall taxes on renewables);
- Gas cap;
- Inframarginal revenue cap;
- Capping the electricity market price.
- Division of the market per technology (national policies setting quotas to technologies and prices.

According to EU Agency for the Cooperation of Energy Regulators (ACER), the combination of the energy crisis and unaligned measures between Member States artificially increased price divergence and altered cross-border trading patterns. A notable example would be the "Iberian exception" and the unharmonised measures put in place to cap the electricity wholesale prices of some technologies in France and Spain.[62]

This fragmentation has harmed investors' confidence. The uncertainty created by the cap undermined investments in renewables in 2022, leading to a reduction of investments in Europe in 2022 because of the regulatory uncertainty among other issues. Investments in wind in 2022 was at its lowest since 2009, with not a single final investment decision (FID) for offshore wind farms taken in 2022.[63]

Permitting

The simplification and harmonisation of Renewable Energy Sources (RES) permitting is even more relevant and urgent than before, as renewables are not only the key tool for the energy transition but also fundamental to achieve energy security from gas ("self-sufficiency").

A few examples of how planning and permitting bottlenecks experienced by both onshore and offshore renewable energy developers, storage developers and grid operators continue to be an issue:

- In Romania, the issuance of construction permits for the installation of EV charging stations can take up to one-and-a-half years because it must be licensed by individual municipalities.
- In Slovakia, there is an effective barrier to the deployment of EV chargers on motorways as the Slovak motorway monitoring company reserves the right to launch applications for e-mobility services (charging installations) for already leased areas (filling stations).[64]

Lack of common standards and methodologies

Companies report a lack of common grid standards for electrical and energy products.[65] Although the EU has a certain acquis with the EU Network codes for grid connection requirements on high-voltage levels, all standards for electrical products at lower voltage level (i.e. any equipment in the building for instance) remain at national level. This has industrial consequences: standards are very important for solar inverter manufacturers, particularly those active in the low voltage segment that need easy access to EU markets.

Companies report a lack of common grid standards for electrical and energy products

Separately, there is a continued fragmentation of the market for guarantees of origins, with some countries still not having joined the European associations for Guarantees of Origin emissions and certification, which means different access rules and validity. For example, Poland is not registered to the AIB and its framework for green certificates is deteriorating with a limit for obligatory redeemed certificates down to 5%, resulting in an oversupply and significant drop in their price. Meanwhile, Romania and Bulgaria are also not registered and thus are having huge difficulties to transfer GOs across their boarders in virtual cross-border PPAs.

62 ACER 2023 Market Monitoring Report.

63 WindEurope, "Europe invested €17bn in new wind in 2022, the lowest since 2009", 29 March 2023.

64 Case studies 2023-2024.

65 Case studies 2023-2024.

Limits to cross-border renewable energy trade

The principle of the Power Purchase Agreements (PPAs) is to both support the long-term business developers of renewable projects and help industrial clients buy long-term renewable electricity contracts. PPAs can be concluded across borders which is helpful to better connect European energy markets. However, as electricity prices in Europe are determined per country, there can be price differences that vary over time in unpredictable ways.

For example, as a buyer, a steel company in Germany purchasing from a renewable producer in Spain would see price differentials vary between €3.5 and €19/MWh between 2015 and 2020.[66] At an industrial level, that is a significant difference. This risk can be mitigated with the use of transmission rights to secure prices. But the owners of the transmission assets – the Transmission System Operators (TSO) – currently only sell transmission rights for the year ahead.

This is an EU Single Market issue: cross-border activities are limited because they cannot be negotiated for longer than a single year. Because of these barriers, businesses cannot contemplate operations at EU scale. The rule discourages market participants from concluding cross-border PPAs. The result is that investments in the energy transition to a low-carbon economy are slowed down, jeopardising the EU's hopes of reaching its target of 40% of renewables in EU energy consumption by 2030.

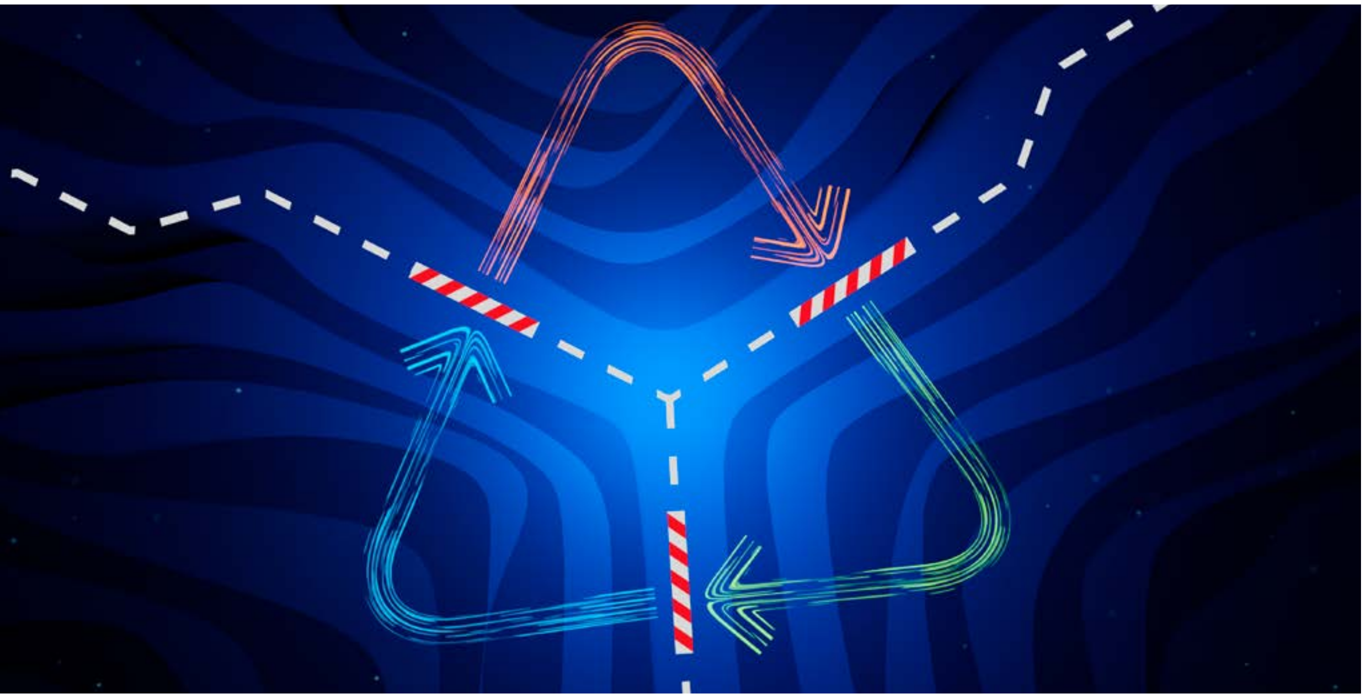
2.1.2.4 Infrastructure (energy and mobility)

The importance of EU-wide infrastructure (in telecommunications, gas and electricity networks, transport and mobility more broadly) is essential for the cross-border circulation of goods and services. However, barriers continue to persist. A few frequently reported challenges are highlighted below.

Road and rail

Notwithstanding the temporary restrictions on heavy road traffic implemented by individual EU countries, which also affect the efficiency of traffic flows and road logistics operations, businesses continue to report that in several especially busy transport networks – such as the Alpine passes that connect Italy, France, Switzerland and Austria – road and rail infrastructure is outdated and overall inadequate, making it ill-suited for the current volume of traffic. Such infrastructure is increasingly prone to accidents and damaging events, leading to continuous disruptions and limitations to both railway and road transit, even in recently opened or renovated facilities.

66 Case studies 2023-2024.



To mitigate these challenges, some local governments have justifiably pursued policies over the past years to limit transit traffic for several years, enacting measures such as sectoral or night driving bans. However, these in turn exacerbate large-scale obstructions in road freight traffic via, for example, the Brenner route. At this point, coordinated investments are needed to revamp and update the outdated infrastructure (see 'recommendations').

While public charging infrastructure for electric cars and vans is developing, in most of the EU there is currently no such infrastructure for heavy-duty vehicles

To illustrate the impact, the 2022 commercial exchange between Italy and France is €111.2 billion, an increase of 20% compared to 2021. France is connected to Italy through the Frejus and Mont Blanc passes. The closure of one of the two tunnels (such as the current case of Frejus) would cause a worsening operation of the other tunnel and therefore a serious disruption of commercial connections between Italy and France.[67]

EV charging infrastructure

In addition to the more classic road and rail infrastructure, there are also problems with newer forms of infrastructure, such as EV charging stations, which in turn hamper the transition to cleaner transport. While public charging infrastructure for electric cars and vans is developing, in most of the EU there is currently no such infrastructure for heavy-duty vehicles. Hydrogen refueling stations are even scarcer. Some EU countries, such as Germany and France, have developed national alternative fuels infrastructure plans, while others (specifically in Central and Eastern and Southern Europe) are still hesitant about investing a lot into a specific technological infrastructure. The decarbonisation of commercial fleets is at risk without adequate investment in public alternative fuel infrastructure for heavy-duty vehicles across all EU member states.[68]

As for the installation of EV charging stations, companies continue to face problems on the level of distribution power capacity tariffs (kW) to be paid, as it is set at such a high level that it significantly impairs rates of return and is a barrier for a new businesses.[69] The formulation of fixed distribution power capacity fees is the responsibility of the relevant authority in Member States. It will be increasingly important for Member States to install chargers with higher power output in accordance with AFIR requirements, which focus on public EV charger installations with a minimum output power of 150 kW. In countries with low EV penetration the high level of power capacity tariffs may deter investors from installing high-powered chargers.

CO_2 transportation

Finally, there are continued infrastructure bottlenecks hampering the transition to renewable energy generation. For example, there continue to be constraints on CO_2 pipeline deployment for Carbon Capture and Storage (CCS) across the EU. For instance, in some countries the design pressure of the existing pipeline may not be compatible with transporting CO_2 in dense phase, which requires pressure > 80 bar. In that case, the transport will have to be in gas phase resulting in lower capacity. Moreover, some corrosion challenges – water ingress risk leading to high corrosion, acid formation owing to impurities in CO_2 – may also make the existing pipeline network unsuited for scaling up CCS.[70]

2.1.2.5 *Capital markets*

Market-based finance for corporates remains below historic levels, and corporates continue to over rely on bank lending. Securitisation has significantly declined, and the EU and UK languish far behind global competitors in terms of domestic securitisation. In addition, household assets invested in capital markets instruments has not shown any progress.[71]

67 Case studies 2023-2024.

68 Case studies 2023-2024.

69 Case studies 2023-2024.

70 Case studies 2023-2024.

71 AFME, "Capital Markets Union Key Performance Indicators", Sixth Edition 2023.

Despite decades-long efforts, most recently with the Capital Markets Union (CMU) initiative, market finance remains insufficiently developed in the EU with an over reliance on international markets outside Europe. There is still a large gap compared to the US market, which in terms of market capitalisation of a company listed was three to four times larger than Europe in 2021 according to European Capital Markets Institute´s calculations.[72] This impacts the ability of start-ups to scale up, and major organisations to raise finance and invest in EU capital markets. As a result, the financing of the twin transitions and other pressing challenges are not comprehensively addressed.

Some first steps have been set since 2015 with the CMU proposals, and the Eurogroup finance ministers are currently reflecting on further issues that the new European Commission should consider once in place at the end of 2024. This concerns the consolidated tape (MiFIR), the single access point (ESAP), and the harmonised corporate insolvency rules, but these proposals will take time to generate results. Overall, progress remains slow.

As a result, within Europe, capital market development amongst Member States remains diverse, with a few countries in Northern Europe that have come quite far in strengthening their capital markets, while Southern, Central and Eastern European capital markets have not advanced over the last 10 years. The harmonised EU push is not there – not least due to the fragmentation of national capital markets which hinder integration on an EU level. Strong Member State views continue to affect the EU's ability to make significant moves towards harmonisation, which the EU recognises is not in of itself a holy grail.[73]

The harmonised EU push is not there – not least due to the fragmentation of national capital markets which hinder integration on an EU level

2.1.2.6 Security

What we call the "security market" is in fact a wide area, covering different needs, ranging from law enforcement agencies to border control, from critical infrastructure and industries to individual families and citizens. Divergent security requirements across Member States limit, both in the public and private sectors, the ability of European industries to produce security solutions that are truly pan-European and that can have a scale and a volume suitable to become real global contestants in the field.

As stated by the industry itself, a fractured system where each of the EU's 27 countries invests in its own security and defence capabilities does not work. In addition to this, rising energy costs, emissions regulations and the cost of labour in Europe

72 New Financial, EU Capital Markets: A New Call to Action, September 2023.

73 Case studies 2023-2024.

weigh on listed European defence companies because "investors will go elsewhere".[74]

To give a few tangible examples reported by companies:

- Under the Minimum Harmonisation Directives (Code, NIS2) Member States are allowed to add requirements where they deem it is necessary. As a result, the scope, sequencing, time to implement requirements and reporting of effectiveness under the can often differ - meaning operators could be applying different sets of requirements, in different areas, at different times in different countries.
- Moreover, reporting and notification obligations and channels are not always fully aligned between different types of security legislation, which exacerbates the fragmentation of security provisions across the EU. For example, there are deviations of what is regarded as "significant" incident (already defined under NIS2 or the Telecoms Code).
- Under current legislation, while national authorities are legally allowed to intercept private communications under certain conditions (i.e. legal intercept or LI), Member States are given discretionary powers to frame national rules on the implementation of LI capabilities, creating fragmentation across the EU.[75]

The opportunity for harmonisation in these areas is hindered for the following reasons: 1) national governments are wary of measures that might infringe their ability to exercise their sovereignty on national security issues; 2) in the specific case of legal intercept or LI, the cost of implementing LI requirements is borne by the operator in the majority of cases – hence the burden on (national) government is low.

