

# SMEUnited's views on a better implementation and enforcement of single market rules

## General remarks

SMEUnited welcomes the Commission's long term [Action plan](#) for better implementation and enforcement of single market rules, published on 10 March 2020 together with the industrial strategy and the new SME strategy. We believe that the well-functioning of the single market rules and their adequate implementation at the national and local level is key for the many Small and Medium Enterprises (SMEs) operating across Europe. SMEs still suffer disproportionately from regulatory and administrative barriers which hinder their potential to grow and to engage in cross-border business.

A favourable regulatory environment for SMEs would also create the conditions for the recovery strategy in line with the digital and environmental transition.

The outbreak of the COVID19 pandemic hit severely small and micro companies that faced new trade barriers imposed at the national / regional level (e.g. uncoordinated border control measures that created disruptions in the supply chains, etc.). We therefore call for the further development of the EU competence to strengthen and secure the internal market by introducing a uniform and coordinated EU crisis management for disaster situations (including pandemics).

SMEUnited welcomes the establishment of the new Single Market Enforcement Task Force (SMET) and suggests the participation / contribution of stakeholders within SMET as well as the mirroring of this body at national level.

Finally, we ask the Commission to identify concrete measures to address existing single market barriers and to allocate sufficient resources to ensure the proper functioning of the single market.

## Suggestions on specific actions proposed

### 1. Increasing knowledge and awareness of single market rules

#### Action 1: Programme to provide more specific guidance tools for national authorities

##### Updating the Handbook on the implementation of the Services Directive

The Service Directive Handbook was designed thirteen years ago to provide Member States with technical assistance during the transposition process. It is therefore set according to a

purely theoretical vision, and it should now be based on an ex-post approach, considering that the transposition is concluded and has been consolidated.

For this reason, even without becoming a mere evaluation tool of the results achieved, it should include elements based on the concrete experience gained, in order to be utilised as a useful guide with a view to managing and developing the regulations adopted. To this end, it should firstly be updated by including the regulatory and jurisprudential evolution that has taken place<sup>1</sup>.

It could also be useful to suggest the adoption of an online constantly updated section of the handbook, where all the national and jurisprudential news related to the implementation of the Directive, at European and national level, should be inserted. The handbook could also include a section dedicated to the implementation of the Services Directive in the Member States, highlighting for each of them the single economic activities affected by the transposition of the Directive. In this context, moreover, case studies could also be included, with a view to promote exchange of best practices within the single market. Finally, the handbook could be integrated with practical comparative implementation sheets, reporting in their different dedicated sections the objectives indicated by the Directive together with an analysis on how the EU provisions have been implemented at national level.

### **Guidance on strategic and other aspects of public procurement**

We ask for a clear simplification and reduction of administrative burdens in the area of e-procurement through a central search platform that lists the notices for all public contracts, provides for uniform handling of e-procurement and technical assistance / support to bidders.

SMEunited asks the Commission to monitor more closely the application of the provisions in the new Directives, especially as regards the division into lots, the simplification related to qualification requirements, the avoidance of unnecessary criteria and the aim to contract with the economically most advanced tender.

### **Updated reform recommendations for regulation of professional services**

These recommendations should be based on the Commission's Communication of 10 January 2017, taking into account a restrictiveness indicator used for the assessment and

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<sup>1</sup> To this end, for example, when revising the handbook, the judgment of the European Court of Justice on case C-31/16 (Visser case) should be included. The latter establishes the legitimacy of an urban development plan that prohibits the retailing of non-voluminous products in given areas located outside the city centre and the compatibility of such provisions with the Services directive. It would be particularly useful to focus on the evolution of the definition of overriding reasons of general interest to provide guidance to local administrations. Actually, although the transposition of the Services directive is completed at national level, measures continue to be issued at local level on several aspects governed by the directive, thus generating over the years a great deal of conflict between the State and local administrations.

The updating of the handbook could also concern some significant judgments from Member States jurisdictional authorities, such as, for example, the one issued by the Italian Constitutional Court (239/2016), stating that the regions and local authorities can establish "even areas closed to commercial activities, or introduce limitations to areas where production and commercial activities can take place", provided that this occurs "without discrimination between operators" and in order to protect specific public interests of constitutional importance (i.e.: protection of health, workers' rights and the environment).

benchmarking of national requirements in professional services to consider the latest changes in Member States' regulatory frameworks and push for further reforms. Any reform recommendation shall be evaluated on a case by case approach, also taking into consideration the important role played by regulated professions when serving the public interest.

