Appraisal of the Commission's Annual Single Market & Competitiveness Report (ASMCR)

April 2024

This appraisal starts with an overall assessment of the 2024 Annual Single Market and Competitiveness Report (ASMCR) of the European Commission.

It then moves to a deeper analysis of 'A functioning Single Market', one of the competitiveness drivers in the report, as well as the SMET report 2022-2023, the Single Market Scoreboard and a Staff Working Document – all accompanying the ASMCR.

It rounds off with a brief analysis of the other eight competitiveness drivers, before outlining some key recommendations and presenting an overview with further insights from ERT publications.

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1. Overall assessment

The 2024 Annual Single Market and Competitiveness Report (ASMCR) of the European Commission was published in mid-February 2024.[1] ERT recognises the value of such an exercise and invites the Commission to further fine-tune this practice. Given that ERT has dedicated several publications to removing Single Market obstacles and using KPIs to benchmark competitiveness (see Chapter 5), it recommends the continued use of a data-driven focus for developing and implementing adequate policies at EU-level.[2]

The nine competitiveness 'drivers' and related KPIs in the ASMCR were identified by the Commission in its Communication on Long-term Competitiveness (March 2023) and are a welcome development, as they help to track and quantitatively measure progress on certain KPIs. However, the macro-economic data in the ASMCR provide only a (partial) snapshot of the state of European competitiveness.

Overall, the ASMCR does not **convey the sense of urgency and alarm that the EU's industry and wider business community have been raising about Europe's declining competitiveness.** This is surprising given that, for instance, the latest Eurostat figures from March 2024 showcase that industrial production in the EU is down significantly, by 5.7%, in comparison to January 2023.[3]

Importantly, the ASMCR and its accompanying documents do not:

Sufficiently compare the state of Europe's competitiveness and the costs of doing business within the EU with our global competitors as there is little to no benchmarking focussing on critical metrics such as private investment (e.g. FDI), the cost of doing business, green tech solutions or innovative digital tech (AI).[4]

Contain a list of obstacles experienced by businesses in the EU Single Market and no in-depth assessment of the current regulatory burden is provided (e.g. administrative burden and reporting requirements).[5] The Commission actually used to publish annual competitiveness reports, which were much more granular, and compared the competitive situation between various EU Member States, before this practice was discontinued in 2014.

Contain a list of companies' closures and/or data on companies scaling down business operations in the EU and/or examples of companies' investment decisions that prioritise other regions instead of the EU. Such examples could help in making the entire discussion on competitiveness more tangible and relatable.

Set out detailed recommendations and a suggested roadmap for actions to tackle Single Market barriers and bringing down the regulatory burden on companies.

Furthermore, the KPIs used to measure progress on the nine drivers do not go far enough – either the overall analysis is incomplete or the KPIs are not exhaustive and too selective. To give an example of skewed results, KPI 3 in the ASMCR (see Figure 1) analyses only private investment in the EU as a share of GDP, suggesting the EU is ahead of the UK and US. However, this metric does not mean that Europe is more competitive or has a relatively more attractive business environment. What is the usefulness of plotting the FDI in the EU against the growth in the EU, especially given the fact that growth has been sluggish in the past 5-10 years?

1 The ASMCR and accompanying documents are available on: https://single-market-economy.ec.europa.eu/publications/2024-annual-single-market-and-competitiveness-report_en.

2 ERT, Competitiveness and industry benchmarking report 2024, (link).

3 Industrial production down by 3.2% in the euro area and by 2.1% in the EU - Eurostat (europa.eu)

4 Admittedly, while the ASMCR does use a fair amount of comparative data, the European Commission is almost exclusively using data provided by the public sector – and that restricts the number and scope of the KPIs explored. ERT would thus encourage the Commission to analyse also data provided by other authoritative sources and economic actors in the future.

5 The regulatory burden and complex framework for doing business in Europe is cited as the main problem in the latest survey of ERT / The Conference Board, "Complex and Incoherent Regulation Puts Pressure on Europe's Competitiveness And Green Transition Efforts", 2023 H2 results (link).

Instead, the European Commission should measure:

The FDI inflows in the EU compared to global FDI flows (Figure 2). When comparing Europe's FDI inflows over time, one sees it going down gradually since 2017. The year 2022 even witnessed negative FDI inflows to Europe, which means that private investors divested more FDI from Europe than they invested in Europe. Meanwhile, since 2017, FDI inflows in the USA and China have gone up.

The divergence in real capital stock per person employed between Europe and the US since 2007/2008, as it reflects the growing productivity growth gap between these two economies (Figure 3).

These two metrics would help provide a more impartial and objective view on Europe's economic situation. Ultimately, such conventional indicators underline Europe's underperformance and sliding competitiveness in international comparison.

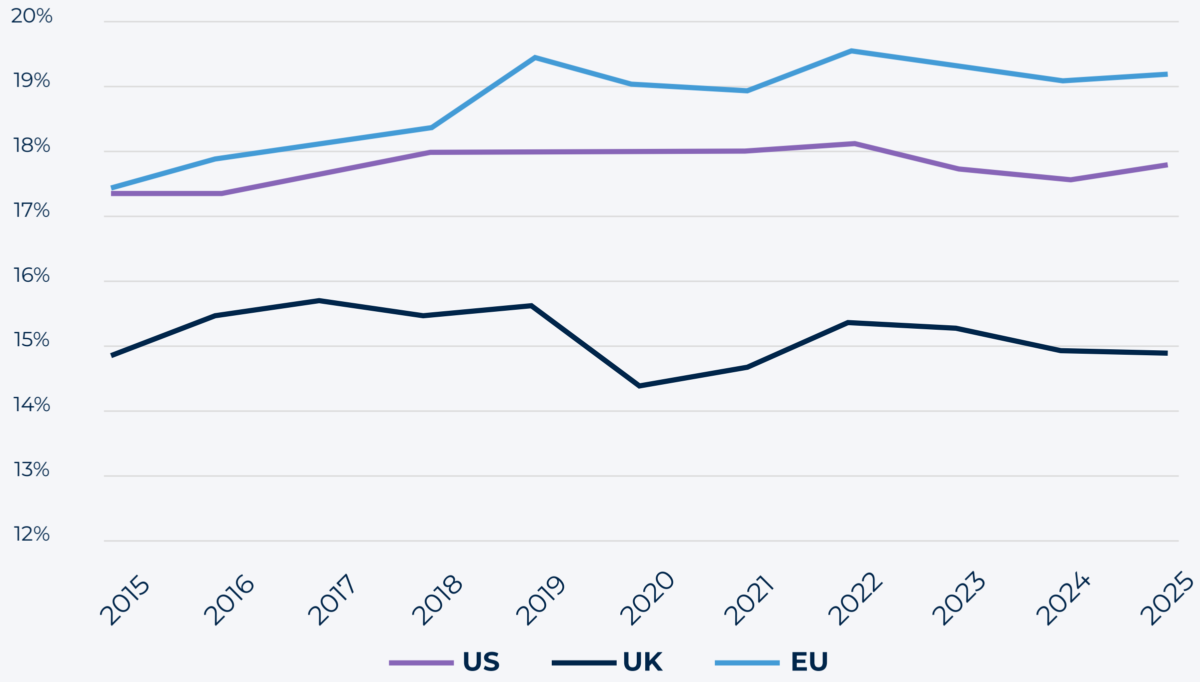
Finally, the recommendations in chapter 4 of this appraisal set out how the analysis of competitiveness and the Single Market can be made more "fit for purpose", such as by:

making it more focused on cross-border obstacles as reported by businesses and other stakeholders;

identifying which Member State / Commission entities should be responsible for tackling specific obstacles;

tracking progress on removing obstacles (with a detailed annex, along the lines of the policy tracker in the Commission Staff Working Document accompanying the ASMCR, or a more detailed spreadsheet).