2.1.3 Non-sector specific barriers

2.1.3.1 Posting of workers

There continues to be a **multitude of national requirements related to cross-border establishment**. The Posting of Worker Directive 96/71/EG (hereinafter: PWD) and Enforcement Directive 2014/66/EU set out the overarching parameters of the Posted Worker Notification but allows Member States considerable margin in its practical implementation. As a result, businesses tend to be overwhelmed by the multitude of national requirements (this includes, among other examples, identifying applicable exemptions in Germany or navigating the more than 800 separate collective agreements in Austria).[76]

VDMA estimates the additional bureaucratic costs for EU postings of workers yearly at a minimum of EUR 31 million for the German mechanical engineering industry (based on 205,000 registered postings). However, the overall costs for the companies that post workers are much higher owing to excessive reporting obligations in many Member States.[77]

Five requirements are indicated when posting workers within the EU:

- **Minimum pay.** According to the PWD, the minimum pay requirements in the host country should be met. The employer needs to compare the home country pay level with the host country minimum level. If a CLA is applicable at the host company, the minimum requirements of this CLA should be met. If no CLA is applicable, the legal minimum requirements are relevant. Companies need to compare the pay levels of the posted employees with the required pay levels in the member state where the employee is posted to. This is a cumbersome exercise as knowledge of the local minimum pay requirements is essential.
- **Assessment.** As directives need to be implemented in local legislation, exemptions to the notification requirement differ by member state. Therefore, an assessment must be done whether a notification needs to be filed for a specific activity for a certain duration in a member state. It might be that in member

74 FT, "Leonardo calls for reform of the EU's fragmented defence industry", January 4, 2024.

75 Case studies 2023-2024.

76 Case studies 2023-2024.

77 VDMA, "Posting of workers in the EU – Obstacles in the Single Market", update 2024.

state A filing a notification is needed, while the same activity for the same period of time does not require a notification in member state B. Next to that, legislation may change in a member state, so companies need to keep a close eye on the legislative developments.

- **Notification.** If the outcome of the assessment is that a notification is needed, data must be collected to complete the notification form. The Enforcement Directive 2014/67/EU states in article 9 that the member states may impose a mandatory simple declaration to the competent national authorities. However, member states have a different interpretation of simple. One company pointed to 250 unique data fields for Austria, Belgium, Czech Republic, France, Ireland, Italy, and Sweden. Some of these data fields are very hard to find for an individual traveller (e.g. host company VAT number). Next to that, companies wonder whether and how all this data contributes to the purpose of the PWD.[78]
- **Documentation.** The Enforcement Directive 2014/67/EU also allows member states to require the service provider to keep copies of the employment contract, time sheets, payslips and proof of payment available during the posting. 14 unique documents are listed for the 8 countries listed above and Switzerland that are relevant for A, including an A1 certificate. Most countries require a translation of these documents to the local language. Furthermore, there are countries which require to keep the documents available up to 2 years after the posting.
- **Contact person.** The challenge concerning the contact person is the fact that some countries require a local contact person, who in some member states even needs to be available after posting. It is important that the contact person has sufficient knowledge on these EU regulations.

Other reported issues relate to the electronic filing of Posted Worker Notifications and the Digital Certificate, specific local language requirements, and more.[79]

The Commission is attempting to address the issue through the development of a uniform voluntary form for the declaration of the posting of workers, the "eDeclaration". Not only are the persistent differences on whether to take this forward – with France being against, Germany in favour – ERT understands from Commission officials that a legal opinion on the eDeclaration is currently blocked at the political level, severely complicating any further legislative progress on the issue in the near future. It is troubling that legislation to address an issue persistently flagged by the business community is blocked in this way and that the focussed deepening of the Single Market by systematically removing barriers seems to lack a champion within the Commission at the political level.

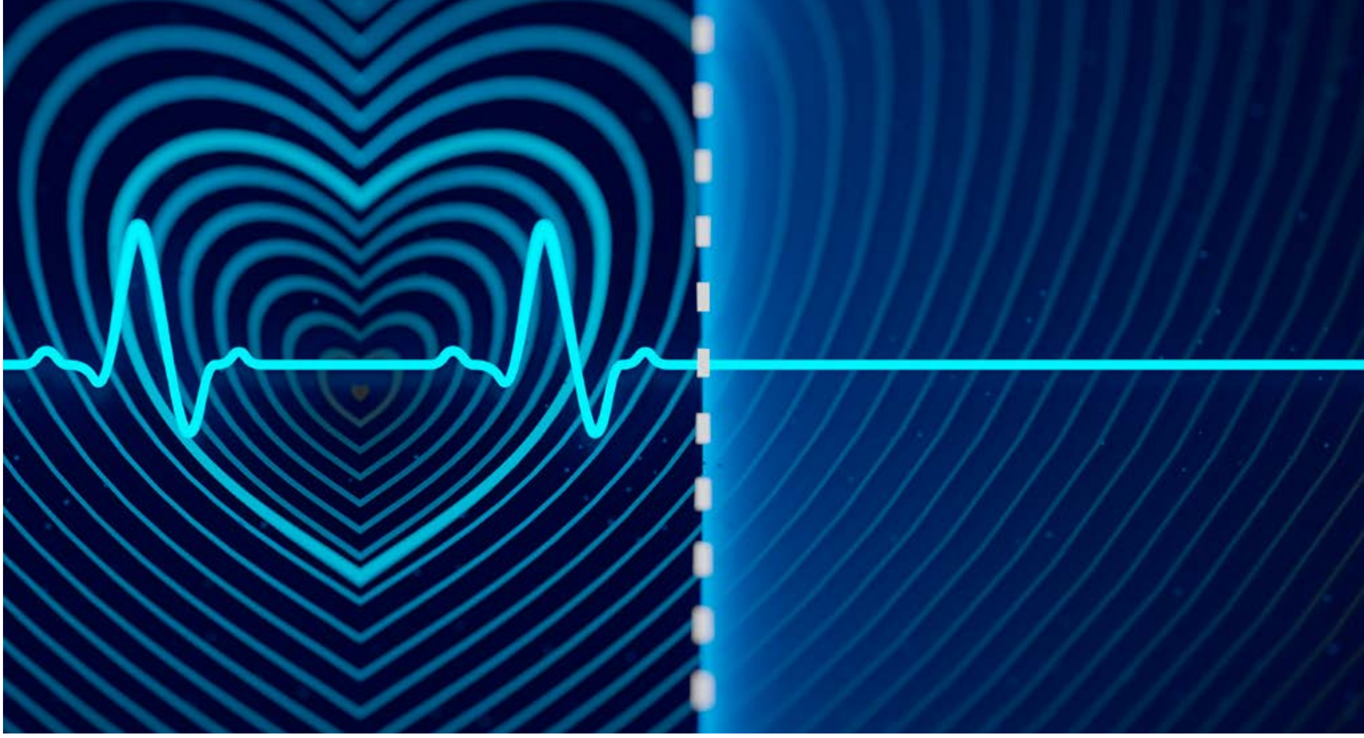
It is troubling that legislation to address an issue persistently flagged by the business community is blocked in this way and that the focussed deepening of the Single Market by systematically removing barriers seems to lack a champion within the Commission at the political level

However, there seems to be a way forward. The realisation of a harmonised prior-declaration system for posting of drivers in road transport suggests that progress can be made if the Commission and Member States really want this. A harmonised, multilingual system for prior-declarations was put into place using the Internal Market Information system (IMI), largely thanks to effective steering by DG MOVE. The same system can also be used by inspections to request a fixed set of documents from drivers if they deem this necessary. The system is seen as a success, with around 25 million prior-declaration per year. Drivers do not have to outsource their prior-declarations anymore – which is time-consuming and costly – but can instead do it in a few minutes. The introduction of a similar eDeclaration would lead to comparable – and maybe even higher – gains.[80]

78 The way of notifying also differs per member state. Ireland requires a completed overview in Word that needs to be attached to an e-mail, where France, for example, has an online notification system. Next to that, there are differences between member states on the period of time the notification should be filed before traveling. Another challenge is timely notifying in case of escalations, emergencies or unforeseen circumstances (e.g. illness of a traveller and replacement by another traveller). Source: case studies 2023-2024.

79 Fragomen, "Posted Worker Notifications: Challenges to achieve compliance for companies doing business in Europe", 2022.

80 Informal responses from Commission sources.



2.1.3.2 Services

The flawed implementation and application of the Services Directive hinders the freedom of establishment, the free movement of services and the freedom to provide a service – all issues discussed earlier and flagged repeatedly by businesses.

When considering horizontal issues, cross-border entrepreneurs have problems with exercising this freedom at a very basic level - for example, there is a recurring problem with distinguishing between situations of temporary provision of services and permanent activities. It directly relates to the qualification of the activities of a foreign entrepreneur by the authorities of the host country. An inappropriate approach by national authorities in this respect (e.g. pressing to set up a permanent business, numerous and burdensome inspections, discouraging local contractors who finally cancel services for fear of criminal liability), may practically result in the impossibility of exercising the freedom to provide services enshrined in the Treaty, forcing entrepreneurs to pursue this right before a national court.

In the last decade, Member State regulations have become more restrictive in most services sectors.[81] In many services sectors, Member States are still free to determine their own regulation and how open they want to be from imports from other EU countries.[82] For example, as highlighted by European sector associations, there is a significant fragmentation of the labour market because of a lack of common EU recognition of solar skills (electricians mostly, as well as direct current – i.e. DC – installers). There is no recognition of electrical competences under the Service Directive, meaning that it is difficult for electricians and solar workers to travel across borders and work abroad. These negative developments have not been matched by an action plan to implement the Services Directive to remedy them.[83]

2.1.3.3 Public procurement

Another issue is that companies continue experiencing difficulties when competing for public tenders, which limit the benefits of the Single Market for business and citizens and results in less efficient spending of public money.

Accounting for about 14% of the EU GDP, public procurement is an important economic lever for growth and investment. At a time of strained public finances, a transparent, open and competitive system of public procurement in the Single Market can not only streamline public finances and raise investment opportunities for business, but also provide high quality goods, works and services for citizens.[84]

81 OECD, Digital Services Trade Restrictiveness Index Regulatory Database, updated to 2022.

82 ECIPE, April 2023.

83 See Pelkmans, Empowering the Single Market, p.2, on the case for one, 2024.

84 Business Europe, "Unlocking the full potential of the European public procurement market", April 2023.

Under the Directive 2014/24/EU on public procurement, each Member State has a certain discretion to decide how it procures the goods and services it needs to carry out its functions. Differences in the application of the Directive imply various interpretations and procurement requirements across the EU. This is especially challenging, for example, in the procurement of cloud services, in such topics as multi-cloud strategies, requirements for portability and switching, qualifying cloud expenses, to name just a few.

More specifically, each country defines contract terms that are non-negotiable. In the Netherlands, for instance, bids often contain clauses requiring all bidders, regardless of size, to prove they are signed up to an escrow service.[85]

More broadly, apart from cloud computing, there is now a growing concern among Member States that fellow EU countries are increasingly restricting access to each other's public procurement functions. There is a growing national perception that the Commission is not doing enough to challenge this.[86]

2.1.3.4 *Mutual recognition*

The persistent issues around the recognition of some non-harmonised goods by different Member States – the principle of mutual recognition, a cornerstone of the Single Market – illustrates the cross-sector nature of many barriers. In principle, it should be relatively easy for a business to sell its product in one Member State if it has already been rolled out in another. In practice, it is much more difficult, chiefly for the following reasons:

- The mutual recognition procedure (whereby one Member State's relevant authority evaluates whether it grants marketing authorisation for a product from another Member State) in theory can take up to only 210 days,[87] but in practice often takes longer. There are also cases in which Member States simply do not decide on whether to grant a product access to the market.
- Businesses must first comply with all national quality checks and only then will be given access to the procedure. Even then, Member States can refuse to give products access to the procedure.
- Instead of accepting supporting documents (tests done in other Member States) and making a decision on that basis, Member States require supporting documents to be obtained again, but in the Member State for which product access is sought. The result is that the businesses actually have to go through the entire procedure twice.[88]

2.1.3.5 *Trade*

Businesses continue to be concerned about persistent issues around customs and ineffective efforts to combat unfair trading practices (UTPs), but also newer areas, such as Foreign Direct Investment (FDI) screening.[89]

When it comes to customs, conformity assessments and custom controls continue to differ from one Member State to another for the same type of goods. For example, while the control of product safety and health or labelling are regulated through EU directives, Member States are free to introduce their own – often diverging – controls to release the goods for import in the EU (border controls). The discretion granted to the different Member States create significant differences causing discrimination issues between the customs formalities (in this case "para-customs" obligations) and unfair differences.

The discretion granted to the different Member States create significant differences causing discrimination issues between the customs formalities and unfair differences

Those Member States which implement "para-customs" controls through means other than "border controls" (such as through national consumers bodies and/or site inspections) are

85 Case studies 2023-2024.

86 Informal responses from Commission sources.

87 European Commission, Public Health – national authorisation procedures.

88 Informal responses

89 Case studies 2023-2024.

ultimately favoured to the detriment of those who implement those checks as border controls. Conclusively, those regulations that might involve “a border control” should be regulated in a harmonised way across the EU.