## **Action 2: Improving access to information on rules and requirements for users**

The proposed instruments (provision of guidance documents, Single Digital Gateway (SDG), efficient Product Contact Points, exchange and cooperation between national authorities) can improve compliance and avoid market segmentation. However, SMEs highlight the need to improve access to information on rules and requirements. Difficulties in obtaining information is mentioned by SMEs as one of the main obstacles. A better cooperation with and integration of the representative SME organisations and leveraging on existing networks of SME organisations must further improve and expand the outreach of the Enterprise Europe Network (EEN). The EEN must broaden its offer to SMEs at a more local level.

The SDG and other instruments are helpful to receive initial information. Nevertheless, many SMEs are looking for more detailed, case-specific solutions. As concerns the SDG, in principle, we support the concentration of information on digital platforms. We would like to highlight the importance to guarantee a unified structure, awareness raising of the existence of such SDG, and accurate and timely maintenance by all Member States. Such portals should be SME friendly by sharing information in all European languages. Realistically, they could provide content in four main languages of the EU, including the national language.

## **Action 6: Building capacity of public procurement professionals and strengthening the cooperation between national bodies**

We ask for a simplification of legislation to eliminate all unnecessary burdens, duplications and gold plating. In particular, we ask for an SME-oriented approach (according to the "think small first" principle) so that any new measure, from the outset, does not introduce excessive burdens, does not increase bureaucracy and meets the needs of the smaller companies.

Any intervention aiming to ensure faster public procurement procedures should, however, be reconciled with the safeguarding of public interests, and with the recognition of the imperative reasons of general interest. Authorising procedures shall be maintained and made more effective by intervening on the efficiency of the action, on training of the dedicated staff, on sharing of databases, and on dialogue with businesses and their representatives.

Simplification will also help unlock public procurement. To this end, a contribution may come from the digitalisation of the procedures in all phases of public contracts: from awarding of tenders, to execution, and to the payment of contractors.

The Commission should offer training for public procurers and interested companies on the application of the new rules in the framework of the Single Market Programme.

## 2. Improving the transposition, implementation and application of EU rules

### Action 7: Structured dialogue for better transposition of single market Directives and Action 8: Implementation partnership for single market Regulations

A correct and timely transposition of single market legislation would significantly reduce the administrative burden for SMEs and national "gold plating".

Member States can and should adapt EU legislation to the national circumstances, and should also make sure that their action does not generate extra burdens for the business community. All EU institutions and Member States should aim at the same objectives concerning the reduction of regulatory burdens in order to reach tangible and concrete results for SMEs.

The European decision making process that has been elaborated in the Treaty of Rome sought to find a balance between the powers and competences of the EU institutions and those of Member States, which has led to the use of Directives mainly, especially for the creation of the internal market. Although Directives allow for compromise and take the national situation better into account, they often "encourage" for the practice of "gold plating".

The Commission has neither the means nor the resources to check the transposition and implementation of EU law in a rapid and systematic way. This is even more the case for assessing gold plating, as there is no instrument to do so. Better enforcement therefore implies that when transposing Directives into national legislation, care should be taken to avoid adding undue complications. "Gold Plating" should be resisted and eliminated. It should be indicated when additional provisions are being made. These should be identified and evaluated separately.

In fact, regulatory impact assessments on the transposition of EU legislation should be carried out at national and regional level. Moreover, the use of Regulations instead of Directives should be more considered. Indeed, it is not because EU legislation is directly applicable that it is burdensome. All depends on the content of the legislation, regardless of whether it is directly applicable or not. Directly applicable legislation, that respects the specificities of small enterprises avoids the danger of gold plating and does not create additional barriers for cross-border activities caused by different rules.

In addition, training at national level should be given to administrations, politicians, business organisations on the EU principles of better regulation and on the European legislative process. The national units responsible for the negotiations on European legislation should also be responsible for the transposition, as these persons are in the best place to know in which context compromises have been concluded.

### 3. Making the best use of preventive mechanisms

#### Action 9: Improving ex-ante assessments of restrictive regulation under the Proportionality Test Directive

We ask for effective cooperation between the Commission and the Member States to remove the causes of national obstacles.