Fig. 1. Private investments as share of GDP.[6]



6 SWD(2024)78 - Commission staff working document accompanying "The 2024 Annual Single Market and Competitiveness Report", p. 5 (link).

Fig. 2. Europe's FDI inflow was negative in 2022.[7]

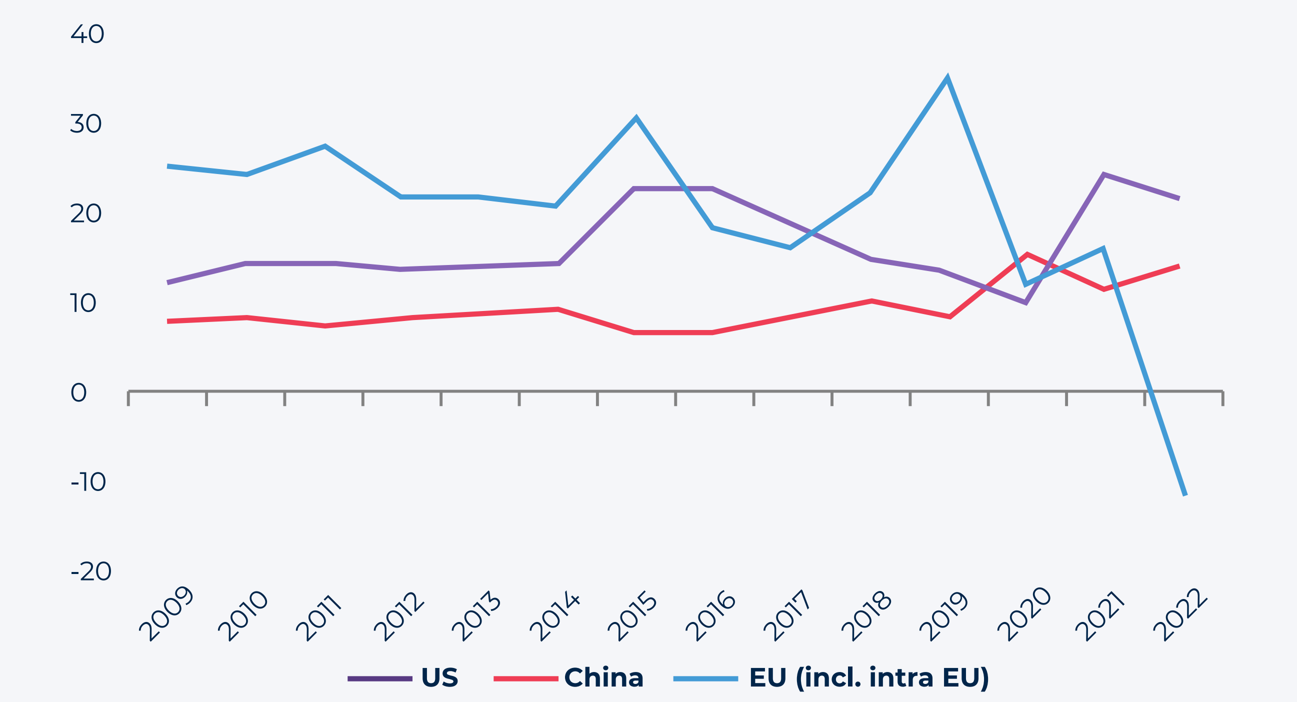
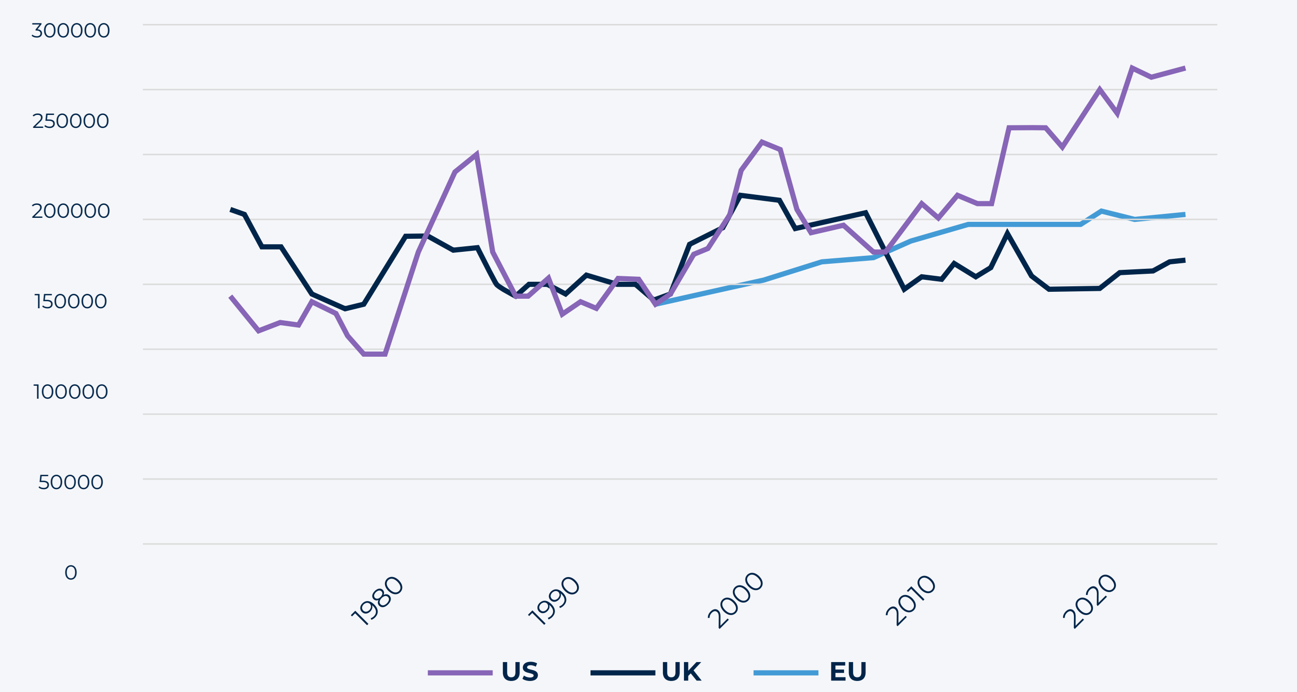


Fig. 3. Europe's stagnating productivity growth.[8]



7 ERT, Single Market Obstacles: Technical Study, 2024, p.5 (link).

8 DG ECFIN, Global Counsel calculations. The gross capital stock is defined as the value of all fixed assets still in use. Fixed assets are all produced assets that are used repeatedly or continuously in the production process for more than a year. Main assets types are: metal products, machinery and transport equipment, housing, non-residential construction and other products (including products of agriculture, forestry, fisheries and aquaculture). It excludes land. Net capital stock is the gross capital, at a point in time, less the consumption of fixed capital accrued up to that point. It takes into account the depreciation of the assets through time as a result of physical deterioration, foreseeable obsolescence or normal accidental damage.

2. Single Market aspects in ASMCR and accompanying docs

2.1 Annual Single Market and Competitiveness Report (ASMCR)

Observation 1

The ASMCR does not contain any list of various existing Single Market obstacles.