In Spain, as an example, the “Royal Decree 330/2008 of 29 February 2008 adopting measures to control the import of certain products with regard to the rules applicable to product safety”, the General Secretariat for Foreign Trade, through the Official Service of Inspection, Surveillance and Regulation of Foreign Trade (SOIVRE) must carry out the necessary checks on the conformity of the products to be imported with the applicable safety and labelling standards before issuing the relevant certificate for releasing the goods for free circulation in the European Union, causing troublesome inconveniences in costs and time.

When it comes to UTPs, the EU’s UTP Directive – which aims to protect (large) suppliers – leaves all enforcement to national authorities, making it extremely difficult for them to tackle cross-border cases as there is no formal procedure designed for doing so. In addition, UTP rules vary widely from country to country: some have chosen to protect small farmers more than industrial producers, while others have similar rules for both sellers and buyers. In terms of fines, a country like France is quite strict, while in other countries the potential fines are relatively small compared to the size of the largest retailers. This fragmented implementation affects suppliers’ ability to navigate different UTP laws and makes it difficult for them to do business in the EU.

The actual financial impact of unfair trading practices on large FMCG suppliers is difficult to measure precisely because of the secrecy of the agreements negotiated by suppliers and distributors and the variety of practices, but this impact could realistically be in the billions of euros.

Meanwhile, Foreign Direct Investment (FDI) screening in the EU lacks coordination between Member States as well as with other transaction clearances, such as merger control and foreign subsidies screening. FDI screening procedures at the Member State level often lack due process present in merger control screening. Investigations at the member state level are often untransparent, unpredictable, and not properly administered. For example, there is no alignment on the type of transactions covered by EU screening mechanisms. For example, Member States exempt certain intra-group transactions (e.g., France, Germany, Spain), whereas others capture them (e.g., Belgium, Italy). In addition, Member States have devised lists of ‘sensitive’ activities which differ both in terms of number of economic sectors, and types of activities covered. The notions used are broad and hard to apply in practice. This unpredictable environment results in heightened unpredictability and increased costs for businesses engaged in FDI activities.

2.1.3.6 Taxes

Businesses continue to struggle to navigate the complex web of VAT and tax exemptions/ requirements that hamper cross-border trade and investment.[90]

A few notable, non-exhaustive examples:

- VAT continues to differ across Member States, with many countries employing different regulations and information about these regulations often only being available in the national language. International transports by coach are a case point. For example, if a Swedish bus company plans a trip to Munich, they have to calculate VAT and register taking into account the regulations of each country they pass on their journey. The need for separate VAT registration in each country creates a high administrative burden for the companies, which particularly impacts SMEs. It forces most SMEs to use agents/middle hands when accounting for the VAT, which further increases costs.[91] To put things into perspective: companies that sell goods online pay around €8,000 per year in VAT compliance cost for every country in which they store or sell. It requires on average 13 documents to complete one VAT registration process, and it takes on average 100 days to get a national VAT number. This high cost is a barrier to intra-EU trade and economic growth.
- In many EU countries, companies are also facing incremental VAT costs and burdensome documentation requirements when donating excess inventory of consumer goods to charities and other good causes. Even though EU VAT law gives EU Member States the right to define

90 ERT case studies 2023-2024.

91 Sveriges Bussoforetag, "Den inre marknaden for buss inom EU fungerar inte", April 2017.

VAT relief conditions for donations to charitable organisations, only a handful of countries make use of these VAT neutralisation options to support sustainability and circular economy goals, whereas other EU countries continue to levy VAT on charitable donations or choose to apply a very narrow scope to VAT relief. This is unreasonable and counterproductive because it makes donations of surplus products more onerous than their destruction.

- Different tax provisions directly impact investments, as many companies have investment projects with different risk profiles and operate in industries that fluctuate greatly with the business cycle. So-called "carryover provisions" – different rules for the amount of net operating losses that firms are allowed to deduct from profits in other fiscal years ("carryover provisions"), both past and future – help businesses "smooth" their risk and income, making the tax code more neutral across investments and over time. In some countries, the amount of net operating losses that may be used in future/past years is capped to a certain share of the taxable base of the year. The cap varies widely amongst countries, from 25% (cap applicable in Spain for companies with gross income above €60 million per fiscal year) to no cap at all. Industries and operators in Member States with stricter conditions for the compensation of Net Operating Losses are in worse position to invest and thus compete.
- Applying for zero excise duty on goods – such as those that contain cosmetic ingredients – proves to be more difficult in some Member States than others.
- The Energy Taxation Directive (ETD), that entered into force 20 years ago, has eroded over time and a complex patchwork of exemptions and reductions have proliferated across Member States, so that currently there is no level playing field across the Single Market. The Commission's fourth report on energy prices and costs, published in October 2020, concludes that the share of taxes and levies has climbed steadily over the last 10 years. While energy prices have been on a downwards general trend, except for during the 2022 energy crisis, and network costs have remained stable, the extra taxes and levies have actually raised industrial power prices.
- Pricing and reimbursement rules and policies are an exclusive competence of Member States (Article 168 TFEU). Under EU law, Member States enjoy considerable freedom in adopting pricing and reimbursement measures designed to control public healthcare spending. Owing to historical, political, legal and economic developments, Member States have developed and applied a large variety of pricing and reimbursement regulations. This is confusing for businesses and imposes a significant burden on them.

2.1.3.7 Standards and standardisation

An often-cited reason for the emergence or persistence of barriers on the Single Market in the case studies received by ERT is the absence of harmonised standards.[92] To name a few examples cited by businesses:

- There are currently **no joint technical standards across the European Union** for digital twins and Building Information Modelling (BIM) software. This absence is causing projects like Building Twins to be developed based on different proprietary software – ultimately risking issues with interoperability and making it less attractive for SMEs to invest in BIM. This, in the end, leads to increased costs, among other things, as companies have to invest in multiple BIM software platforms in order to collaborate with other stakeholders on projects.
- The "lack" of a robust, well-functioning and harmonised standardisation process is currently preventing market uptake of low-carbon construction products and solutions within the EU.

More examples of the lack of harmonised standards are presented in the Compendium as well as in the 2021 ERT flagship publication on "Renewing the dynamic of European integration – Single Market Stories by Business leaders" (such as the example from KONE regarding standards for lifts in buildings across the EU).[93]

92 Case studies 2023-2024.

93 KONE, Elevation & harmonisation (story from 2021 flagship).

2.2 Shortcomings in Single Market governance and enforcement

2.2.1 Lack of follow-up on the removal of barriers that were identified

There is a risk that new legislation takes priority over enforcement of existing legislation. It is true that every Commission seems to re-discover enforcement somewhat later in a Commission's term. But, given how crucial enforcement is to making the Single Market work, it should be more of a priority for the incoming Commission than was the case in the past.[94]

There are probably three high-level political reasons for the lack of follow-through on addressing barriers:

1) First, there has been a shift in political priorities. The ambition to deepen the Single Market has become subsidiary to this new policy direction. With new programmes to converge Europe's crisis economies, in 2010 the EU established processes and instruments such as the European Semester and Country-Specific Recommendations – policies that tied some competitiveness reforms to larger macroeconomic concerns. These programmes also heralded another qualitative shift: they gave much greater weight to economic reforms in the Member States rather than at the EU-level.[95] However, that will hardly help to eliminate the structural disadvantages in the EU's Single Market – EU Member States have a very poor record of delivering on country-specific recommendations.[96]

2) Second, during the von der Leyen Commission, the focus of the Single Market portfolio under Commissioner Breton has increasingly shifted from tackling fragmentation in the EU and concrete barriers faced by companies to dealing with strategic dependencies from non-EU countries. Notwithstanding their importance, adjacent issues should not divert attention away from improving the Single Market structurally, which drives the EU's competitiveness. Examples of adjacent policies are the fascination with economic security and strategic autonomy (not always mindful of the need for more 'openness'), mapping strategic dependencies, controlling supply chains and improving resilience (e.g. chips and critical raw materials), anticipating future disruptions (e.g. Single Market Emergency Instrument), the development of transition pathways per eco-system, etc.

3) Too little is being done to fundamentally improve the Single Market. Too many resources in the Commission are allocated to developing and negotiating new legislation rather than on the correct implementation and enforcement of existing rules. This Commission has shied away from launching infringement procedures against EU Member States.[97] It is also not entirely clear how often infringements are reported by the business community and then settled preventively, without the need for a formal procedure.

As a result, businesses are left with the impression that only a fraction of the barriers that are reported by them or by business associations are systematically addressed by the relevant institutions in the public sector.[98]

Many of the problems now being flagged by companies – including the sizeable transposition and compliance deficits and delays in solving infringement procedures – were previously identified in the 2010 Monti report.[99] Even then, Monti largely blamed policymakers' attitudes for the failure to address these problems, emphasising that the Single Market was seen

94 Informal responses from Commission sources.

95 The Recovery and Resilience Facility (RRF), established in early 2021, was launched by the European Commission, partially in the hope of increasing the EU's competitiveness. The aim is to help Member States address the challenges identified in "country-specific recommendations" under the European Semester framework. ECIPE, April 2023.

96 Member States' implementation rate has dropped substantially over the past decade, depending on how implementation is measured, it has reached all-time lows, especially in larger EU Member States. ECIPE, April 2023.

97 Financial Times, "Policing of EU market rules drops under von der Leyen's commission", May 9 2023.

98 Statements from ERT companies, other companies' informal feedback.

99 Mario Monti, "A New Strategy for the Single Market: At the service of Europe's economy and society", 9 May 2010, pp.95-96.

as "yesterday's business" compared to other policy priorities, while Single Market regulations are often perceived "as threatening established interests, flattening national diversity or as counter-productive to a well-functioning market economy". This might also explain why many of Monti's recommendations have not seen actionable follow-through and why today, thirteen years afterwards, the "Single Market at 30" and "Long-term Competitiveness" Communications have not led to the step change that is needed.

As a result, the EU currently does not have a well-executed, workable and comprehensive programme, centrally steered by the European Commission, for deepening the Single Market and making Europe the most competitive economy in the world.[100]

To understand why the correct implementation and enforcement of existing rules is lacking, it is worth homing in on the worrying drop in infringement procedures and assessing whether 'soft' tools at the Commission's disposal – SMET, SOLVIT and others – can make up for this.

2.2.2 Enforcement

2.2.2.1 Drop in number of new infringement case and long duration of pending cases

Official figures from the European Commission obscure the fact that the number of new infringement procedures and decisions to proceed with infringement has dropped significantly under the current Commission. This is because the figures mostly consider the *total* or *absolute* number of procedures.[101] The most recent edition of the Single Market Scoreboard (SMS) contains nothing substantial about the number of newly started infringement procedures, as well as the number of decisions made on infringement procedures (the Commission could decide to move an infringement procedure towards a reasoned opinion, a court case, or to a close).

The recent SMS states that "after steadily increasing for 3 years (2017-2020) and strongly decreasing in 2021 (-12%), the number of pending single market infringement cases has continued its declining trend". The total number of single market cases is 713, 26 fewer than in the previous Scoreboard (-4%). One explanation is the wider use of the early problem-solving mechanism (EU Pilot) requested by the Member States, and on the use of compliance tools, such as dialogue with Member States.[102] However, this is not reflected in the figures.

Of the 22 Member States with increased average case duration, 16 recorded their longest duration ever

More broadly, it is not clear how many new cases have been opened; how many existing cases have been closed; how many closed cases have been resolved; and how many have been closed on "opportunity grounds" (meaning there was no solution, but the Commission wanted to get rid of the pending procedures). Finally, the substance of the cases is also not clear – "criminal cases" are also being included, arguably artificially inflating the total number of infringement cases.[103]

Finally, the figures suggest that the duration of infringement procedures is on average longer than 12 months in nearly all Member States. Out of the 22 Member States with increased average case duration, 16 recorded their longest duration ever. Eight Member States have increased their average case duration by 50% or more in two years, in particular Latvia (+133%), Estonia (+199%) and Luxembourg (+97.1%). Most Member States exceed the proposed target of an average maximum of 36 months (to either close a case or send it to Court).

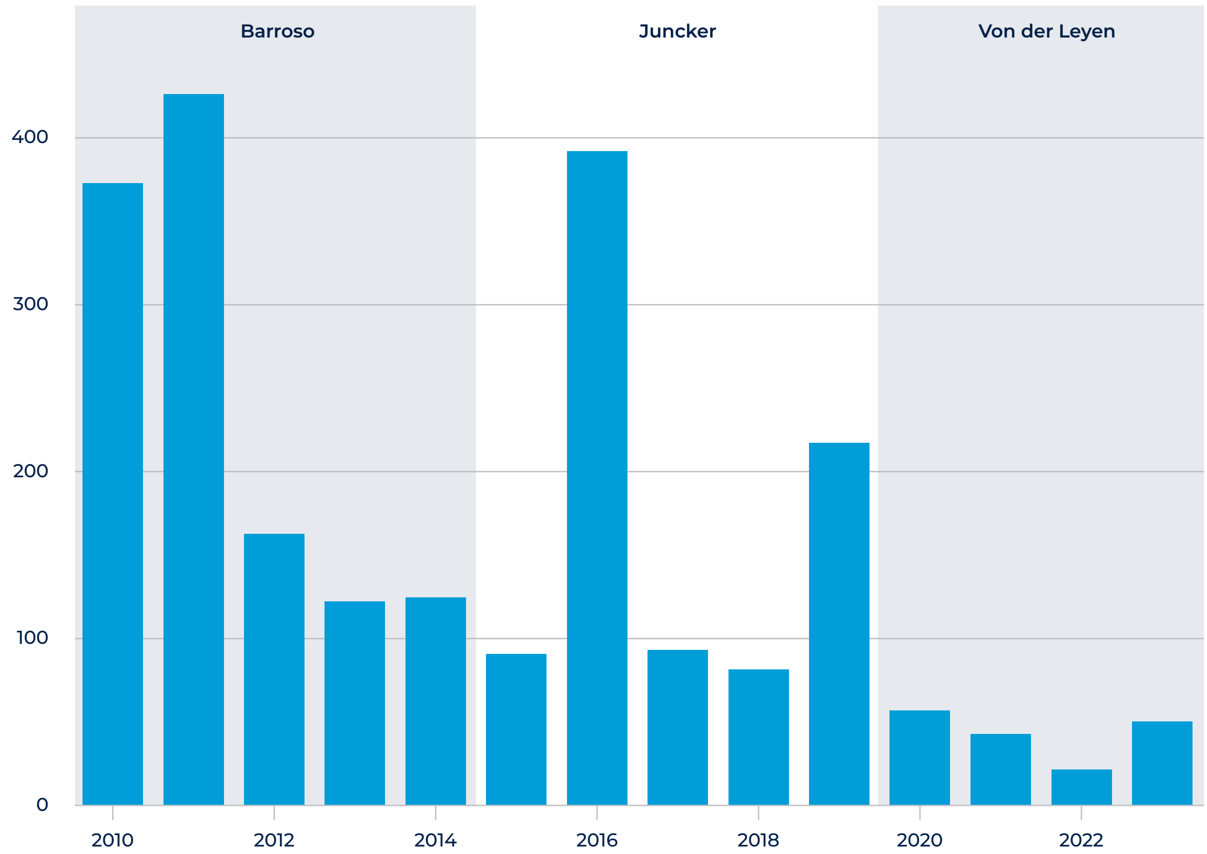
100 ECIPE, April 2023, corroborated by Monti 2010.