#### Action 10: Streamlining the operation of the single market Transparency Directive and Action 12: Unlocking the full potential of the notification mechanism under the E-commerce Directive

Increased scrutiny of the compatibility of national notifications of technical regulations for Information Society goods and services with the EU single market would reduce national barriers for companies operating across borders in the single market.

#### Action 11: Preventing new barriers to providing services in the single market

We strongly believe that national and local authorities should be the sole responsible of regulating services at local level, in compliance with the Services Directive principles and provisions. That can be adequately verified and sanctioned by the existing judicial authorities and through a sound implementation of the existing rules, at the same time promoting a stronger cooperation between EU, national and local authorities, and an actual involvement of stakeholders' representative organisations.

### 4. Detecting non-compliance inside the single market and at the external borders

#### Action 13: Rationalising single market IT systems and setting-up a platform for online enforcement (e-enforcement lab)

With regards to Single market IT systems, we support the cross-border cooperation in Europe by eGovernment-solutions like the Internal Market Information system (IMI) which has the potential to foster cross-border networks. However, a better structure is needed and digital solutions cannot replace direct service, therefore a better cooperation with and involvement of the representative SME organisations is key. The focus should continuously be put on the provision of business support services, including business partnering and strengthening SME innovation capacity. It is essential that the range of services offered is customer-oriented (easy replies to consultations in the local language, etc.). Redundant parallel structures are to be prevented.

## Action 14: Strengthening the fight against counterfeit and illegal products

We support measures to protect fair competition in Europe strengthening the position of European companies in order to reduce the number of non-compliant products on the market. The same applies to the use of efficient tools to quickly detect infringements.

## Action 16: Development of labelling and traceability systems

In principle, digital solutions for traceability and labelling are welcome, however a mandatory product database, as envisaged by the Commission in the past, would mean additional bureaucracy for companies.

With regards to identifying and tracking non-compliant products, an impact assessment should be carried out focusing on the consequences for SMEs in the small series and one-off production sector. Because of the comparatively high costs for implementing these systems, it could be that SMEs are forced out of the market, although manufacturing in compliance with EU standards and requirements.

## 5. Strengthening enforcement on the ground

### Action 17: EU Product Compliance Network

The provisions on the establishment of a Union-Network for product conformity appears to be rather burdensome. It is questionable whether the added value of such a network can outweigh the bureaucratic burden of setting up and participating in it.

### Action 18: Making SOLVIT the default tool for single market dispute resolution

The strengthening of SOLVIT is welcome and the necessary resources must be ensured by both the Commission and the Member States in order to be able to respond to business cases as a matter of priority and to ensure rapid procedures. At present, the biggest problem for SOLVIT is the lack of staff and financial resources. In this regard, they are currently not sufficiently operational "as a standard tool for alternative dispute resolution in all areas of internal market policy" and cannot be an effective dispute resolution tool for businesses.

Furthermore, it must be highlighted that stakeholders are not involved at all in SOLVIT procedures whilst in some Member States the solutions defined through SOLVIT are transposed in national law to avoid infringement procedures. The risk that SOLVIT may overlap with other existing instruments, being a sort of preliminary phase of the pre-infringement procedure, should be avoided by preserving its informal nature. Therefore, SMEUnited calls for SOLVIT procedures to be more transparent and open to the contributions / participation of the stakeholders representative organisations.

## 6. Improving handling of infringement cases

### Action 19: Better prioritisation of enforcement action

The follow-up of well-founded but unsuccessful SOLVIT complaints was not taken up. SOLVIT quickly and easily helps in 80% of cases where companies are prevented from carrying out their legitimate business activities in other Member States due to misapplication or failure to implement EU law by public authorities. SMEunited asks a preferential treatment for the remaining 20% of unsolved SOLVIT cases by the Commission. The statement of facts and legal processing already exist, which allows the Commission to actively support affected companies in the exercise of their single market rights in a quick and effective way.

### Action 20: Clarity and consistency in case handling

We welcome the streamlining of the infringement procedure.

### Action 21: Better use the EU Pilot system

Enforced use of the EU pilot system (in 2016, the Commission announced to abandon the EU pilot). We call for the continuation of the EU pilot procedure as well as for greater transparency and participation by the stakeholders' organisations, going beyond the current regime of absolute confidentiality of communication exchanges between the Commission and the Member States.

### Action 22: Systematic periodic package meetings

We welcome the direct exchange between the Commission and Member States on internal market problems and ask for regular information to be shared with stakeholders.

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