The 2023 Communication of the "Single Market at 30" had noticed that "60% of the barriers that businesses [face] today are of the same type as were reported 20 years ago".[9]

In addition, the 2020 "Long term action plan for better implementation and enforcement of Single Market rules" contained a list of persistent cross-border barriers.[10]

Analysis & suggestions

The ASMCR does not delve into observations that were made in previous Commission documents related to Single Market barriers, like the Commission's 2020 long-term action plan.

As the Compendium of 100+ obstacles gathered by the business community reveals, there are many cases of fragmentation.[11]

The ASMCR should be focused on the analysis of such obstacles in the Single Market. It should thoroughly examine the bottlenecks and spell out the reasons for why some of these are so persistent. The ASMCR's value added would be even greater if it pinpointed concrete reasons for Single Market barriers (e.g. by naming the specific national or EU authorities which are responsible for a barrier) and identified possible solutions and next steps for removing a barrier, including by suggesting which entities could take action.

As a first step, a link between the Single Market Obstacles Tool (SMOT) and the ASMCR could be made. 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).[12]

9 COM(2023), "Single Market at 30", p. 14.

10 COM (2020)94, "Long term action plan for better implementation and enforcement of Single Market rules" (link).

11 ERT compendium of case studies 2023-2024 (link).

12 ERT, Single Market Obstacles: Technical Study, 2024, p.39.

Observation 2

The ASMCR describes the work of the Single Market Enforcement Taskforce (SMET), referencing the removal of prior checks for professions and removal of some process-related barriers for wind and solar energy projects.[13]

Analysis & suggestions

Whilst these and other activities of the SMET are worthwhile (in particular the tables in the SMET Report mapping the challenges and progress in all EU Member States related to energy permitting and Posting of Workers), the actual results of the SMET since it was created four years ago in March 2020 are too thin. Some projects are limited in scope, and do not constitute a big step-change to significantly overcome fragmentation in the EU.

The Commission should thoroughly analyse all the files that are still pending. It is also important to improve the process by which the SMET chooses priority barriers to address and the amount of time it takes SMET to solve identified barriers, as the interaction with the business community has been rather limited in the past four years. It is vital to examine the bottlenecks, when and why it is difficult to remove obstacles and spell out the reasons for this.

Observation 3

The ASMCR only mentions that a project tackling IBAN related discrimination was launched by SOLVIT in 2023.[14]

Analysis & suggestions

More analysis is required on the strengths and weaknesses of the SOLVIT network, which is only briefly mentioned in the ASMCR. Can the Commission expand on the work of SOLVIT, clarifying which cases it receives from the business community? As SOLVIT is mainly treating cases brought by citizens, it would be useful to assess why SOLVIT is not reaching companies or why companies do not find SOLVIT an accessible or helpful tool for the obstacles they are facing.

Can the Commission include an overview of the capacities (human resources) of the SOLVIT networks in all EU Member States and keep a scoreboard of the type of cases from companies they are able to treat (or not)? What happens when certain problems are not solved or when vested interests delay or block the removal of certain obstacles? Which procedure is followed? Is the procedure through which companies can register complaints not too complicated and bureaucratic? Is the follow-up by the SOLVIT networks sufficiently tailor-made and effective?

13 ASMCR, p. 3.

14 ASMCR, p. 3.

Observation 4

The ASMCR states that the target for Member States transposing Directives is to reduce the conformity deficit to 0,5%.[15] However, the current deficit stands at 1,2% and has been hovering around this percentage for the past 3-4 years, without coming down significantly closer to the target.

Analysis & suggestions

The ASMCR rightly promises that "the Commission will continue to work with Member States to reach the objective." But it does not spell out how this will be achieved… When the target has not been reached for several years in a row, more analysis should be provided on the persistent bottlenecks, and how these can be overcome, especially because the 2011 Single Market Act already contained the 0,5% target, which was repeated in the Communication on "Long-term competitiveness" of March 2023.[16]

Can the Commission also be more explicit in naming the Member States that have not managed to meet the target? Which policy files are problematic to transpose correctly? What can be done to help these Member States? And what can be done to make less complex legislation at EU level that leads to transposition difficulties?

15 ASMCR, p. 3.

16 COM(2023)168 - Long-term competitiveness of the EU: looking beyond 2030, p.5 (link).

Observation 5

The ASMCR states that the Commission is "making progress towards the target of reducing the burden from reporting requirements by 25%. A first set of 41 initiatives to cut such burdens was presented in the 2024 Commission Work Programme (autumn 2023)." The examples mentioned in the ASMCR are the reform of the Union Customs Code (expected to bring around EUR 2 billion in cost savings) and the revision of the Regulation on European statistics (to save EUR 450 million).[17]

Analysis & suggestions

In fact, the progress on reducing reporting requirements is extremely limited since President von der Leyen made the commitment to a 25% reduction in her speech in front of the European Parliament on 15 March 2023: "We will look beyond departmental boundaries to see what really makes Europe more competitive and what we can do without. By the autumn we will put forward concrete proposals to simplify reporting requirements and in fact to reduce them by 25%. It won't be easy but it's an effort we have to make."[18]

Instead, companies testify that the reporting obligations have increased since March 2023, possibly even by 10-15%, owing, among other factors, to the Delegated Act of the European Sustainability Reporting Standards (ESRS), the Taxo04 Delegated Act, the Foreign Subsidies Regulation, the start of CBAM reporting, rules on cybersecurity, etc.

Could the Commission analyse why it is so challenging to bring down the flow of new reporting requirements? Can it present an overview (which would be made public) of all new reporting requirements which stem from EU legislation and provide a mapping of these requirements with an estimation of the time and costs they entail? It will also be vital for the Commission to present a cost-benefit analysis of every requirement, the use / usefulness / uptake of any reports, and any political objectives that are being achieved (efficiently) or not.

As all reporting requirements serve some (political) objective, it will be essential to critically examine if these requirements are fit for purpose (i.e. if the policy objective is actually reached by the regulation/reporting) and if the achievement of certain objectives is being compromised since the volume of total reporting has a cost for companies and puts a drag on their competitiveness (for instance to innovate and scale-up solutions for the digital and green transitions in the EU). While the reporting data enables policy-makers to track changes in an individual company's operations, in turn helping to improve policies accordingly, a better balance should be sought in order not to overburden businesses. As stated in the first priority of the Antwerp Declaration for a European Industrial Deal, the next political mandate should "eliminate regulatory incoherence, conflicting objectives, unnecessary complexity in legislation and over reporting" and develop an "Omnibus proposal to take corrective measures on all relevant existing EU regulations".[19]

In March 2024, the Commission has not yet outlined which conclusions it draws from the call for evidence that was launched in October 2023, and when rationalisation plans will be presented by all departments of the Commission. Industry is regularly asked to provide input - which is welcome - but then faces a lack of visibility as to which recommendations are considered, relevant, or discarded by the Commission. This limits industry's ability to constructively engage and help the Commission to make decisions in the most informed way possible.

Beyond the challenge of "reporting requirements", the Commission should also study the wider issues related to the regulatory burden and Single Market obstacles faced by companies. 100+ obstacles were outlined in this Compendium, which represent only the tip of the iceberg. In the future, it will be crucial for the Commission to pro-actively capture, collect, analyse, process and remove obstacles.

17 ASMCR, p. 4-5.

18 2023 State of the Union Address by President von der Leyen, 13 September 2023.