101 Single Market Scoreboard, 12/2021-12/2022.

102 Not only SMS, also corroborated by other studies that demonstrated that the number of infringements was historically low - R. Daniel Keleman, "Where have the guardians gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union", January 2022.

103 Informal responses from European Commission sources.

Fig. 4. Total infringement actions taken by the Commission in relation to the internal market excluding case closures.[104]



2.2.2.2 Late or incorrect transposition

The incorrect transposition, implementation and application of EU rules create barriers to the smooth functioning of the Single Market. Delays or gaps in transposition deprive people and businesses of the benefits stemming from the agreed rules, sometimes even for years. And while the number of new procedures is apparently dropping, according to official figures, the number of pending infringement cases open for late or incorrect transposition of Single Market directives, as well as the number of cases open for incorrect application of rules, have in fact continued to rise.[105]

The **transposition deficit** is the percentage of Single Market directives not yet completely notified to the Commission out of the total number of directives that should have been notified by the deadline. While the average EU deficit has decreased over the past 20 years, it nearly doubled following the COVID-19 pandemic, with Member States' administrative resources apparently unable to transpose directives in time. Member States are apparently catching up on this 'backlog', with the average percentage number now going down again. But it is uncertain whether another systemic shock, like COVID-19, could disrupt the downward trend, preventing the EU in reach its 1% target.

Meanwhile, the **conformity deficit** (the percentage of EU directives incorrectly transposed) for the EU on average has remained stable at 1.3% and has not gone down to at least

104 Financial Times, 2023 (link); Single Market Scoreboard, Scoreboard Archive. It is possible that there are various reasons why the number of infringement cases have gone down but one would then expect that the Commission's Annual Single Market and Competitiveness Report (ASMCR) addresses these statistics. Why does the ASMCR (February 2024) not contain an overview of complaints from companies and an explanation of which cases have resulted into an infringement procedure and which ones haven't (and for which reasons…)?

105 The Commission says this is due to the backlog Member States have built up in timely transposing EU directives during Covid (they are now catching up) and that this is reflected in the improvement of the transposition deficit (the gap between the number of single market directives adopted by the EU and the number of directives transposed by each Member State). Single Market Scoreboard.

0.5%, which is the EU's target.[106] It is unclear what the reason for this is, but incorrect transposition can certainly not be blamed on COVID. While 11 Member States met the conformity deficit target of 0.5% or less (proposed in the 2011 Single Market Act) in November 2012, since 2018, no other Member States have reached the target.[107]

2.2.2.3 Enforcement numbers in comparison

In 2016, the then-Juncker Commission said it intended to have a more strategic approach to enforcement in terms of handling infringements ('bigger and more ambitious on big things, and smaller and more modest on small things'). On paper, this meant that the Commission would investigate cases where Member States have failed to apply EU law correctly, strengthening compliance assessment, and introduce sanctions for non-communication of transposition measures.[108]

In practice, however, this meant that all DGs have seen a decrease in the number of infringements and decisions related to infringement cases. The Juncker Commission's guiding motto became 'small on big, small on small': big cases were not followed through, while smaller cases were not taken up.[109]

DG GROW exceeds these dropping numbers by a significant margin. The reduction (in percentages) is sometimes three times as high for GROW as for other DGs. As a result, the number of infringement cases and decisions made by GROW substantially decreased as a percentage of the whole Commission. Where GROW used to have 20-25% of the infringements and decisions made, it now has roughly 10%.[110]

The reason for this lack of proper enforcement is twofold.

One seems to be that the number of people working on enforcement of Single Market rules is substantially lower than it used to be – owing to Commission budget cuts and, seemingly, the reorientation of priorities in DG GROW towards ecosystem units and other topics, such as strategic autonomy.

Further to conversations with practitioners in the course of 2023, another reason is that more decisions appear to be taken at a more political level. The Internal Market Commissioner and his cabinet are more directly involved in infringement cases and related decisions than previous Commissioners or cabinets. These decisions include blocking new cases, blocking decisions to advance cases and closing cases on "opportunity grounds".[111]

2.2.3 Additional Commission tools to govern and enforce

Although DG GROW has also been putting more effort into other enforcement activities (there are notifications, more opinions given on notifications, "package meetings", SOLVIT and SMET), these extra efforts have not plugged the reduction in efforts on infringements.[112] This section looks at why they have not worked as intended.

2.2.3.1 Notifications

The Commission can try to avert the introduction of a law in a Member State that is negative for the Single Market through notifications, which is a preventative instrument. Member States flag possible regulatory issues, and the Commission, other Member States, and stakeholders can respond to them. Official figures mainly focus on the Technical Regulations Information System (TRIS). The figures also reflect the number of responses from the European Commission, how often other Member States respond, how many responses Member States receive, and how often stakeholders respond. The problem is that this does not say anything about the follow-up. There is no transparency on whether the notifications have an actual effect, whether Member States

106 Single Market Scoreboard. European Commission, "Long-term competitiveness of the EU: looking beyond 2030", March 2023.

107 Single Market Scoreboard.

108 European Commission Communication, 'EU law: better results through better application', 2017/C 18/02.

109 Informal responses from Commission sources.

110 Informal responses.

111 Informal responses.

112 Informal responses.

adopt the regulations, or whether they ignore responses to notifications and quietly push through the legislation.

2.2.3.2 Soft tools

Beyond formal infringement procedures or notifications, the Commission also has a whole arsenal of soft tools. But these tools are difficult to quantify properly. The best-known tool is perhaps the ***Single Market Enforcement Taskforce (SMET),*** created with joint Commission and Member States' membership in the spring of 2020. This Task Force is jointly managed by the European Commission and the 27 Member States. Its ambition is to compel national administrations to swiftly devise remedies for failures to implement the Single Market's rulebook properly and to end non-compliant practices.

The ambition and concept are innovative. But the SMET Report of September 2021 reflects overall limited progress made by EU Member States on addressing barriers effectively.[113] When describing the 'goals' or the 'actions taken so far', the SMET report refers to "screening the existing requirements", "launching a dialogue", "continuing the discussions in order to avoid any misperceptions", "providing an overview… in order to identify provisions that are disproportionate", a "proposal is being prepared to remove unnecessary document requirements," and "new notifications have been made". These status updates are helpful but do not reveal any substantial breakthroughs. The SMET's follow-up report from November 2022 uses very similar language and does not reflect real progress.[114] Again, similar to notification procedures, there is no proper follow-up or analysis of whether the recommendations are actually implemented or have an effect.

What the SMET has achieved is the removal of certain barriers that were flagged many years ago but without real success at that time. Admittedly, even smalls steps require much work from the SMET members. The positive efforts need to continue and, to accelerate progress, more time and resources should be dedicated by public sector institutions at EU and national level to act on concrete obstacles, and to engage regularly with the private sector. Regrettably, there is currently little engagement with businesses by the SMET. This opportunity should be seized because businesses often have the clearest view of where problems exist and whether solutions are being implemented.[115]

SOLVIT centres in the EU-27 capitals aim at resolving individual cases in which Member States fail to apply internal market rules properly. However, SOLVIT is currently underused by businesses: in 2022, it received only 153 business cases, compared to over 2000 citizens cases.[116] Moreover, SOLVIT centres in France, Italy, and Germany are at the risk of becoming understaffed.

113 SMET Report, 27 September 2021.

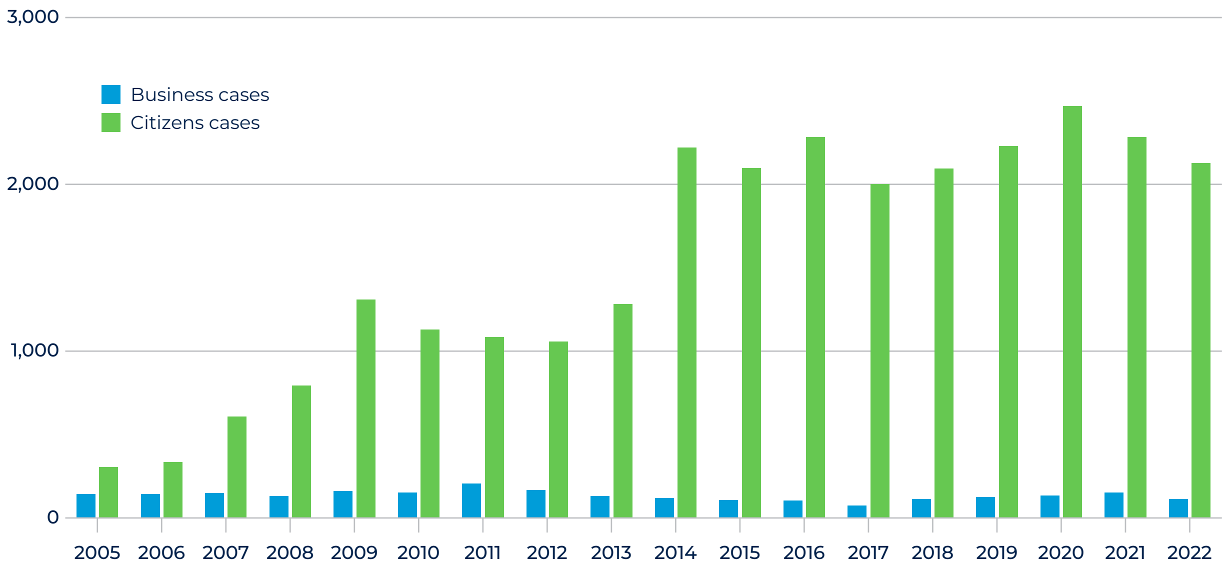
114 SMET Report 2021-2022, 28 November 2022.

115 ERT 2021.

116 Single Market Scoreboard. Judging by these number, the Commission has failed to "promote a broader knowledge of the help SOLVIT can offer within the business community", as it intended in 2017. European Commission, Action plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses, 2017.

In this context, an important question seems to be whether SOLVIT is able to help with such a wide variety of issues.. SOLVIT is effective in simpler cases, such as those involving VAT refunds or traffic fines. But for more complicated, business-related issues, especially those concerning socially or politically sensitive areas (e.g., posting of workers), feedback from the EC concerning if and how structural unresolved and recurring cases are dealt with internally is lacking.[117]

Fig. 5. The proportion of cases from businesses treated by SOLVIT is much lower than from citizens.[118]



Another tool the European Commission initiated to get a better grip on all the different barriers in the Single Market is the **Single Market Obstacles Tool (SMOT),**[119] launched as part of the Single Digital Gateway. The objective of the SMOT is to bring information on Single Market barriers from different sources together – e.g. comments by users of digital services provided by governments through the Single Digital Gateway, internal Commission sources on barriers (SOLVIT, YEA, and THEMIS) and barriers provided by stakeholders - and to create a continuously updated overview of Single Market barriers that would feed the Annual Single Market Reports (ASMR) and the new Annual Single Market and Competitiveness Report (ASMCR).

When taking into consideration the various tools, the question arises who is eventually responsible for overcoming fragmentation and removing obstacles which companies face, from A to Z? Is the Commission sufficiently naming the culprits? Does the Commission publish about the responsible authorities (including at Member State level) which cause barriers? Should the Commission pro-actively solllicit input from the business community on limitations that SMEs face related to the four freedoms? Does the Commission outline pathways and recommendations as to how and why certain obstacles should be removed, and by whom? Or… are too many others simply just left unattended?

2.2.3.3 Is the Commission holding itself to account?

In March 2020 the European Commission launched a **"Long term action plan for better implementation and enforcement of Single Market rules"**, part of the Single Market Barriers Report (the "Business Journey" document was discussed above). The Commission proposed measures to strengthen the Single Market, mentioning the joint responsibility of the Member States, the European Parliament and the Commission itself.

