

Legal obstacles in Member States to Single Market rules

The [original full study](#)¹ reviews and analyses national rules that restrict the free movement of goods and services and the right to establishment across the EU Single Market. The study also analyses trends over time in national restrictions and offers recommendations on how they can be removed.

Background

The EU Single Market is the world's largest and most successful example of economic integration. Empirical evidence shows that EU integration has significantly contributed to increased trade, competitiveness and GDP within the EU. Although the EU may still need to work towards having a fully functioning Single Market (free from unjustified or disproportionate obstacles to free movement), the study shows that there is no overall trend of increasing restrictions, save for in some specific sectors where certain types of restrictions have been on the rise recently.

The functioning of the Single Market is a shared responsibility between the EU and the Member States. Understandably, Member States seek to ensure that national risk objectives are met in terms of, for instance: consumer protection, safety, public health, and the environment. Risk preferences of Member States can differ, and this is a valid ground for divergence among Member States. However, justification is not always clearly or specifically provided by Member States. Moreover, Member States often fail to balance their justification for imposing new rules against the adverse impacts that these rules might have on free movement in the Single Market. This can lead to increased costs, and can effectively limit or block cross-border economic activity in the Single Market.

Key findings

National rules, measures and administrative practices are rarely outright discriminatory or protectionist, but there are numerous restrictions to trade within the EU Single Market that are likely unjustified. The study has identified obstacles to achieving the full potential of the Single Market:

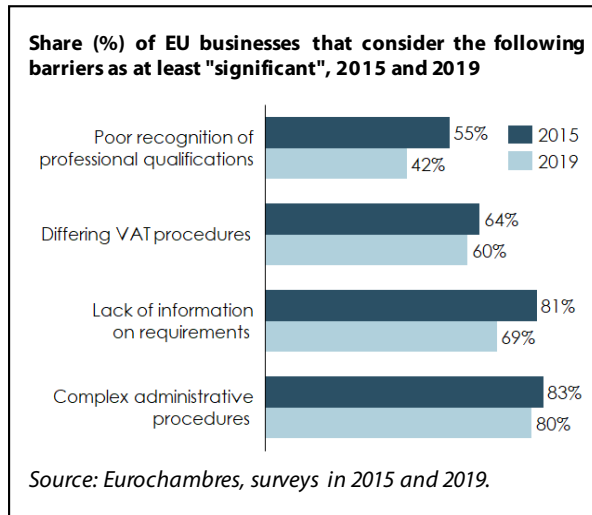
- Requirements for national standards, marks, and certificates, despite EU harmonisation being in place. The Commission is currently reviewing e.g. the Construction Products Regulation and the Machinery Directive to address such issues.
- National labelling requirements for food and beverage products, and requirements on retailers to promote local food products, put foreign providers at a disadvantage compared to domestic providers. This development should be heavily scrutinised and unjustified or disproportionate measures should be abolished (e.g. via EU pilots or infringement procedures).



Check out the [original full study](#) by scanning this QR code!



- Mutual recognition remains seriously underused – authorities often fail to show an evidence-based rationale in case of refusals. The new Regulation (EU) 2019/515² can help, but a more promising approach is to harmonise rules for specific sectors, such as food contact materials, lightning conductor systems, or hallmarking.
- Businesses struggle to find relevant and high-quality information about applicable rules. The Single Digital Gateway is likely to improve the situation. Close follow-up is needed to ensure that the information made available lives up to the high quality that is sought.
- There are almost 6,000 national rules on professional services – around one-quarter are regulated in only one Member State. There is also a lack of transparency for new national rules for service provision and establishment. For the 6,000 national regulated professions, the rules ought to be assessed by external reviewers in order to ensure that they pass a proportionality test.
- The process for posting workers is often cumbersome and lacks transparency. It would be better to register on a common EU-wide form (similar to those used with regards to customs). The EU Labour Authority (ELA) should be granted stronger powers to verify documents.
- The country-of-use principle for VAT makes e-merchants subject to divergent rules in each Member State in which they do business. Continued efforts to simplify VAT filing, especially for smaller e-merchants, are needed.
- Similar problems exist with regard to diverging national consumer protection rules, which is particularly problematic for smaller e-merchants. It is unclear whether such differences are objectively justified and it would be beneficial to move further in the direction of maximum harmonisation of at least some aspects of consumer protection.
- Implementing the 6-point EU public procurement strategy is a good way to improve procurement performance (e.g. eProcurement), but single bid tenders and tenders without a single bid must be minimised. Central Procurement Bodies ought to be far more involved in raising professionalism among procurers (especially those that only rarely make large purchases).



Conclusions

Many of these issues are long-lived – there does not appear to be an overall trend of increasing barriers to free movement. The problem is rather that "old" issues are not sufficiently addressed and removed.

The root cause of the problem is the dual responsibility between the EU and the Member States (at national, regional or local levels of governance). A more localised scrutiny of proposed national rules that potentially conflict with Single Market rules and principles may be needed. Local EU bodies could help not only by being better placed to scrutinise national measures, but also by providing expertise, guidance and assistance to facilitate the ability of national, regional and local bodies to comply with EU law.

¹ Dahlberg, E. et al., *Legal obstacles in Member States to Single Market rules*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658189/IPOL_STU\(2020\)658189_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658189/IPOL_STU(2020)658189_EN.pdf).

² Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008 [2019] OJ L 91, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0515>.

Disclaimer and copyright. The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy. © European Union, 2020.

© Image on page 1 used under licence from Adobe Stock

IP/A/IMCO/2020-31; Manuscript completed: November 2020; Date of publication: December 2020

Administrators responsible: Christina RATCLIFF and Mariusz MACIEJEWSKI; Editorial assistant: Roberto BIANCHINI

Contact: Poldep-Economy-Science@ep.europa.eu

This document is available on the internet at: www.europarl.europa.eu/supporting-analyses

Print ISBN 978-92-846-7516-6 | doi:10.2861/567469 | QA-03-20-821-EN-C

PDF ISBN 978-92-846-7515-9 | doi:10.2861/445016 | QA-03-20-821-EN-N