19 The Antwerp Declaration for a European Industrial Deal.

Observation 6

According to the ASMCR analysis, "efforts at EU and Member State level are required to further simplify the implementation of agreed legislation, paying particular attention to unjustified "gold plating" and addressing the cumulative impacts and timing of implementing legislation. This would help to reduce compliance costs and ensure greater visibility for investment decisions."[20]

Analysis & suggestions

It is not clear how the Commission or EU Member States deal with "unjustified gold plating" and actually reduce the "cumulative impact" on businesses when EU legislation is implemented at national level. [21]

The aim of the Commission should be to recognise and analyse the origins of gold-plating derived from delegated acts or directly implemented regulations, identify the concrete issues stemming from gold-plating and outline options of how these issues can be addressed.

It would be useful for the Commission to describe the problem of "gold plating" and give some examples. What system does the Commission have in place to help, incentivise or oblige EU Member States to remove gold-plating?

Furthermore, the Commission's approach to effectively enforcing Single Market rules is unclear. The Commission should not be reluctant to provide more insights in the ASMCR on matters related to implementation and enforcement.

The Commission claims in the ASMCR that it took "prompt enforcement action when the core principles of the free access to markets were at stake or discriminatory practices emerged against non-national operators" (page 3). However, more analysis and practical examples would be welcome on how the Commission defines "core principles".

As the number of new infringement procedures and decisions to proceed with infringement have dropped significantly in the past 5 years[22], it would be very relevant for the Commission to outline how it deals with infringement procedures, which cases it pursues and how it decides to open or discard a case?

In sum, the European Commission should not shy away from calling out Member States or certain actors for violating Single Market rules, also publicly, be these minor or very significant offences. It would be important to see the European Commission taking leadership in spearheading rigorous enforcement and implementation across all aspects of the Single Market and in all EU Member States.

20 ASMCR, p. 5.

21 Citing from "Single Market at 30" Communication, the 2022-2023 SMET report de facto implies that, as it is "up to Member States to decide if there is a need to reinforce the existing departments or units", the proposed Single Market Offices could end up being too integrated in national structures, at risk of being downscaled if a Member State decides to do so (SMET Report 2023-2024, p.19, link). As a result, these Offices cannot be the Commission's (or SMET's) 'eyes and ears' on the ground, unable to call out Member States if they do not make an effort in addressing cross-border barriers.

22 ERT, Single Market Obstacles: Technical Study, 2024, pp.32-41. Is the Commission less willing to confront Member States when infringements occur than previously? It is not sufficient to assume that some cases were simply carried over from previous terms, as this happened also in the past. Much more analysis and explanation is needed. The Commission should avoid invoking 'opportunity grounds'.

Observation 7

The ASMCR states that the "Commission continues to advocate establishment of dedicated national Single Market Offices, with Member States ensuring senior leadership and necessary resources."[23]

Analysis & suggestions

This idea was already proposed in the Commission's "Single Market at 30" Communication" (March 2023). It would be helpful if the Commission could present an overview of the number of Single Market Offices (SMOs), in which Member States they are present, how they are staffed and which issues they solve (effectively)? How many new SMOs were created since March 2023? Why are certain EU Member States not creating such offices?

Taking a step back, it is actually not clear how these SMOs would operate. What is their added value vis-à-vis other tools (e.g. SOLVIT, SMET) and how these would complement each other? In other words, how should these SMOs interact with the SOLVIT offices? How will the Commission interact with SOLVIT and SMOs? Which type of issues should be dealt with? If such national capacities do not manage to fulfil the task of sourcing, tracking and removing cross-border obstacles, will the Commission then take these up? How? In a spreadsheet? By publicly listing and tracking the issues and naming the authorities (also at national, regional or local level) responsible for removing the obstacles?

Just expressing the hope that national SMOs should deal with the removal of obstacles suggests the Commission is not directly addressing the obstacles. It is important that the European Commission ensures that through leadership and necessary resources a proper procedure is put in place that helps to systematically resolve issues, across its own services and in collaboration with relevant Member State authorities.

Observation 8

The ASMCR says that "it is vital to keep working together on the CMU... the Commission and Member States should promote further efforts to increase direct access of corporates to financial markets..."[24]

Analysis & suggestions

The objective is welcome, but the ASMCR should analyse at length the bottlenecks for the slow progress on building the Capital Markets Union (CMU) in spite of the last Action Plan. Can the Commission be more explicit and straightforward?

How will the Commission achieve the objective stated in the ASMCR? What are the recommendations and the roadmap going forward? Which next steps will be taken?

23 ASMCR, p. 7.

24 ASMCR, p. 9.

Observation 9

KPI 1: Integration in the Single Market (trade over GDP). It currently stands, in 2022, at 26,3% for goods and 7,5% for services. The numbers are slightly higher than in 2021.[25]

Analysis & suggestions

Even though there is an increase of the integration in goods and services compared to the previous year, the business community wonders which policy measures are actually responsible for this.

In the absence of clear measures to improve implementation or enforcement, the increase of intra-EU trade in 2022 is not necessarily the result of deeper integration. On the contrary, it can stem from slower growth. In fact, it is due to: a) a rebound in intra-EU trade after the Covid-19 dip and b) reflects 2022 price effects (high inflation and Ukraine-war related energy price hikes that translated into higher prices for energy intensive products).[26]

This means that the integration in goods has stalled over the last decade and is virtually not advancing anymore. The integration in services is still too low, and has been for over a decade. Hence, clear policy measures to further deepen the Single Market and improve the freedom of circulation are required.

Observation 10

The ASMCR does not cover competition policy, such as merger control.

Analysis & suggestions

ERT advocates for an evaluation of the Commission's competition policy in light of the global competitiveness of European companies.

The approach to merger review should be examined, as this could significantly help make the commercial case for and stimulate cross-border deals.[27] ERT recommends that a reform of the EU Merger Regulation (EUMR) is urgently required to strengthen European competitiveness and resilience.

The EU Competition Framework has undergone a massive review to make it fit for the digital era and globalisation, with the exception of one of the most important pieces - the EUMR, which has not been reviewed for the last 20 years. Such a review is actually required in line with best practices regarding EU regulation, and is now overdue to deal with the challenges of digital markets, such as nascent acquisitions. It is needed to secure Europe's position in the current geopolitical environment by introducing amongst others a more dynamic & long-term perspective. ERT firmly believes that competition law must be aligned with EU's wider policy objectives, such as the competitiveness of the EU industries, the digitalisation of the economy, the sustainability goals and, as an overarching principle for all of them, the creation of an integrated and true EU Single Market. Competitiveness, speed and legal certainty are of essence in the modern world, and this is what the EUMR is increasingly lacking.

See more analysis and examples at the end of Chapter 5 below.

25 ASMCR, p. 2. And also the graph on page 3 of the Staff Working Document, accompanying the ASMCR, which uses Eurostat data as a source.

26 ERT, Competitiveness and industry benchmarking report 2024, (link), p. 16.

27 ERT, Single Market Obstacles: Technical Study 2024 (link), p. 19.

2.2 Single Market and Competitiveness Scoreboard

The 2024 edition of the Single Market and Competitiveness Scoreboard contains additional data on competitiveness. It does not, however, include substantial analysis on 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).

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 end the pending procedures). The substance of the cases is also not clear – "criminal cases" are also included, arguably inflating the total number of infringement cases.