117 Informal responses from Commission sources.

118 Single Market Scoreboard, SOLVIT, 01/2022-12/2022.

119 SMOT User Guide for External Organisations.

The intention is practical: "If we want to realise the benefits of the single market, **enforcement needs to be broader and cover the entire lifespan of relevant rules, from inception to application**. This requires **collaboration at all levels of governance in the EU**, starting from local and regional authorities and courts, all the way to the European level. It also requires thinking of enforcement as a **continuous exercise** starting with designing the rules, through the transposition by Member States, where applicable, to application and the sanctioning of violations. It is crucial that Member States and Commission support each other in their respective roles to live up to their shared responsibility."[120]

However, contrary to that statement, there has not been a proper follow-up on these promises. The plan stated that the "Commission will adopt an annual single market Enforcement Strategic Report, identifying specific areas of concern and priorities for enforcement taking into consideration the findings of the European Semester".[121] Indeed, a first **Annual Single Market Report (ASMR)** was published in May 2021, followed by subsequent iterations in 2022 and 2023 and in 2024 with the Annual Single Market and Competitiveness Report (ASMCR).

The 2023 ASMR stated that 60% of the barriers that are reported today were also reported 20 years ago. It recognises that the lack of enforcement and consequent diverging national

120 European Commission, "Long term action plan for better implementation and enforcement of single market rules", March 2020 COM(2020) 94, p.3 (link).

121 European Commission 2020, p.14.

The 2023 ASMR stated that 60% of the barriers that are reported today were also reported 20 years ago

administrative procedures continue to hamper cross-border trade and investments. Similarly, the 2024 ASMCR admits that "effective enforcement," specifically of applicable eco-design and energy labelling requirements, is a continuing issue as "Member States' market surveillance authorities lack resources to enforce them".[122] But the Commission and Member States do not actively address businesses' concerns: the reports do not analyse progress of removing "persistent" barriers.

In addition, the ASMCR does not elaborate on how the Commission plans to "step up enforcement of Union law at national level, following up on the proposed targets". The mentioned targets are exclusively based on the KPIs identified in the 2023 Competitiveness Communication, i.e., limited to conformity and transposition deficits (see p.35 on suggestions how to broaden set of KPIs).

While some of the soft tools – like SOLVIT, SMET and the Single Market Scoreboard – are referenced in these Reports (ASMR & ASMCR), **these Reports have not outlined proposals to improve the current handling of Single Market barriers and do not ensure formal follow-up. As a result, the European Commission does not feel compelled to act upon the obstacles that businesses raise and does not have a systematic procedure in place to address these**. The Reports do present some interesting facts and figures but no recommendations or conclusions are drawn regarding the barriers that need to be removed and how to make the system more effective and efficient in dealing with the concerns from the business community. Finally, the observations do not seem to feed into the Commission's broader enforcement strategy or wider policy agenda (e.g. Commission Work Programme, European Semester, etc.).[123]

Instead, too many adjacent topics are covered which are important in their own right but are not core to the four freedoms as well as cross-border, intra-EU business operations.[124] The ASMCR shies away from really examining barriers and, instead, is presenting data on the various ecosystems and (strategic) dependencies. It serves the (open) strategic autonomy agenda of the European Commission. This is not how the removal of barriers can progress.

2.2.3.4 Ways to improve

It would be more relevant to include in future editions of the ASMCR a diligent review of existing barriers as well as more Key Performance Indicators (KPIs) related to deepening the Single Market and improving the EU's competitiveness in a structural way that is useful for business.

To illustrate, none of the past Reports gave a central place to the removal of barriers or contained an overview of barriers based on the SMOT. For the ASMCR to become "fit for purpose" and give guidance on how to improve the Single Market by tackling barriers, it is essential that a link between the SMOT and ASMCR is made.[125] In other words, the ASMCR should prioritise persistent Single Market barriers identified through the SMOT as well as by the business community at large, independent of the format in which an obstacle is notified (e.g. through a position paper of an association).

In addition, the Commission should clearly call out which authorities are responsible for certain obstacles and provide recommendations on how these could be removed, possibly accompanied by a cost-benefit analysis per obstacle and anecdotes from companies which face restrictions, so that the problematic nature of certain obstacles becomes more clear, for the relevant administrators as well as for the political level. A dedicated service or "desk" may need to be created in the European Commission to systematically receive, analyse, track and remove obstacles in the Single Market.

122 Annual Single Market and Competitiveness Report (ASMCR) 2024.

123 Informal responses from European Commission sources.

124 European Commission, "2023 Annual Single Market Report: Single Market at 30", 31 January 2023. This also applies to the "Single Market and Competitiveness Scoreboard".

125 In their non-paper on a new Horizontal Single Market Strategy of January 2024, 15 EU Member States also questioned whether these ASMRs (or ASMCR) are fit-for-purpose.

3. Recommendations

3.1 Modernising the EU's Single Market governance

Looking at the evidence of barriers that remain unresolved and analysing the insufficient response by policymakers in the previous sections, it becomes clear that the Single Market is very fragmented and new barriers continue to arise.[126]

The EU should raise its ambition to improve its structural competitiveness. The EU has a Treaty obligation to ensure "an area without internal frontiers" and that "the conditions necessary for the competitiveness of the Union's industry exist (...) in accordance with a system of open and competitive markets." (Articles 26 and 173(1) TFEU). This is why the EU should uphold the Treaty provisions on free movement and prioritise the transformation of the Single Market so it is the most attractive place to innovate, invest and do business in the world.[127]

The independent High-Level Report, to be published in the spring of 2024, could be a catalyst for the European Commission to develop a new and highly ambitious Single Market strategy.

The European Commission and Member States should spearhead a "new comprehensive programme" to deepen the Single Market. The political and economic aim is to reinvigorate the process of sectoral integration.[128] A piecemeal approach to deepening the Single Market does not work, as vested interests always prevail – a "package deal" or encompassing programme should be the answer.

In such a programme, the European Commission should not only spell out a compelling political vision but also start with seriously addressing the business barriers, already listed in its own mapping from 2020 as well as flagged periodically by many business associations.

Nor should the Commission shy away from the hard challenges that would have big beneficial impacts, such as the lack of uniform business laws or harmonised tax laws for companies.

In addition, the **European Commission and Member States should formulate a "headline" target**, e.g. 2030, that would help to mobilise resources, focus, political will and administrative capacity to remove barriers, similar to the process initiated by Lord Cockfield in 1985, which eventually helped set the deadline and move the Member States and other stakeholders towards the creation of the Single Market by the end of 1992.

The Commission should also insert a Single Market focus into the Mission Letters for incoming Commissioners. It should start with clarifying the most basic definitions. The European Council talks about "removing *unjustified* barriers to EU companies' freedom of establishment in the single market". What makes barriers justified or unjustified?[129] Once this has been set straight, the new strategy should go beyond the goalposts outlined in Mario Monti's 2010 report as the need for increased ambition has been flagged in many publications over the past decade.[130]

The new strategy should be backed by strong *political leadership* to push the case for deepening the Single Market at all levels – EU, national or local – and foresee sufficient administrative capacity to "walk the talk". Furthermore, in terms of substance, the strategy should take a *holistic approach* to the full business journey to ensure legislation at EU level or rules at national level do not limit cross-border trade in the Single Market, primarily by integrating the strategy across all pillars of the Single Market and modes of doing business.

126 See the Compendium of 100+ obstacles which was released on 13 February 2024 together with a Joint Statement of 25 business associations.

127 BusinessEurope et al., "Businesses call for fresh political engagement to renew economic integration in the single market", June 2022.

128 Echoed by multiple other publications, including Eurochambres 2024 and Kommerskollegium 2023.

129 Council of the EU, "EU makes it easier for companies to restructure within the single market", 18 November 2019.

130 Implement Consulting Group, "A Reboot of the Single Market", November 2022.

Finally, the strategy should be regularly revised – and, if need be, updated – through *consultations with the business community and social partners* (something that should have been part of the ASMCR).

The recent non-paper by 15 Member States that calls for the development of a "new horizontal Single Market strategy" (that should be "concrete", "holistic", and project "political ownership") largely aligns with the high-level recommendations presented here and should serve as a north star. It is up to the next political mandate to develop and implement such a strategy.[131]

A strategy may be helpful to focus attention and resources but is by itself not sufficient to actually "get the work done" on removing obstacles. To this end, a dedicated service, "desk" or even DG may need to be created in the European Commission to register issues, keep a 'spreadsheet' of obstacles, track progress on removing these, indicate which services or authorities (also in the Member States) are responsible for solving issues, and, when needed, raise complex issues to the political level and outline options with a cost-benefit analysis of the consequences.

3.1.1 Political leadership and administrative capacity

It is essential to re-orient the focus, time and energy of European Commissioners as well as officials in the European and national administrations towards better enforcement and implementation in the Single Market, mapping existing barriers and working together with business actors and social partners to remove these, rather than permanently proposing, developing and negotiating new rules (Regulations, Directives and Delegated Acts).

The Single Market offices proposed in the 'Single Market at 30' and supported by the recent report from Sweden's Kommerskollegium[132] could help with administrative capacity, but a cultural change, steered from the top, would be needed. There are some organisational changes that would immediately help. Having one Commissioner cover industrial policy, strategic autonomy, internal market, digital policy, and defense portfolios is simply not workable – this does not do justice to all the different policy areas that fall under the Commissioner's responsibility.

The incoming Commission should consider beefing up the mandate of DG GROW or creating a separate DG for "Market Integration" (DG MINT) to streamline single market work across DGs and in cooperation with EU Member State authorities. DG MINT or DG GROW should also start separately focusing on addressing Single Market barriers – currently, only enforcement effectively falls under the remit.

In practice, this could improve the approach to infringement procedures, which should be dealt with diligently and centrally and not become lost in coordination between DGs. In addition, the benefit of the measure would mean there would be better accountability – in the case of an infringement procedure, a DG should be accountable towards the complainant and publicly explain why an infringement procedure was not launched (for instance if there were political considerations).

Political decisions by the relevant Commission cabinets or the College of Commissioner could still be taken on certain priority or 'strategic' files; once these have been taken, the initiation of infringement procedures becomes much more of a technocratic matter. **The decision to launch a procedure could then be made by a Chief Enforcement Officer (similar to what is now being done at DG TRADE).** It is, of course, important that this "CEO" does not become a political appointee.[133]

Finally, DG MINT should ensure that Article 114 of the Treaty on the Functioning of the European Union – which sets out the process harmonisation of rules – is really applied.[134] When disagreements arise between Member States,

131 Non-paper on a new horizontal Single Market Strategy by 15 EU Member States.

132 Kommerskollegium, Opinion, 2 November 2023.

133 Informal responses from European Commission sources.

134 Informal responses.

like France and Germany, the Commission – and by extension DG MINT – should not shy away from finding compromise. The Commission should overcome polarisation and prevent dossiers from getting stuck.[135]

There is potential momentum to put these ideas into practice. The recent report of the Franco-German paper already proposed to basically divide up larger Commission portfolios among two or more Member States, so that they could fulfil one brief jointly.[136] German Foreign Minister Annalena Baerbock in principle supported this option – more Member States might follow.[137] This proposal would be relevant especially for key files – like the Single Market – that cannot realistically be fully overseen by DG GROW alone.

3.1.2 A holistic approach

3.1.2.1 Low-hanging fruit

There are several concrete measures that are low-hanging fruit, i.e. they do not require multiple rounds of intra-agency coordination and could be implemented relatively swiftly:

- **The European Semester should contain instructions for EU Member States to remove barriers, including gold-plating.** The European Semester could be an effective tool to tackle gold-plating, notably via proportionate action on the part of the Commission if commitments to country-specific recommendations (CSRs) are not adhered to, including potential suspension of EU funds. This is in line with the EC guide to Member States on the recovery and resilience plans, which emphasises the removal of regulatory and non-regulatory barriers to the internal market, as well as the conditions under which Member States must meet the requirements of the European Semester.[138]
- **The Commission should, as standard practice, consider conducting a "Single Market fitness check"** on existing legislation and before new legislation is proposed. This could be a more comprehensive version of the Proportionality Test Directive (PTD), which now only applies to Member States.
- **The Commission could add to the EU transition pathways more comprehensive "integration pathways"** that focus on cross-border barriers to business operations (per ecosystem) that should be removed.
- **The use Article 114 of the Treaty should be more restricted and not drawn upon to justify EU action for solving problems that are not strictly speaking related to harmonising the Single Market.** Currently, Article 114 is too often used for any type of legislation.[139]

135 Informal responses.

136 Report of the Franco-German Working Group on EU Institutional Reform, "Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century", pp.19-20, 18 September 2023.

137 Federal Foreign Service, Foreign Minister Baerbock's speech at the Conference on Europe in Berlin, 2 November, 2023.

138 Informal responses.

139 Consolidated version of the Treaty on the Functioning of the European Union, Article 114. BusinessEurope, Priorities for the Single Market beyond 2024 – reigniting the engine of Europe's global economic leadership, November 2023.

- **Future Annual Single Market and Competitiveness Reports should be fit for purpose and contain actions and options for removing barriers.** They should be the embryo of a spreadsheet that outlines when a barrier was reported, which authority is responsible for dealing with it and what next steps can be taken to remove the barriers (see next subchapter for more details). This seems already to echo the perspective of most Member States.[140]

3.1.2.2 *High-hanging fruit*

Other measures may be more difficult to achieve politically. This is most notably the **need for increased staffing**. It seems reasonable that the public administration, at EU and national levels, dealing with removing barriers should not suffer capacity shortages. However, considering that owing to budget constraints the Commission has already been understaffed over the past few years, and these strains will likely continue in the next cycle, this will not be easy. If no resources are found, we will continue to see fewer cases initiated against and decisions made on infringement cases involving Member States.

Staffing is especially important now that a stream of new legislation has been introduced since the start of the year, sometimes necessitating major implementation and enforcement obligations. The Commission's Better Regulation agenda is apparently not being implemented sufficiently because of persistent staffing issues, but when it comes to new legislation (like the Net-Zero Industry Act or Critical Raw Material Act), often no account has been taken of the availability of human resources.[141] Officials should be sufficiently dedicated to enforcement, implementation and removing barriers, rather than introducing and negotiating new legislation.