Furthermore, the Scoreboard does not include any conclusions and does not lead to formal follow-up. As a result, it is unclear to what extent Member States are going to address the shortcomings identified in the Scoreboard and whether there is actually a systematic procedure in place to address these.

2.3 SMET report 2022-2023

The Commission referred to the most recent, third, annual report of the Single Market Enforcement Taskforce (SMET).[28] Similar to the ASMCR (see comment 2 under 2.1 in this ERT appraisal), the report does not elaborate on how cooperation with businesses could further be strengthened (including by requesting their input on reports or encouraging participation in certain meetings).[29]

Another concern is that the SMET's listed "ongoing work & achievements" seem limited and only concentrate on a small number of focus areas, including professional qualifications (where some important progress has been made to address cross border restrictions).[30] But if this is the pace of progress, no real advance – to the extent expected by the business community[31] - is being made on really deepening the Single Market.

It should be noted that the overview tables on pages 12 and 14 of the SMET Report are useful to track progress in all EU Member relating to: streamlining permitting procedures for wind and solar energy projects as well as cross-border restrictions for professionals who provide services on a temporary and occasional basis (Posting of Workers).

Through the colour coding system, the Commission makes a useful effort to take stock of the (lack of) progress across Member States. However, it would be helpful to receive additional analysis on why some Member States are marked red (i.e. why they choose not to introduce certain best practices) and what could be done to address and resolve certain obstacles.

Furthermore, the use of such overview tables and colour coding should be expanded to more areas of obstacles. Commission and Member State departments dealing with the mapping and removal of obstacles should be sufficiently resourced to this end.

28 SMET Report 2022-2023 (link)

29 idem, p.6.

30 idem, p.7.

31 Joint Statement (ERT et al), "European business calls for deepening the EU Single Market and renewing the dynamic of European integration", February 12, 2024 (link).

Fig. 4. Implementation of the key solutions / selected practices for improving renewable energy permitting in Member States.[32]

	AT	BE	BG	CY	CZ	DK	DE	EE	EL	ES	FI	FR	HU	HR	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SI	OK	IM	YES	NO
Clear information	IM	OK	IM	OK	OK	OK	YES	OK	YES	IM	IM	OK		YES	OK	IM	IM	YES	IM	OK	YES	IM	OK	OK	IM	YES	IM	10	10	6	0
One stop shop	YES	OK	IM	OK	YES	OK	OK	OK	IM	OK	OK	NO		NO	IM	IM	NO	YES	YES	OK	OK	YES	IM	IM	YES	NO	YES	9	6	7	4
Clear deadlines	YES	OK	OK	IM	OK	OK	OK	IM	OK	OK	OK	OK		YES	IM	OK	OK	OK	OK	OK	OK	OK	OK	OK	YES	YES	IM	18	4	4	0
Tacit agreement	NO	NO	IM	NO	NO	YES	OK	OK	OK	OK	NO	NO		NO	YES	OK	OK	YES	YES	NO	NO	OK	OK	NO	OK	OK	IM	10	2	4	10
Digital permitting	IM	OK	IM	IM	IM	OK	OK	OK	IM	IM	OK	OK		YES	IM	IM	IM	OK	OK	OK	OK	IM	IM	OK	OK	IM	IM	12	13	1	0
																												59	35	22	14

OK – Suggested solution / practice is already in place
IM – Suggested solution / practice is in the process of implementation
YES – Suggested solution / practice will be further discussed
NO – We do not plan to introduce this practice

Fig. 5. State of play of best practices regarding the reduction of the administrative burden imposed on cross-border service providers[33]

	AT	BE	BG	CY	CZ	DK	DE	EE	EL	ES	FI	FR	HU	HR	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SK	SI	OK	YES	NO
1. Tageted	NO	NO	NO	NO	NO	OK	NO	NO	NO	NO	YES	NO	YES		YES	NO	NO	YES	YES	YES	YES	NO	YES	NO	NO	NO	NO	1	8	17
2. Short-term	NO	NO	NO	NO	NO	OK	NO	NO	NO	OK	YES	NO	YES		YES	NO	OK	NO	YES	YES	YES	NO	YES	NO	NO	YES	NO	3	8	15
3. Grace	NO	NO	NO	NO	OK	OK	NO	NO	NO	NO	OK	NO	YES		OK	NO	NO	YES	YES	NO	NO	OK	YES	NO	NO	YES	OK	6	5	15
4. Documents	NO	NO	OK	OK	OK	YES	OK	OK	OK	NO	OK	NO	YES		NO	NO	NO	YES	NO	YES	NO	OK	OK	NO	OK	NO	OK	11	4	11
5. Provide	NO	OK	NO	OK	YES	YES	OK	OK	NO	NO	OK	NO	YES		OK	YES	NO	YES	YES	YES	NO	NO	YES	NO	OK	YES	NO	7	9	10
6. Translations	OK	NO	NO	OK	YES	NO	OK	OK	OK	NO	OK	NO	YES		OK	NO	OK	NO	NO	NO	YES	OK	YES	NO	OK	OK	NO	11	4	11
7. Presence	OK	OK	OK	OK	OK	YES	YES	OK	NO	OK	OK	NO	YES		OK	YES	OK	YES	YES	OK	NO	NO	OK	YES	NO	OK	NO	13	7	6
8. Avilability	OK	NO	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	YES		OK	NO	OK	YES	OK	OK	OK	OK	OK	OK	NO	OK	OK	21	2	3
																												73	47	88

YES – Suggested best practice will be further discussed
OK – Administrative requirements were already in line
NO – Suggested best practice will not be considered

32 SMET Report 2022-2023, p.12.

33 SMET Report 2022-2023, p.14.

2.5 Commission Staff Working Document (accompanying the ASMCR)

The Commission Staff Working Document, which contains annexes to the ASMCR, also includes a policy tracker that outlines progress made by the Commission on “enforcing Single Market rules and removing Member State-level barriers” since the publication of the “Single Market at 30” Communication.[34] It lists the policy proposals made in the “Single Market at 30” and flags whether the proposal have been implemented, are launched / under preparation or are yet to be launched.

While some of the policy proposals are useful – e.g. monitoring benchmark on SOLVIT – many remain too broad or vaguely defined to be helpful for businesses in measuring real progress.

Few examples:

Observation 1

The policy tracker considers “reporting on progress in solving Single Market barriers using cooperative tools, such as SMET” to be a completed / implemented action. (✓)

Analysis & suggestions

This action cannot be considered completed (✓), as SMET’s tracking of progress is not comprehensive enough, and it does not sufficiently track and address (progress on removing) specific barriers reported by business.

Observation 2

The policy tracker considers “monitoring specific enforcement targets set on enforcement” to be a completed / implemented action. (✓)

Analysis & suggestions

This action cannot be considered completed (✓), as a reduction in the transposition and conformity deficits are not exhaustive metrics to measure success in removing cross-border barriers, such as “gold plating” by Member States is not addressed”.

34 SWD(2024)78, pp.47-48.

3. Analysis of other competitiveness drivers

3.1 Access to private capital and investment

Observation 1

The ASMCR claims: "The EU Taxonomy regulation will enhance financing of environmentally sustainable economic activities and boost the green transition."

Analysis & suggestions

This claim is a hope or an aspiration, but the burden of proof is on the European Commission to show that this is actually the case: namely that the EU Taxonomy is actually value-adding and workable for industry at large.