Officials should be sufficiently dedicated to enforcement, implementation and removing barriers, rather than introducing and negotiating new legislation

3.1.2.3 *Improving accountability*

In addition to improving effective monitoring of the Single Market and follow-up on flagged barriers, **the Commission should broaden its set of KPIs** (those that were initially set out in the 2023 Communication on Long-term Competitiveness) – this time also covering additional KPIs for, *inter alia*, the Single Market – and add corresponding deadlines (e.g.) for reaching the set KPIs. The current two KPIs for measuring 'a functioning Single Market' are not sufficient.[142] In its "Single Market at 30" Communication, the Commission refers to its previous call on Member States to commit to limiting the transposition deficit to 0.5% for all directives. However, this was not followed through in the Long-term Communication on Competitiveness – only the 0.5% conformity deficit target, already set out in the 2011 Single Market Act, is stated.

As proposed in Monti's 2010 report, the processing of infringement cases, notably for non-transposition, should be accelerated.[143] As a start, a benchmark should be put in place for the maximum average duration of infringement procedures, limiting to 6 months procedures for non-notification and 12 months for all other infringement procedures. After that deadline, the Commission should be able to decide whether to go to Court or to close the case. Based on this benchmark, the Commission should develop a KPI for Member States that would keep applying pressure to speed up the processing of cases. It remains to be seen how the Commission will work new KPIs into the Single Market Scoreboard's new iteration: there is still the risk that this will be neglected in favour of adjacent issues around competitiveness and strategic autonomy.[144]

140 Non-paper of Croatia et al. on a new horizontal Single Market Strategy. 15 January, 2024.

141 Informal responses.

142 The two KPIs – 'Single Market integration' measured as intra-EU trade flows as a share of EU GDP and 'conformity deficit' measured as the number of directives transposed for which infringement proceedings for incorrect transposition have been launched by the Commission. European Commission, 'Long-term competitiveness of the EU: looking beyond 2030', 16 March, 2023.

143 Monti 2010, pp. 97-98.

144 Informal responses.

3.1.3 Dialogue with businesses

The Single Market Enforcement Task Force (SMET) should be upgraded and should explore ways to interact more frequently with the business community, including by requesting their input on reports or encouraging access to certain meetings. The Commission should not shy away from consulting the business community and inviting companies out of fear that they are not treating all businesses equally. It's time for a more qualitative and intensive dialogue with various sectors in the business community.

The Commission and SMET should put a clear system in place to follow-up on barriers and be accountable to those submitting case studies of fragmentation. The SMET reports have so far been too optimistic and did not dare to clearly name the obstacles, how long they have persisted and which authorities (at EU, national, regional or local level) are blocking progress.

The SMET reports should henceforth outline per issue a pathway with several options, so that these issues can be tackled properly, at the political level if need be. Too often, complex obstacles are neglected because there is no clear responsibility and are subsequently forgotten. When a problem is complex, it should not be ignored but tackled at a higher level, in coordination meetings with Member States, and even at political level if needed.

Beyond the SMET, there should also be more dialogue with businesses to engage on the Single Market barriers and work together structurally to remove these. The European Commission should not consider SOLVIT (or future Single Market offices / ombudsmen in EU Member States) as a panacea for solving Single Market barriers. SOLVIT centres are often ill-equipped or don't have the competence to deal with barriers reported by the business community.

To make a real difference, the European Commission should keep a spreadsheet of all barriers reported by companies (including through various SOLVIT centres) until companies receive a satisfactory response about the complaint they have brought. The spreadsheet should indicate the status per barrier, set a firm deadline, e.g. 2030 (in line with the headline target discussed at the outset of this chapter), for the resolution of the most persistent barriers, and suggest next steps that could lead to potential solutions. When SOLVIT centres are not capable of solving complex problems, the European Commission should also delve into these, for instance by critically examining if European legislation is the origin of a barrier.

Regular spreadsheets and reports from SOLVIT and SMET should be submitted to the Competitiveness Working Party and also the Competitiveness Council, which should examine and solve complex barriers (including when political disagreements lie at the heart of a barrier), based on the possible options that the administration spells out.

3.2 Recommendations to deepen the Single Market per policy area

Deepening the Single Market involves further harmonisation and introduction of new common standards. It is true that harmonisation is not a holy grail or end in itself – improvements in some sectors is a fine balance of enforcement and harmonisation. It is not needed to harmonise or standardise *everywhere*.

3.2.1 Recommendations for sector-specific barriers

3.2.1.1 Environment & sustainability

Labelling

This Commission period, several legislative acts were created to solve these problems - or at least aim to solve them. Examples are the Packaging and Packaging Waste Regulation (PPWR), Ecodesign for Sustainable Products Regulation (ESPR), Green Claims Directive, Critical Raw Material Act, Battery Regulation, Textile Labelling Regulation, and more.

The EU should strive for a Common approach for packaging waste-sorting labelling. The Packaging and Packaging Waste Directive (PPWR), Ecodesign and other legislative files should ensure common terms and symbols are set for the collection, sorting and recycling of products across the EU Single Market, preventing Member States from introducing additional national labelling requirements for the purpose of identifying extended producer responsibility (EPR) schemes and recyclability.[145]

Waste

To achieve a true circular economy, by increasing the level playing field between secondary and virgin material, supporting trade across EU borders upon fair conditions, and helping foster its secondary raw material market and strategic

145 As highlighted by industry, the current approach set out in the PPWR risks unravelling the Single Market by allowing Member States to introduce their own unique restrictions – a result that would seriously jeopardise supply chains and discourage investment in much-needed technologies. Source: Europen, "Over 100 associations warn current PPWR approach risks unravelling the Single Market and setting the clock back on the Green Deal", 14 December 2023.

autonomy, the EU should expand its End-of-Waste criteria in the Waste Framework Directive to other products and include them into the broader value chains.

This applies, first and foremost, to the already discussed End-of-life Tyres (ELTs); "waste textiles"; and waste from lithium-ion batteries, battery production waste and black mass.[146]

More specifically:

- The mentioned products should be strictly classified as "waste" and therefore cannot be considered as "product" in different Member States.
- EU legislators should clarify that, based on the assessment of the chemical properties of their components, some of the materials such as black mass are classified as "hazardous waste".

Separately, to further harmonise the transport of waste – in particular waste shipments across the EU and the cross-border transfer of electronic equipment (EEE) – a corresponding revision of corresponding legislation, like the EU's Waste Shipment Regulation, is needed.[147]

More specifically:

- Clarifying, harmonising and enforcing the shipment of "hazardous waste" under the Waste Shipment Regulation would help remove grey areas and leave no room for dispute. This would ensure that the battery waste generated in Europe remains in Europe and that it is handled with full respect to high European EHS standards.
- With the same aim of better supporting the circular economy, the EU should also review its Directive on Waste Electrical and Electronic equipment (WEEE). The shipment of dismantled EEE between affiliates of the same company must currently be mandatorily provisioned under derogations of Appendix 6 of the WEEE. This requires fulfilling four prerequisites for any transfer of EEE. If operators do not uniformly apply these conditions, then the shipping or the transfer between affiliates of a same group or between different entities shall be de facto qualified as illegal transportation of waste. This requirement needs to be amended as it hampers the recycling of mass market devices and network equipment across the EU.

Clarifying, harmonising and enforcing the shipment of "hazardous waste" under the Waste Shipment Regulation would help remove grey areas and leave no room for dispute

3.2.1.2 Digital

Data protection, data availability, and interoperability

First and foremost, the Commission should **ensure the harmonised interpretation and enforcement of the General Data Protection Regulation (GDPR)** as Member States continue to implement the provisions differently. That is harder said than done – especially now that Member States have carved out individual provisions, as EU legislation leaves flexibility in the level of harmonisation. But, in any case, first steps can be taken if there is the political will from above.

In other areas of fragmentation, including in cloud certification, the EU should strive for more harmonisation. One example is the replacement of individual state cloud certification schemes with a single, EU-wide label such as the European Cybersecurity Scheme for Cloud Services (EUCS) that is currently being developed by ENISA. This would enable providers to fully implement, conform to and be certified for a comprehensive framework rather than having to comply with multiple rules from multiple countries. To that end, it is important that EUCS provides 1) clarity on the various level of security needed, 2) homogeneity of the highest categories across all 27 Member States to avoid further fragmentation of the cloud market.[148]

146 Case studies 2023-2024.
147 Case studies 2023-2024.
148 Case studies 2023-2024.

It must be noted, however, that some ongoing initiatives – like the EU Cloud Rulebook and the Guidance on Cloud Public Procurement – that have a potential to provide coherent framework are non-binding tools. At the same time, the Commission is limited by existing Directives in its ability to bring about effective harmonisation. That is why the Commission should, as standard practice, consider conducting a "Single Market fitness check" on existing legislation and before new legislation is proposed (see previous sub-chapter).[149]

Fragmented regulation of digital services

Policy-makers should explore the simplification of regulation that applies to telecommunications networks and to the provision of communication services. The focus should be on adjusting regulatory models (if, what, and how to regulate them) to the realities of changed technology (software defined networks, cloud-controlled applications) and the change in user behaviour (mobile dialler and WhatsApp calling are substitutes), all while taking into account new players on the market and including them accordingly in the regulatory approach.[150]

Spectrum

Best practices for a timely roll-out of 5G and fast broadband should be implemented in a consistent way across all Member States so that the costs of deploying electronic communications networks are reduced. More coordination is needed among Member States on spectrum assignments, assignment conditions, and better enforcement, supported by the European Commission. In addition, Member States should be encouraged to further improve cooperation with the EU and the European Conference of Postal and Telecommunications Administrations (CEPT)[151] to ensure additional spectrum is available faster across the EU.

More specifically, to make a real difference what is needed is an effective synchronised schedule for radio frequency spectrum auctions across the EU, and a common set of criteria for awarding licenses set at EU level.[152]

Mergers

The European Commission should re-evaluate its substantive approach to merger review and adopt a more favourable approach to in-country consolidation by taking a more long-term view leading to sustainable competition. It should do this by moving away from only focusing on short-term consumer pricing effects, better taking into account efficiencies, environmental impacts and recognising the need for minimum viable scale to enable investments in markets with high fixed costs.[153]

149 Case studies 2023-2024.

150 Case studies 2023-2024.

151 The Commission may issue mandates to CEPT for the development of technical implementing measures that can ensure harmonised conditions for the availability and efficient use of radio spectrum. European Commission, The Radio Spectrum Commission.

152 Case studies 2023-2024.

153 See Ericsson's story in ERT 2021.

3.2.1.3 Energy

Divergent taxes and levies

Despite the arguments in favour of short-term intervention in the context of the recent energy crisis, a long-term approach should be developed that does not lead to lasting heterogenous market conditions that deepen market fragmentation. Revenue caps have been proven to create a fragmented electricity market and a chilling effect on the PPA market and wider build out of renewable generation.

Permitting

EU policymakers should aim to harmonise, or at least rationalise, at EU level the deadlines for issuing permits for the implementation of renewable energy projects using EU funds (e.g., special rules in order to take into account deadlines for grant agreements).

EU policymakers should aim to harmonise, or at least rationalise, at EU level the deadlines for issuing permits for the implementation of renewable energy projects using EU funds

In addition, there are other ways in which permitting can be streamlined and be made more efficient. In Germany, for example, the federal and state governments' 'Pact for Planning, Approval, and Implementation Acceleration' proposes to expedite the construction of infrastructure projects, such as power lines and roads, by digitising planning and approval processes, introducing a cut-off rule for planning and approval, and reforming construction law.[154] This could serve as inspiration for other Member States as well.

Lack of common standards and methodologies

Regarding the lack of common grid standards for electrical and energy products, the EU should consider recognising the CEN – i.e. the European Committee for Standardisation – certification procedure.

Furthermore, there should be a European harmonisation of Guarantees of Origin (GOs), preferably in a way that incorporates the sustainability criteria of the EU's 2018 Renewable Energy Directive (RED II).[155]

PPAs

Operators (the TSOs) should be encouraged to issue cross-border transmission rights for a duration longer than the year ahead. This would significantly mitigate the cross-border price risk and give the industrial players access to low-carbon electricity at optimal cost and help achieve the decarbonisation targets more quickly. This change would also give TSOs a clear signal to invest in transmission grid reinforcement.

The solution should be a low-hanging fruit. There is no need for the European Commission to issue any new piece of legislation. The Commission just needs to call out the issue and ask European TSOs to initiate a revision of the existing guidelines and to review their practices to reduce the financial risk currently incurred by cross-border PPAs. There would only be minor modifications of technical methodologies, and the relevant guidelines should be adapted and validated by relevant national and European regulatory authorities.[156]

3.2.1.4 Infrastructure

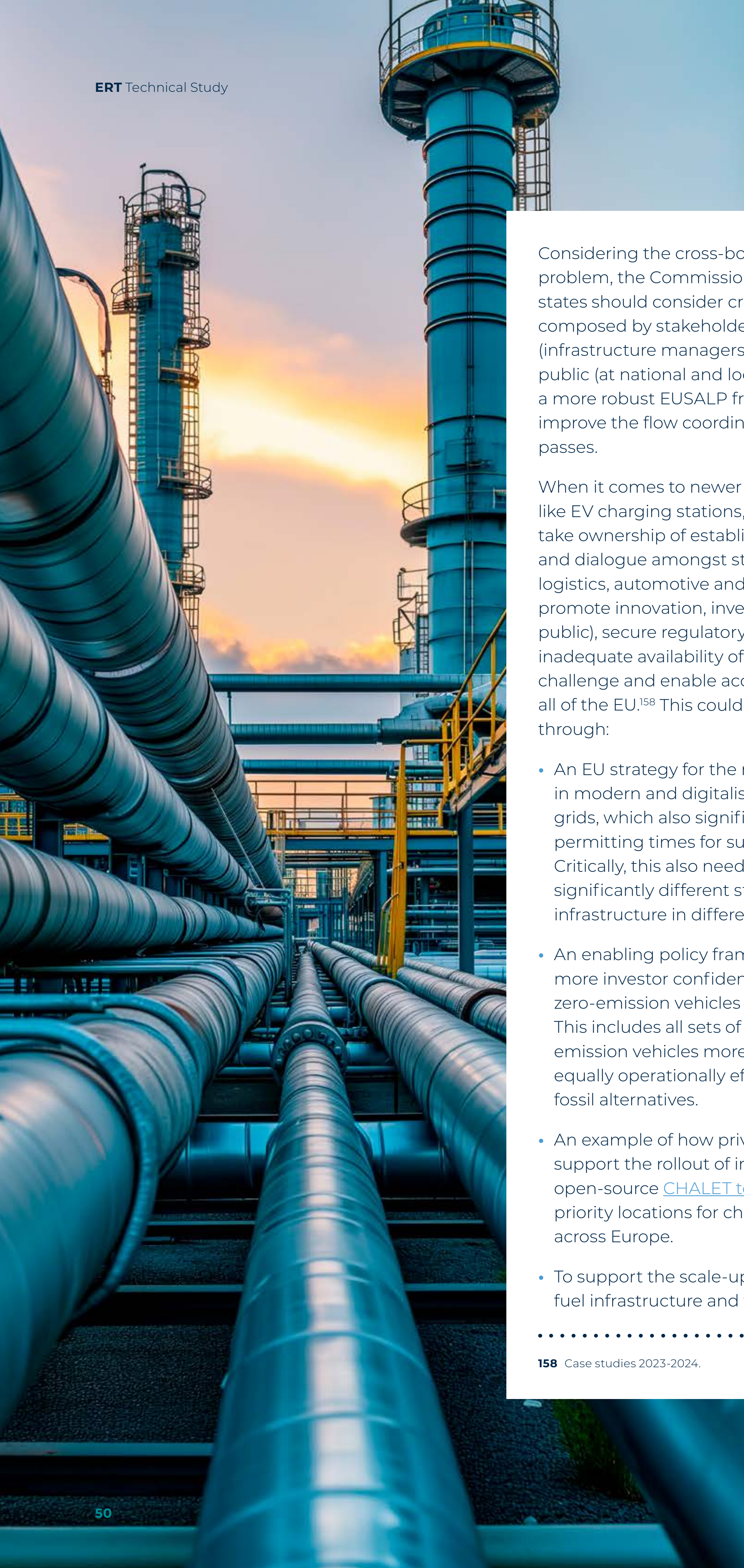
When it comes to "classic" rail and road infrastructure, a strong political initiative is needed. This means that the European Commission should take responsibility for safeguarding the free movement of goods, services and people. Promoting and supporting projects for the core Trans European Transport networks (TEN-T) and the Alpine passes between Italy and France, as well as Switzerland and Austria (i.e. the construction of a second tube of the Mont Blanc tunnel to be financed by the TEN-T programs of the new EU Commission 2024-2029) is crucial to ensure the free movement principle and to boost EU trade and EU competitiveness.[157]

154 Bundesregierung, Einigkeit zu Migration und Deutschland-Pakt, 7 November 2023.

155 Case studies 2023-2024.

156 Case studies 2023-2024.

157 Case studies 2023-2024.



Considering the cross-border nature of the problem, the Commission and involved member states should consider creating a single entity composed by stakeholders both private (infrastructure managers, service operators) and public (at national and local level) together with a more robust EUSALP framework, which could improve the flow coordination of the Alpine passes.

When it comes to newer forms of infrastructure, like EV charging stations, the Commission should take ownership of establishing collaboration and dialogue amongst stakeholders in the logistics, automotive and energy industries to promote innovation, investment (private and public), secure regulatory enablers to address the inadequate availability of charging stations, and challenge and enable accelerated rollout across all of the EU.[158] This could be reached for example through:

- An EU strategy for the rollout and investments in modern and digitalised smart electricity grids, which also significantly reduces permitting times for such investments. Critically, this also needs to address the significantly different starting positions on infrastructure in different EU member states.
- An enabling policy framework which creates more investor confidence in investments in zero-emission vehicles and their infrastructure. This includes all sets of policies to make zero-emission vehicles more cost-efficient and equally operationally efficient compared to fossil alternatives.
- An example of how private companies can support the rollout of infrastructure is the open-source CHALET tool, which identifies priority locations for charging infrastructure across Europe.
- To support the scale-up of alternative fuel infrastructure and the corresponding

158 Case studies 2023-2024.

regulations (AFIR), the European Commission can establish dialogue between EU member states (who will implement AFIR), power system operators (who need to supply the charging stations placed by AFIR with power) and the logistics industry (who can show where the biggest needs are to place chargers).

When it comes to the quality of pipelines and other energy infrastructure, the EU should develop a fit-for-purpose EU regulatory framework for CO_2 transport infrastructure to complement the CO_2 Storage (CCS) Directive. Moreover, a strategy and clear targets should be developed for a common European CO_2 transport network.[159]

3.2.1.5 *Capital*

European finance should be brought back to what it was designed for: economic growth.

Capital is key for enhancing productivity, growth, and the ability for companies to invest in their business or drive new ideas. The need for well-functioning capital markets is particularly relevant today, when our societies are going through two fundamental transformational developments that need massive investment – the green and digital transitions. Furthermore, one of the key social and economic roles of capital markets is to provide citizens with adequate opportunities for planning and saving for their long-term financial needs.

With the continuing great diversity of capital market structure in the EU, a more unified EU capital market needs both progress in market development locally and regionally, as well as action at the European level. Stronger local capital markets are a pre-condition to have a more EU-wide capital market, but Southern and Central and Eastern European markets have not advanced over the last 10 years.

A functioning European capital market is to a large extent dependent on measures undertaken by national governments. These include tax policies that incentivise investments in equity, increasing citizens´ financial knowledge, andvallow local institutional investors and pension funds to invest in capital markets and in particular in SMEs. It also includes public investments that can kick-start private investments and ensure that online brokers and banks are ready to service retail clients.

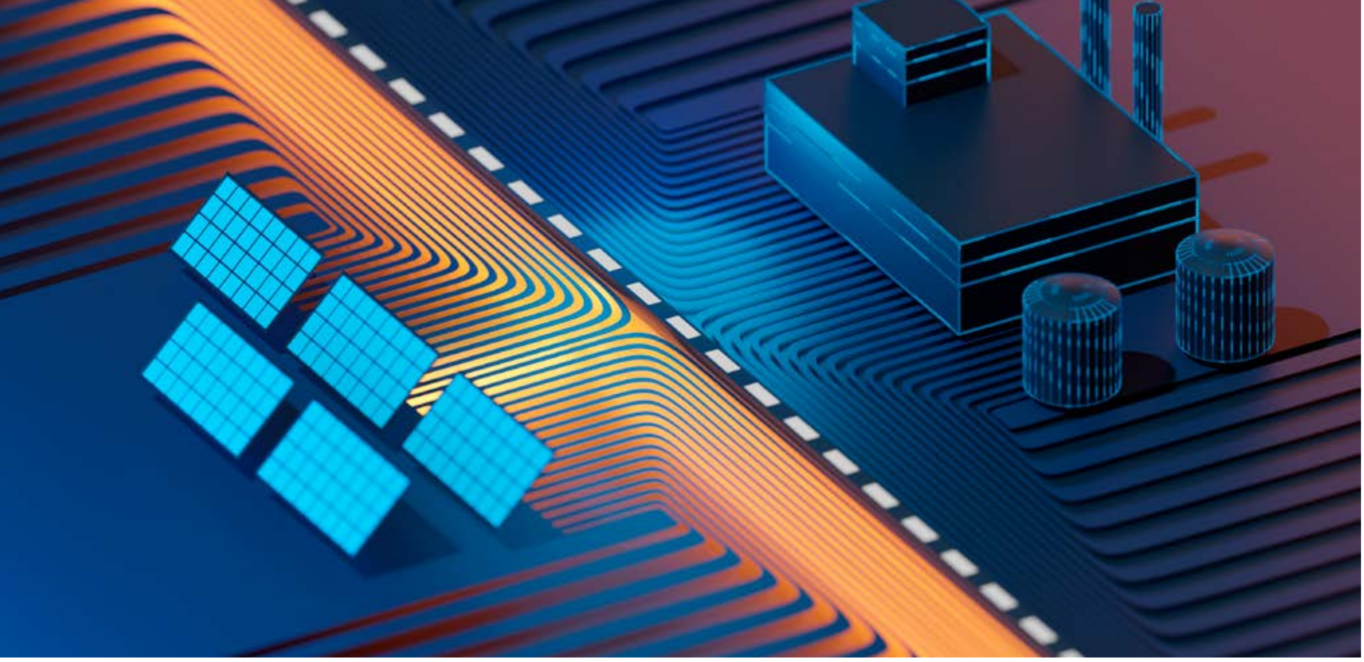
Each member state should be is encouraged to **elaborate a national capital market plan**, listing national measures to develop its capital market. This could be coordinated across the EU to ensure a sharing and uptake of best practices.

As a complement to the actions undertaken by Member States, it is of paramount importance to continue efforts at the European level. Policymakers should act against factors that prevent consolidation, such as tax and legal barriers, or biases. Below are six key steps to ensuring that this is accomplished:[160]

- **First, simplifying listing and streamlining, as well as facilitating IPO-rules are key.** Despite the EU Listing Act, national barriers still remain, as is suggested by the scarcity of pan-EU IPOs. Although a company from one Member State can be listed in another Member State, a pan-European offering is in practice impossible. For example, the national competent authorities (NCAs) might invoke that the degree of investor protection in the Member State where listing takes place is not the same as in the home country, or vice versa, even when there is an automatic recognition of the prospectus.
- Second, the conditions for cross-border investments, especially in SMEs, should be facilitated by harmonising and streamlining the **rules for management of withholding tax at the EU level**. The negotiations and adoption of the proposal from the European Commission on new withholding tax procedures presented in June 2023 should be speeded up.
- Third, a package of measures to facilitate cross-border investment within the EU: **streamlining and increasing investor protection, implementing the EU retail investment strategy, reinforcing the effectiveness of insolvency regimes across the EU, supporting the multiple-vote share structures** (which already exist in the Scandinavian countries), **creating a better functioning supervisory structure and increasing dialogue between private sector and policy makers**.

159 Case studies 2023-2024.

160 Case studies 2023-2024.



- Fourth, to add impetus to the CMU agenda we suggest that a **series of KPIs** should be agreed on to measure the competitiveness of the EU's capital markets, of the financial market participants and of the efficiency and effectiveness of the supervisory structure.[161]

- Fifth, addressing the lack of a permanent European safe asset, a critical blind spot in the development of a genuine CMU.[162] Historically, mature capital markets have been built around a public safe asset. In the U.S., for example, capital markets developed alongside the issuance of federal bonds. **The Commission should consider developing a risk-free (or less risk) benchmark**, which would allow for better pricing of risky financial products, provide a common form of collateral needed in many financial transactions, and help attract foreign investors. But a European safe asset cannot be created out of thin air: it seems to hinge on the EU having a standing fiscal capacity with a borrowing function, i.e. that it is able raise revenues and borrow money from the financial markets. There are different ways to establish a standing fiscal capacity. In 2022, a group of Italian economists argued for the creation of a European Debt Agency.[163] However, this remains a highly contentious topic in the EU. The incoming Commission should make that the case for this policy is not only fiscal stability or fairness but a fully functioning CMU.[164]

- Sixth, CMU would also benefit from **deeper market integration in banking**, another CMU blind spot. There is a practical solution that would benefit users of capital in the national markets. The solution builds on the tough competition policy framework which is at the heart of the European single market.[165] This would be a commitment by financial intermediaries, such as asset managers, to invest a specified minimum proportion of funds solely on a cash flow basis, taking into account only the fundamental value and without any reference to or alignment with competitors, or any benchmarking. By focusing expressly on only one objective, this proportion of funds would be kept safe from dysfunctionalities arising from the same portfolio having dual and conflicting objectives. Moreover, it would be possible to measure, check and audit the results of this strategy over time, and by doing this promote competition between all the asset managers using the same cash flow method of investing. In return, this would provide a stable basis upon which the EU's capital markets can be developed and eventually unified.

European and national authorities should consider making it a condition of funds, perhaps over a certain size, **that cross-border access to the European capital market requires a minimum proportion of assets in each portfolio under professional**

161 AFME, "Capital Markets Union: Key Performance Indicators – Sixth Edition", November 2023.

162 Fabio Panetta, "Europe needs to think bigger to build its capital markets union", 30 August 2023.

163 Saraceno et al., "Creating a safe asset without debt mutualisation: the opportunity of a European Debt Agency", 22 April 2022. Euractiv, "Eurozone fragmentation or fiscal union? There is a middle way", 7 July 2022. By János Allenbach-Ammann.

164 Euractiv, "ECB-Panetta: Capital Markets Union might require EU fiscal capacity", 31 August 2023. By János Allenbach-Ammann.

165 CEPS, "How to make the Capital Markets Union work?", 24 January 2023. By David Harrison and Paul Woolley.

management to be invested in such a way. The results should then be audited and published by a competent independent body, and made available to all savers, investors and companies in Europe. While it would take some time for meaningful results to become available, and therefore for competition properly to develop, there would be a stable core of investment funds created from the outset, available for the long-term investment purposes of European companies.