At a recent meeting of the ERT CFO Platform, where 20+ CFOs of manufacturing companies gathered who all have extensive experience in preparing high-quality reports, it was agreed that the Taxonomy reports are largely incomprehensible for external stakeholders, are not comparable across or within industry sectors and thus suffer from a serious credibility issue. So far, the Taxonomy reports from companies are of very limited use to investors and other stakeholders: during investment roadshows, companies receive very few to no questions about their Taxonomy reports from investors.

Reasons for the lack of useability of the Taxonomy:[35]

i. the reports had to be written based on incomplete definitions and differing interpretations of the concepts in the Taxonomy Regulation and Delegated Acts, which makes reports of companies active within the same sector not comparable to each other;

ii. the technical screening criteria are not homogenous / aligned, meaning the Taxonomy cannot be used to assess the environmental performance of many activities / products.

iii. the Taxonomy does not recognise that the applicability of EU law ends (in most cases) at the EU border (assessing the CO2 emissions or RDE of US/CHN cars based on EU law is not possible…), meaning that globally operating companies have a structural disadvantage.

Overall, the Taxonomy does not give a holistic view on sustainability performance and efforts by companies as it does not cover all economic activities but only a selection (some activities of EU companies are usually not covered, so the investors have only a partial view on the company). More specifically, the Taxonomy reflects the impact of decarbonisation measures in in-house production only to the extent that they serve to manufacture Taxonomy-aligned products or to the extent that they are explicitly included in the description of an activity. The taxonomy reports therefore do not properly reflect what a company is really undertaking to move towards more sustainable solutions.

For now, the reports are not fulfilling the function of clearly signalling to investors which competitors are investing more in sustainable business activities.[36] The taxonomy also does not give credit to

35 Views on the value and use of the Taxonomy can differ across sectors. For instance, whilst energy-intensive industries and downstream industries (e.g. automotive or aviation) may not find it has been helpful so far, utilities may benefit from the Taxonomy in the way it has been conceived. For example, it may be easier for utilities to fulfil the Technical Screening Criteria and Do No Significant Harm (DNSH) criteria as their core activities, such as the generation of renewable electricity, is Taxonomy aligned. According to energy-intensive industries, on the other hand, the Platform on Sustainable Finance (PSF) was too selective in collecting feedback for its work and did not consult sufficiently with hard-to-abate sectors and manufacturing companies. Hence, the taxonomy is less apt at recognising their significant decarbonisation efforts, let alone attracting "additional" investment for decarbonisation purposes. As the Taxonomy currently cannot incorporate a value chain approach, it is questionable if it really speeds up the green transition.

36 The Taxonomy cannot be interpreted in isolation to measure the attractiveness of investments in green transition activities.

activities which are enablers to other sustainable activities or those that support activities of other industries that meet the taxonomy definitions.

All of this does not mean that the intention behind or the actual concept of the Taxonomy is futile but it signals that the implementation difficulties should be addressed, especially because the entire reporting exercise requires a lot of human and financial resources from companies. A thorough simplification would be needed so that the Taxonomy can become a positive, transparent and useful tool. To this end, it should amongst others be contemplated if the number of KPIs in Taxonomy reports can be reduced (e.g. only revenues instead of also capex and opex). ERT stands ready to advise and contribute.

Observation 2

The ASMCR states that venture capital investments as share of GDP in the EU is rising (at 0.09% of GDP in 2022, double the level of 2018).[37]

Analysis & suggestions

In fact, there has been a drop in 2022 (0.09%) compared to 2021 (0.11%) in venture capital investments as a share of GDP. At the same time, the 2022 level of investments as a share of GDP in the EU (0.09%) was still a fraction of the levels in the US (0.75%) and China (0.58%). What is not mentioned in the ASMCR is that the Inflation Reduction Act (IRA) will likely lead to an increase in industrial investment as of 2023 in the US, further increasing the gap with the EU.

The ASMCR should thus include more analysis and detailed recommendations on how the EU could remove the bottlenecks hindering the uptake of venture capital investments and catch up with the US and China.

But venture capital investments as a share of GDP is not the only metric - EU industry also consistently invests a lower share of Industrial Gross Value Added (GVA) than industry in Japan and the US[38]. This metric (the investment rate) is currently absent from the ASMCR.

This investment rate metric should thus also be included: to achieve the digital and green transition, Europe's real economy needs massive investment, both for corporates and for start-ups and scale-ups. Much of this investment will need to come from Europe's corporates. If the investment rate is low, this is a reflection of the unattractive business environment.

37 ASMCR 2024, p. 8.

38 ERT Competitiveness and Industry Benchmarking Report 2024, p. 20

3.2 Research and Innovation (R&I)

Observation 1

The analysis is right to point out that the EU's R&I investments lag behind the US' and China's, because of the gap in business sector R&I, stagnant public R&D investment, as well as persistent structural challenges in several R&I systems, such as weak science-business linkages.[39]

Analysis & suggestions

The analysis misses that:

- In the EU, R&D spending is not only proportionately lower than for its peers and competitors – it is also focused on different kinds of R&D, with EU industry spending much less on experimental R&D than its global peers;[40]
- The EU lags all its peers in terms of R&D intensity – the ratio of a firm's R&D investment to its revenue – and it is also still far behind its own goal of reaching 3% R&D intensity by 2010;[41]
- R&D investment differs strongly across the EU with the risk of entire regions being left behind.[42]

These additional points of analysis should give ideas for new or expanded metrics by which to measure the state of Europe's R&I vis-à-vis its global competitors and peers.

39 ASMCR 2024, p. 12.

40 ERT Competitiveness and Industry Benchmarking Report 2024, p. 28

41 ERT Competitiveness and Industry Benchmarking Report 2024, p. 27

42 Idem.

3.3 Energy

Observation 1

The analysis is right to point out the significant increase in intra-EU investments in renewables, which is a positive development.[43]

However, this chapter almost exclusively focusses on explaining which actions the European Commission has taken in the past, such as legislative initiatives (e.g. on electricity market design, the Net-Zero Industry Act, etc.) and other actions (e.g. Action Plans on Grids and on Wind Power).

Analysis & suggestions

Several of the Commission's actions have been positively received by the industry and should be swiftly implemented. However, this chapter falls short of addressing the real issues faced by companies in the EU as it lacks analysis on:

- The plight of energy-intensive industries (EIIs). It does not mention any of the closures or curtailments which have occurred since the spike in energy prices. It also does not mention the opportunity cost of the attractiveness of the IRA which has directed significant additional investments for EIIs to the US, and less in the EU.
- The high price of energy in the EU, and its origins. The European Commission should analyse the high cost of taxes (e.g. VAT) and levies on energy in the EU, and compare them with the cost of taxes of its main competitors (US, China) and future competitors (Brazil, South-Africa, Saudi Arabia, UAE, Oman, etc.).
- The Commission should track the time it takes to obtain permits for renewable energy projects over time in all EU Member States. It should also compare the time it takes to start and complete such projects with other, non-EU countries.

A few other points that are missing in the analysis:

- While Europe's low-carbon energy transition investment is just above the US's, it lags China's.[44] It also lags in electricity network investments. Electricity grids are set to become an important bottleneck.
- EU energy infrastructure needs an upgrade to make a common market reality. To support the infrastructure transition, it is key to accelerate permitting procedures that enable private investments.
- Furthermore, in some specific but key or 'strategic' technologies – for generating hydrogen, for example, with the building of electrolyser installations – Europe's investment comes second after China (but it could slide further in the ranking following the US Inflation Reduction Act).[45]
- US start-ups attract most investment across all renewable areas, except fuel cells (dominated by China) and project development (very prominent in the EU).[46] Europe should respond to this by scaling up its market for hydrogen to incentivise investment and innovation 'made in Europe'.

43 ASMCR 2024, pp.13-15.

44 ERT Competitiveness and Industry Benchmarking Report 2024, p. 45

45 ERT Competitiveness and Industry Benchmarking Report 2024, p. 46

46 idem

3.4 Circularity

Observation 1

The ASMCR states that at 11.5% the rate of use of secondary raw materials in 2022 is less than half of the target agreed for 2030 (which should be 23.4%).[47] The ASMCR refers to unsustainable consumption and related production as key bottlenecks to circularity.

Analysis & suggestions

The Commission should provide more analysis on the bottlenecks.

We know from ERT companies that one problem is the lack of EU-wide End-of-Waste criteria for certain products. As a result, there are persistent issues with the transportation of waste or secondary raw materials. For example, e-scrap is being shipped from Hungary through Austria and Belgium without a problem, as those Member States classify it as "non-hazardous" waste. However, the Danish authorities do deem it "hazardous" and block the shipments. Such fragmentation prevents companies from achieving economies of scale in treating and recycling waste. In addition, there is no harmonisation of the waste shipments procedures themselves, meaning procedures take a long time and are inefficient. For example, for shipments in transit, while a few EU Member States give automatic consent, most Member States require written consent even if the waste during this transshipment is not being unloaded from a truck or ship.[48]

Another issue relates to plastic recycling that suffers from the lack of recycling infrastructures, partly due to very scarce public support. It results that in some circumstances businesses carry the financial burden of waste infrastructure and services disproportionately.

Will the Digital Product Passport (mentioned on page 16) be sufficient to address the fragmentation in the Single Market?

The ASMCR states (also on page 16) that "Member States need to work to strengthen the market surveillance of product regulatory requirements linked to circularity." What actions can the Commission undertake to map the activities in the EU Member States and stimulate cooperation on surveillance?

47 ASMCR, p. 15.

48 ERT compendium of case studies 2023-2024 (link).

3.5 Digitalisation

Observation 1

KPIs 11 & 12 largely focus on the uptake of digital technologies by companies and SMEs, while the analysis lists some of the key legislation recently adopted in the digital area (e.g. the AI Act).

Analysis & suggestions

It remains to be seen whether the recently adopted legislation (e.g. the AI Act), which implies additional burdens for companies, will actually lead to the desired outcomes, helping to achieve the Digital Decade targets.

At the same time, both the KPIs and analysis are not putting the state of Europe's digitalisation in a broader international comparison that focuses mainly on the lack of private investments in various digital domains (including AI leadership, chips manufacturing, and fibre networks) and Europe's lagging implementation in some key areas, like 5G roll-out, compared to global competitors.[49]

It is essential to undertake such benchmarking vis-à-vis global competitors / peers. The Financial Times recently revealed that "investment in tech research and development in Europe is only one-fifth of what it is in the US, and half that in China. Investment in AI is around 50 times higher in the US than in Europe. European tech is falling behind its competitors at an alarming rate."[50]

Observation 2

This section describes a lot of legislative actions that the Commission has taken. There are however other means to evaluate competitiveness and other possible measures that could at least also be considered...

Analysis & suggestions

The above referenced FT article states that: "The recent wave of tech lay-offs offers insights into some of the key structural weaknesses of the European model. Restructuring in Europe takes much longer and costs much more than in the US, which impedes investment in AI." Whereas companies are more agile in the US as they can restructure faster (laying off and hiring) than in Europe. For Microsoft, Google and Meta, this takes on average 5-7 months, whereas for SAP, Nokia and Ericsson, this can often take until 2 years.

The article goes on to state that: "At a more macro level, this diagnosis is confirmed by a McKinsey study[51] which shows that large European companies are much less profitable than their American counterparts, and that 90 per cent of that gap can be attributed to technology-creating industries. Tech is unpredictable, disruptive and volatile. With higher severance costs and longer delays, the costs of adaptation in Europe are about 10 times higher than in the US. After decades of greater agility, American companies have the financial means to invest in AI; European companies simply can't compare. [...] A solution that does not threaten the European social model, and which could be highly effective, would be to reform employment protection laws for salaries above a high threshold. That, more than anything else, could help bring Europe back to the forefront of innovation."

49 ERT, Single Market Obstacles: Factsheet, 2024 (link). ERT Competitiveness and Industry Benchmarking Report 2024, pp. 34-39.

50 Financial Times, "Why Europe is a laggard in tech" (24 February 2024) (link)

51 McKinsey Global Institute, "Securing Europe's future beyond energy: Addressing its corporate and technology gap (May 2022) (link)

3.6 Trade and open strategic autonomy

Observation 1

The analysis is complimentary about the EU's role in global trade – "the EU is the largest exporter globally".[52] It, however, also finds that Europe's global market share in exports has been decreasing.[53]

Meanwhile, the analysis blames the energy crisis and China's fast growth in clean tech markets for the market share losses in several manufacturing sectors.[54]

Analysis & suggestions

However, there are structural problems at the heart of Europe's declining manufacturing capacity. For example, over the past decades, compared to the US, investment in infrastructure has been relatively low.[55] This hard truth is not taken up sufficiently in the overall reflection or included as a separate KPI.

In the context of the European Economic Security Strategy, the EU should mostly dedicate itself to the "promote" and "partner" aspects of the strategy. In other words, a lot more efforts should be dedicated to negotiating and concluding FTA agreements.

52 ASMCR 2024, p.22

53 See also ERT Competitiveness and Industry Benchmarking Report 2024, pp. 17-19

54 ASMCR 2024, pp.22-25

55 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.

4. Recommendations

For the ASMCR to become "fit for purpose", i.e. give meaningful guidance on how to improve the Single Market and reflect the state of Europe's competitiveness to the fullest extent possible, it is key that: 1) the analysis is comprehensive and focuses more on cross-border obstacles as reported by businesses and other stakeholders; 2) it identifies which Member State / Commission body should be responsible for tackling specific obstacles whilst issuing recommendations on how best to do this; 3) it tracks progress on removing obstacles (with a detailed annex, along the lines of the policy tracker in the Commission Staff Working Document accompanying the ASMCR, or spreadsheet).

On point 1 (removing obstacles identified by companies) :

- A non-paper of 15 Member States underlined that it is essential that the ASMCR combines different data and methodologies - not just macro-economic data but also micro-examples at company level, and data from the perspective of entrepreneurs and citizens (i.e. business journeys and the renewed Eurobarometer).[56] KPIs should be reviewed periodically and adjusted, if necessary to reflect the developments in competitiveness. For this purpose, the Commission should find ways to systematically source up-to-date information on cross-border barriers from the business community.

- A dedicated service or "desk" may need to be created in the European Commission to receive, analyse, track and remove obstacles in the Single Market (the result of this analysis could then feature in the upcoming editions of the ASMCR). If extra information is required on the nature of specific obstacles, the Commission should pro-actively reach out to the companies concerned.

On point 2 (follow-up by relevant public authorities):

- Based on a thorough analysis of the sectors in which the EU economy is lagging behind and where companies are disinvesting in the EU, the next edition of a Report from the European Commission on the Single Market and Competitiveness should outline options for redressing and improving the situation and make recommendations that can guide and steer concrete actions. In these recommendations, the Commission should clearly call out which authorities are responsible for certain obstacles.