On the proportion of assets that each fund would need to dedicate, a good starting point might, for example, be 10% of assets under management (which can be reassessed after a suitable trial period). This may seem only a modest proportion, but the scale of assets under professional management in the world today comes to some USD 100 trillion, which is greater than global GDP. Even a small proportion of this total would constitute a significant contribution towards long-term investment. European companies will need such investment if they are to transition to a low carbon economy. In the medium and long run, funds would enjoy a private benefit and, at the same time, contribute to the social utility of more stable financial markets, plus the higher returns from companies which would also be investing for the long run.

Although strictly a deepening of the EU's Single Market in retail financial services, a useful flanking measure which would increase market integration in banking would be the facilitation of cross-border lending by banks. Cross-border lending is inhibited by the varying legal status of collateral across member states for collateralised bank loans. Because of this variation in national law, financial institutions require external legal advice when providing collateralised bank lending across member states.

The cost of this legal advice (or alternatively of building up in-house legal advisory capacity) makes loan offers from banks outside the home market of companies or people seeking the loan less competitive. This leads to widely differing costs of obtaining loans across member states, which do not correspond to the country risk or other objective factors of credit quality. This reduces competition within the Single Market and constrains the availability and raises the cost of loans for European citizens and companies.

Given how entwined this problem is with existing national law, the most practical solution would be to set up an EU "opt-in" law, standing next to existing national law, that can be used in loan or collateral contracts as an EU-wide legal standard. A system like this has already been implemented in UN trade law, which can be accepted by countries and specified as the legal basis in contracts.

3.2.1.6 Security

In all discussed areas, despite the political challenges, legislative instruments should be explored that would lead to certain level of harmonisation across the Member States, with the aim of improving efficiencies while not compromising questions of national security. Overall, security legislation should make use of common standards that build on international standards. National authorities should be limited in their ability to add additional security requirements when it comes to reporting and notification timelines.

For foreign investments screening, to achieve greater alignment between Member States, the establishment of a clear framework and set of principles, supported by a robust central mechanism, would greatly benefit both the EU and investors. Inspiration can be taken from the so-called ECN+ Directive, which puts in place important principles which national competition authorities should comply with. These include impartiality and independence from political influence, human and financial resources to perform their tasks, effective investigative and decision-making tools, as well as a requirement to conclude investigations within a reasonable timeframe. These principles should also be adhered to in the work undertaken for investment screening.[166]

Current efforts to develop the EU's future European Defence Industry Strategy (EDIS) might hopefully address some of these challenges.[167]

166 Case studies 2023-2024.

167 EurActiv, "LEAK: European Commission readies 'single market' scheme for defence", 5 December 2023.

3.2.2 Recommendations for non-sector specific barriers

3.2.2.1 Posting of workers

The following could be considered to improve the persistent issues around the five requirements for companies when posting workers within the EU:[168]

Minimum pay. Employer proofs that meet the minimum requirements and exclude an employer from notification.

Assessment. What would help is a so-called targeted approach where certain sectors or industries (like technical services) are excluded from notification. Furthermore, reporting obligations in the EU Member States need to be harmonised. This would entail equal exemptions across member states and exclude short-term travel, which should also contribute to ease the administrative burden to comply with the legislation.

Notification. To help reduce the burden for the posting employer on notification, short-term travel and alignment of exemptions should be excluded. Next to that, a uniform notification form and allowing notifying after start date would make it easier to comply with this legislation.

Documentation. The following would reduce the administrative burden on required documentation:

- Allowing documents to be collected and delivered at the time of inspection;
- Accepting documents in any EU language;
- Not requiring an A1 certificate to prove social security in home country.

Contact person. A beneficial simplification would be to allow one central point of contact within a company, including outside the country where the activities are performed.

Other measures could include:

- Transparent and binding labour law tools (e.g. standardised national wage calculators) that services providers can use to obtain the necessary information.
- Digital instruments to increase the mobility of persons: implementation of the European Digital Identity Wallet/EUDI and the European Social Security Pass (ESSPASS).[169]

3.2.2.2 Services

The examples earlier focused on horizontal policies, such as labour market policies in the Member States. Though it is arguably in part an enforcement issue, the incoming Commission should think of practical ways of 'completing' the services sector:

- The number of regulated professions and their member state requirements is a barrier to the free movement of services. As Sweden's Kommerskollegium recommends, the Commission's first report on the application of the Proportionality Review Directive could serve as a basis for further work. The potential for the European Professional Card to cover more professions should also be explored, as should the reduction of the documentation burden on individuals.[170]

3.2.2.3 Public procurement

To return to the cloud examples. two ongoing initiatives by the European Commission – the EU Cloud Rulebook and the Guidance on Cloud Public Procurement – have the potential to provide a coherent framework at the disposal of both private and public sector organisations to inform their decision-making in procuring suitable cloud services, including areas such as data security, data privacy, data portability, and energy efficiency. However, these rules and guidance are non-binding tools, and the Commission is limited by the Directive on public procurement, which may need revision to achieve the objective.[171]

To be more ambitious across the board (not only on cloud services), the Commission should, in line with BusinessEurope's proposal, first, strengthen cooperation and increase the exchange of best

168 Case studies 2023-2024.

169 Kommerskollegium, Opinion, 2 November 2023, pp. 21-22.

170 Kommerskollegium, Opinion, 2 November 2023, pp. 19-20.

171 Case studies 2023-2024.

practices between Member States - for example, through cooperation of national competence centres, or the creation of a Public Procurement Portal providing access to information on national procurement markets, publication platforms, complaint systems and availability of projects. Second, compliance with the existing legal framework must be guaranteed. Infringements of public procurement rules should be rigorously enforced in a national and EU context, in particular those relating to transparency and non-discrimination.[172]

3.2.2.4 Mutual recognition

More work should also be done on the principle of mutual recognition, which could usefully address the problem of barriers arising from different rules for goods between Member States. This could be a relatively light-touch way of improving the free movement of goods.[173] This would not imply more infringement proceedings (see 'recommendations' for more detail).

3.2.2.5 Trade

When it comes to customs, the following should be considered:[174]

- **Single Window for Customs:** Likewise, businesses should have access to a real single data entry point (single window/portal across the EU) and a simplified procedure for customs formalities. The EU Customs Union is currently not functioning as well as it could. There is a widespread lack of uniform enforcement of customs legislation by Member States, and there are even some incongruencies within single Member States. Full customs clearance and associated procedures (quality controls, testing, etc.) for the EU must take place once when evaluating the life-cycle analysis of goods.
- **Single Customs Code:** Harmonisation within an International Single Customs Code Framework. There should be better internal alignment with other EU regulations to avoid overlapping HS codes for the same products and operators.
- The EU must also consider issuing **binding tariff/value information at a centralised level** to resolve tariff classification and customs valuation issues that could be applied at EU level.

When it comes to UTPs, the following should be considered:

- Extend the scope of application to agri-food suppliers of all sizes;
- Extend the scope of application to all suppliers;
- Prohibit self-preferencing and conflicts of interest arising from gatekeeper/dual role practices;
- Clarify the extraterritorial effect of EU UTP laws.

3.2.2.6 Taxes

Uniform application of tax provisions and rules across Member States to minimise the administrative burden on companies. An additional measure to ease the burden could include a "one-stop shop" for intra-EU VAT registration and accounting purposes.[175]

3.2.2.7 Standards and standardisation

Technical details of legislation should be elaborated by industry-led standardisation bodies. As already mentioned by the ERT and other stakeholders, industry-led does not mean industry-controlled: it refers to a profound knowledge of market needs, risks, and unmatched technical expertise, whilst respecting the voluntary nature of standards, participation by consumers and SMEs, and the public debate about draft standards.[176]

The publication of the European Commission new European Standardisation Strategy in 2022 was a real step forward, as it included the establishment of a High-Level Forum on Standardisation and the nomination of a Chief Standardisation Officer for the European Commission (Maive Rute).

Having a designated Commission official on this topic, as well as a clear forum, could significantly

172 BusinessEurope, "Unlocking the full potential of the European public procurement market", April 2023.
173 Kommerskollegium, Opinion, 2 November 2023, pp. 15-16
174 Case studies 2023-2024.
175 Case studies 2023-2024.
176 ERT 2021.

help with 1) aligning expectations between the Commission and standardisation experts, thereby avoiding the unnecessary delay of harmonised standards, 2) possibly finding the right balance in standardisation requests between qualitative requirements set by EU legislation and flexibility for the European Standardisation Organisations required for state-of-the-art standards.[177] But the Commission could still be more ambitious: for example, by committing to KPIs when it comes to shortening the processing time for citation of new harmonised standards in the Official Journal of the European Union.

Furthermore, there are continued delays at the national level, with the implementation of standards varying from country to country. For instance, France has already set the rules to use EN 197-5 cements in structural concrete while other countries are still performing tests. This has resulted in significant delays for the release on the market of new cements for low carbon concrete.[178] The new Chief Standardisation Officer for the European Commission should be pro-active in calling out those Member States that have been delaying the timely implementation of standards.

3.2.3 Looking ahead – striking the right balance and approach regarding state aid

Returning to the discussion at the outset of this study, the EU's current loosening of state aid rules is only a partial answer to addressing Europe's sliding competitiveness in global comparison.

In response to the COVID-19 and energy crises, Member States have stepped up support to companies, including in the form of state aid. However, the proliferation of national schemes runs the risk of destabilising the level playing field within the Single Market. Absent some coordination in industrial strategy, larger Member States or those with greater fiscal space may have greater scope to support companies, to the partial detriment of other euro area countries and the integrity of the Single Market.[179]

Nevertheless, the EU needs a system of state aid that can match the tax credits in the US under the Inflation Reduction Act (IRA) for simplicity of deployment, limited bureaucracy and ease of access by companies, while at the same time upholding the Single Market's Level Playing Field. Important Projects of Common European Interest (IPCEIs) have, within their limited scope, been a success but it is a long and resource-intensive process to access them, as is the case for support available through the Innovation Fund, Invest EU or *NextGenerationEU* (Recovery and Resilience Facility).

One possible avenue to explore might be for the European Commission and EU Member States to create a common budget or fund that can grant or reimburse tax incentives to companies for the same objectives, across the entire EU, irrespective of the country in which a company is located. Hence, the EU would need a uniform "Europeanised" regime for the coordination and application of these tax incentives. Companies would be able to request a tax incentive as soon as they meet criteria that are identical across the EU. Depending on how the system is designed legally, companies could request the incentive directly from the European Commission or their national government, which would then be reimbursed from the common fund.

Such a scenario would guarantee a fair distribution of funds to companies which qualify. It would not only avoid a "subsidy race" among member states as well as "subsidy-shopping" by companies between countries, it would also allow a boost in growth in Member States with fewer public resources. It would need to be explored if the tax incentives should be capped at a certain limit and if such a common fund would be composed of existing budget, require an uplift in the Multiannual Financial Framework (MFF) or involve new common borrowing from the capital markets.[180]

177 Council of the European Union, Joint non-paper on harmonised standards, 27 May 2021 8600/21.

178 Case studies 2023-2024.

179 Gopinath, G (2023), "Europe in a fragmented world", IMF First Deputy Managing Director Remarks for the Bernhard Harms Prize.

180 Such a novel system for granting EU-wide tax incentives deserves to be considered, politically and at administrative level. It would not affect the current state aid control by the European Commission under Art. 103 (3). The uniform nature of the tax incentive would remove the possibilities of distortion of competition and would thus reduce the need for the European Commission to relax state aid control.

ERT

The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairs of major multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open and competetive Europe as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members are situated throughout Europe, with combined revenues exceeding €2 trillion, providing around 5 million direct jobs worldwide – of which half are in Europe – and sustaining millions of indirect jobs. They invest more than €60 billion annually in R&D, largely in Europe.

www.ert.eu

We are grateful to Prof. Dr. Jacques Pelkmans (CEPS, College of Europe) for reviewing this analysis.

This publication has been produced in collaboration with Global Counsel.

GC
Global Counsel

Global Counsel is a strategic advisory business. We help companies and investors across a wide range of sectors anticipate the ways in which politics, regulation and public policymaking create both risk and opportunity – and to develop and implement strategies to meet these challenges. Our team has experience in politics and policymaking in national governments and international institutions backed with deep regional and local knowledge. Our offices in Brussels, London, Singapore, Doha and Washington DC are supported by a global network of policymakers, businesses and analysts.

www.global-counsel.com

Campaigning for the creation of the European Single Market was the original *raison d'être* of the European Round Table for Industry when it was first established in 1983 – a development supported by many others that would ultimately regenerate economic and social progress for EU citizens and help European businesses succeed at a time of rapidly expanding globalisation.

Over the past three decades, the free movement of people, goods, services and capital at the heart of the EU Single Market have made it a transformative force for prosperity and a more cohesive political and economic entity. However, the changing geopolitical context, the emergence of new technologies and societal needs and norms mean it's now time to revisit the governance of the Single Market.

+32 2 534 31 00 www.ert.eu
contact@ert.eu @ert_eu

European Round Table for Industry
Boulevard Brand Whitlocklaan 165
1200 Brussels, Belgium

For more information on ERT's work on the Single Market, contact philippe.adriaenssens@ert.eu

Released at a special Single Market event, jointly organised by European Movement International and ERT on 22 February 2024.

Please scan to read the Joint Statement of 25 business associations calling for a "Deeper Single Market and Renewing the dynamic of European integration" and to access the Compendium containing 100+ obstacles which illustrate the fragmentation in the Single Market.