- Based on such recommendations, the Commission and incoming Presidencies should propose concrete follow-up actions (which could then feature in the next editions of the ASMCR) – assigned to the specific Commission initiatives to enforce Single Market rules (like the SMET) or addressed directly to the Member States – to be considered by the Council.

On point 3 (tracking progress):

- Going forward, the Commission and national agencies should also spend more time and resources on tracking progress on removing cross-border obstacles (e.g. through keeping a 'spreadsheet' of obstacles). The next editions of the ASMCR should track whether the obstacles identified in the previous ASMCRs are being addressed and whether the policy recommendations / concrete follow-up actions are being implemented.

More granular recommendations can be found in the Chapter "Recommendations" of the ERT Technical Study on Single Market obstacles as well as per KPI in the ERT Benchmarking Report (see references in Chapter 5).

The action points listed in the Antwerp Declaration for a European Industrial Deal are also relevant as orientation for policy-making.

Furthermore, the European Commission should also reinstate the practice of comparing various competitiveness drivers between EU Member States, which was done until 2014 in annual competitiveness reports. For example, the 2014 report analysed the reasons behind the wide variation in electricity prices

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

across the EU, pointing out the different taxes / levies and network costs between EU Member States that led to a wide variety in intra-EU electricity prices.[57] ERT would argue for a relaunch of these annual competitiveness checks which could feature in future editions of the ASMCR.

5. ERT insights on Single Market & competitiveness

Single Market

- February 2024:
  - ERT Technical Study on Single Market obstacles: 1) competitiveness & fragmentation, 2) analysis of barriers and governance shortcomings and 3) recommendations
  - Compendium of 100+ obstacles showcasing the fragmentation and regulatory heterogeneity in the Single Market
  - Joint Statement of 25 associations calling for "Deepening the Single Market and Renewing the dynamic of European integration" (13-14 February)
  - Joint Statement of 6 horizontal business associations (29 February)
  - Animated short film on the Single Market
  - Factsheet: a summary of key messages and selected case studies of obstacles
- December 2021: Renewing the Dynamic of European integration: Single Market stories by business leaders

Benchmarking Competitiveness internationally:

- March 2024: https://ert.eu/bmr2024/
- June 2022: European Competitiveness and Industry: Benchmarking Report 2022

Innovation: Innovation made in Europe: Setting the foundation for future competitiveness, 2023.

Energy:

- Competitiveness of European energy-intensive industries: https://ert.eu/wp-content/uploads/2024/04/ERT-Competitiveness-of-Europes-energy-intensive-industries_March-2024.pdf.
- Strengthening Europe's energy infrastructure: https://ert.eu/wp-content/uploads/2024/04/ERT-Strengthening-Europes-energy-infrastructure_March-2024.pdf.

Sustainable finance: ERT contributed to various consultations regarding the Taxonomy and the European Sustainability Reporting Standards (ESRS) by means of Expert Papers that are available here: https://ert.eu/focus-areas/finance-and-taxation/.

ERT had published an appraisal last year (June 2023) of the EU initiatives related to competitiveness that were taken in the spring of 2023.

Competition policy, in particular merger control. Below are two concrete examples that showcase the necessity to adapt the EU Merger Regulation (EUMR):

1. **More dynamic & long-term perspective needed in the EUMR** to factor in innovation & investment

57 European Commission, European Competitiveness Report 2014, pp.190-191.

effects, which contribute to EU competitiveness and resilience:

a. On the need for a broader, more dynamic and forward-looking substantive assessment "*DG Competition should extend the timeline over which they assess the impact of mergers, including increasing the general timeframe for taking account of potential entry to five years*" Competing at Scale by ERT, 2019.

b. Wider timelines assessed will allow to account for efficiencies, eg. in form of improved quality: "*Extending the time frame to reflect investment cycles should lead to a greater importance of quality improvements for efficiencies assessment in the merger review process than is currently the case.*" Efficiencies in telecommunication network cooperations and mergers by Kai-Uwe Kühn, Adina Claici, Konstantin Ebinger, 2022

c. Economic models can deal with potential uncertainties a longer time horizon may bring: "*Models can be used to make an assessment of the longer-term innovation effects of a merger, and to help inform decision-making.*" Innovation in EU merger control: walking the talk by Reinhilde Veugelers, Bruegel, 2012

2. **Clear threshold for nascent acquisitions needed in EUMR** as current guidance on Art. 22 is a very questionable approach – or as Nicholas Levy, Adris Risma, and Bianca Buzatu put it in their 2021 contribution in CoRe, '*The EC's new merger referral policy: a creative reform or an unnecessary end to 'Brightline jurisdictional rules?*':

- Questions around the lawfulness of new Art. 22 guidance: "*The Commission's assertion of extended jurisdiction under Article 22 remains unlawful, unconstitutional, and ultimately unsustainable. Even though its new policy was supported by the EU General Court in the Illumina case the judgment is unconvincing and inadequate. It also involves an underlying constitutionally stunning proposition: that without the explicit consent of the Union legislature, the national competition authorities (NCAs) should be able to transfer merger cases to the Commission which they themselves had no national competence to assess. In other words, the EUMR is able to be deployed by the NCAs to grant the Commission jurisdiction over cases which national parliaments have never empowered NCAs to review, and for which the EUMR does not otherwise grant the Commission jurisdiction.*" Killer Acquisitions and Article 22: A Step Too Far? By Alan Riley, College of Europe, 2023

- Legal uncertainty caused by the full discretion of EC and Member States: "*The key weakness of this extension is found in the Notice itself: `the Member States and the Commission retain a considerable margin of discretion in deciding whether to refer cases or accept referrals.´ As a result, there is no guarantee that all problematic mergers would be dealt with by the Commission...... A further problem is that the Commission is expected to review the effects of the merger on the territories of the Member States that have made the notification. Therefore, the only way to ensure that the Commission examines the effects of these mergers EU-wide is if it receives a notification from all Member States, which is a resource-intensive exercise. There are a number of procedural concerns as well: The parties to these mergers face a degree of legal uncertainty because they had not expected to notify these mergers to national competition authorities in the EU and now face the cost of notification to the Commission.*" Page 24/25 in Article 114 TFEU as a Legal Basis for Strengthened Control of Acquisitions by Digital Gatekeepers, by Jens-Uwe Franck, Giorgio Monti and Alexandre de Streel for the BMWI, 2021

- Fragmentation/Duplication not in the spirit of EUMR: "*this (new Art. 22) mechanism can lead to a duplication of merger procedures where one group of national competition authorities refers a merger to the European Commission, while another does not join said referral. This occurred in the 2022 case of Meta/Kustomer. Such occurrences can weaken the one-stop-shop principle enshrined in the EU Merger Regulation and challenge consistency among merger reviews in the EU more generally.*" Page 8 in Digital Merger Control: Adapting Theories of Harm –OECD Note by Viktoria Robertson, 2023

- Therefore we need a clear threshold in the EUMR that defines scope of notifiable transactions narrowly where current turnover is a particularly poor indicator of a target's value, for instance setting out notification requirements for all acquisitions of designated gatekeepers, in the vein of the ICN Recommended Practices for Merger Notification: "*with merger notification requirements, the business community, competition authorities, and the efficient operation of capital markets are best served by clear, understandable, and easily administrable "bright-line" tests*"

The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairmen of major multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open, and competitive 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.

This Expert Paper was prepared by the ERT Single Market Task Force, the ERT Reporting burden Task Force and the ERT Competitiveness & Innovation Working Group.

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